

The Graying of America

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Americans are getting older. On the individual level, of course, the melancholy fact that every day each of us is another day older is a truism. But demographers, with a mounting urgency, have been calling attention to the aging of our society more generally. Since the turn of the century, there has been an eightfold increase in the number of Americans over the age of 65, and almost a tripling of their proportion in the population. Those over the age of 85 — the fastest-growing group in the country — are 21 times as numerous as in 1900.

This dramatic change in the age structure of the United States is straightforwardly explained by two interacting social and medical developments. First, there has been a decrease in the number of children, accelerating precipitously in recent years as the last of the baby boomers moved into adulthood: from 1960 to 1982 the number of children younger than 15 fell by 7 percent. Second, with improved medical care and sharply declining death rates for the elderly, there has been an even more rapid increase in the number of senior citizens: between 1960 and 1980 the number of people 65 or older grew by 54 percent. America's elderly are now facing a population explosion, demographers warn, greater than that of the population of India.

The graying of America has consequences that ramify throughout our society. McDonalds ads portray perky oldsters slinging hamburgers, while Alzheimer's support groups multiply to help families cope with one of the tragedies plaguing the aged. But perhaps nowhere is the demographic shift more evident than

in the changing contours of the federal budget. As the ranks of Medicare and Social Security beneficiaries continue to swell, the costs of administering these programs have become staggering in an era of spiraling deficits and retrenchment in other areas of public spending. In the early 1960s, less than 15 percent of the federal budget was targeted to those over the age of 65; by 1985, that percentage had almost doubled. The \$80 billion of private and government money spent on health care for the old in 1981 is expected to grow to \$200 billion by the year 2000, with public expenditures alone rising to \$114 billion. We now spend more on the elderly than on national defense, in 1983 some \$217 billion or \$7,700 per elderly person. (In contrast, expenditures for child-oriented programs — AFDC, Head Start, food stamps, child nutrition, and all federal aid to education — totaled about \$36 billion in 1984, about one-sixth of federal expenditures on the elderly.) Real doubts have been expressed about whether we as a society can continue to afford expenditures of this magnitude or allow programs for the elderly to dominate our public spending to such a degree.

Indeed, the question can be raised whether the support of the elderly is properly a core responsibility of government at all. It could be argued, for instance, that while the education of America's children is clearly a public responsibility, since this is an investment in the future that benefits us all collectively, health care for the elderly has no comparable dimension as a public good. Even setting aside libertarian arguments for reducing the role of the state in private life generally, special arguments can be made for centering care for the elderly in the family. Conservatives call for a return to the traditional roles and responsibilities of families, and even those who look less nostalgically at the past may worry about the values expressed by a society that increasingly consigns its elderly to institutional care.

Who should bear the largest responsibility for taking care of the aged: old people themselves, their children, the government? To what extent is it morally desirable or practically feasible to shift care of the elderly back again from the state to families? What is required in this arena by justice, by compassion, by sheer human decency?

Prudence and Self-Reliance

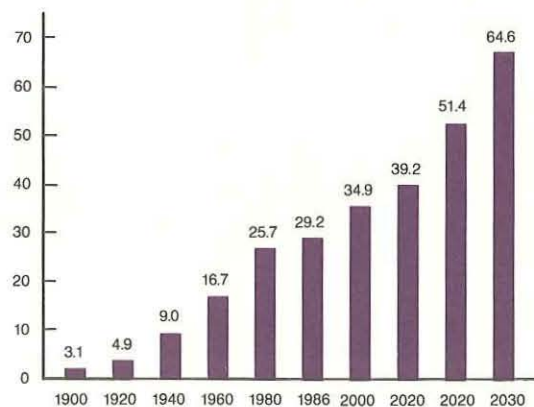
The elderly themselves already shoulder much of the burden of their own care, principally by the plans they lay for their old age in their younger, working lives. Each of us tries to anticipate the financial needs of our later years, through various pension plans and saving schemes; ideally, we also try to develop other resources — hobbies, friendships, social and political commitments — that will sustain us as we retire from the work force and watch our children leave home. It seems fair to expect individuals to take the initiative in facing their own future. We have our whole lives to prepare for old age, after all. Why shouldn't the quality of our post-65 years depend at least in part on the choices we made over the lifetime preceding?

But there are several reasons for doubting that individuals can and should be held accountable for meeting the financial and health care needs of their old age. For one, such long-term planning must be undertaken in the face of massive uncertainties. How long will each of us live? How healthy will we be? How will periods of inflation and recession affect our savings? The magnitude of these unknown variables as they confront individuals makes old-age planning into a gigantic crap game, in which we are better served by pooling our risks through collective decision-making.

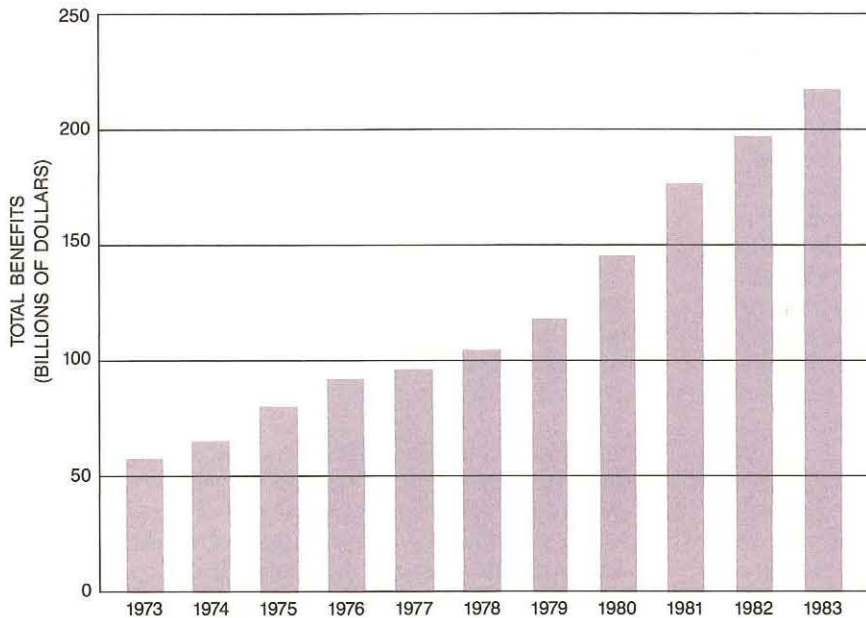
It simply seems to be the case, moreover, that in the world as we know it individual prudence is one virtue in regrettably short supply. Daniel Wikler, a philosopher at the University of Wisconsin Medical School, argues that individual provision of finances for the elderly "would require not only adequate wealth but prudent planning, demanding in turn more discipline, self-control, and foresightedness than many individuals are normally capable of." Our best-laid plans are notorious for tangling aghast; and it's difficult enough to postpone today's indulgence for tomorrow's security, let alone for the security of a tomorrow some twenty, thirty, or forty years distant. Wikler concludes that "any proposal to shift responsibility upon individuals for rationing resources in old age must address the gap that may appear between ideal or optimal allocation plans and the one that, in the many moments of actual decisions, our imperfectly rational constitution leads us to make."

Such problems might be addressed by instituting various "self-binding" mechanisms, in which a person legally commits himself to follow what he deems at the time of commitment to be the prudent course of action, but such schemes hold out little promise for financial and health care planning across a lifetime. The binding of our future by our present selves in essence amounts to the binding of our older by our younger

Number of Americans 65 and Older
1900 to 2030
(in millions)



Source: U.S. Bureau of the Census



Federal Expenditures on the Elderly

Source: Samuel H. Preston
"Children and the Elderly in the
U.S." *Scientific American*, vol. 251,
no. 6 (December 1984)

selves; this hardly seems likely to be the best way of securing full consideration of the interests and preferences of our twilight years. Norman Daniels, professor of philosophy at Tufts University, argues that "as an individual ages, his situation changes. The passage of time erases uncertainties and alters probabilities that must affect early judgments about what it is prudent to do, even assuming preferences and values remain constant. But these are likely to change, too. . . . Adhering to the prudent choices of fully informed consumers risks biasing our health care system in favor of the prudence of the young."

Finally, perhaps through their own fault, perhaps through no fault of their own, some will simply lack the resources to sustain themselves through the vicissitudes of old age. A compassionate society cannot leave destitute even the imprudent. So the question faces us: when the elderly cannot meet their own needs, who is next in line to take up the responsibility?

The Duties of Families

A first answer is that, just as parents should take care of their young children, so adult children in turn should take care of their aging parents, in a cycle of familial reciprocity. The Chinese philosopher Lin Yutang asks: "How can any one deny that parents who have toiled for their children in their youth, have lost many a good night's sleep when they were ill, have washed their diapers long before they could talk and have spent about a quarter of a century bringing them up and fitting them for life, have the right to be fed by them and respected when they are old?"

But many do deny just this, arguing that the care given by parents to children fulfills a parental responsibility for which there is no filial analogue. Parents choose to have children and so tacitly agree to assume the obligations of parenthood; children, as teenagers

are fond of reminding their parents, do not choose to be born. While children may of course *want* to provide comfort and assistance to their parents out of love and affection, this is to sidestep talk of familial *duties* altogether.

Yet it is difficult to let go of the idea that familial ties do exert a moral claim on us, however involuntarily we may have entered into them. Nancy Jecker, Rockefeller Resident Fellow at the Institute for Philosophy and Public Policy, points out that we often acknowledge duties of gratitude in response to unrequested benefits, even when others are morally bound to benefit us. For example, we consider gratitude fitting if "the tasks that are required result in goods that are especially valuable" or if "discharging one's duty is especially onerous or requires substantial sacrifice or risk." Certainly parenthood often partakes of the heroic. Moreover, to have an obligation to someone other than oneself, a deep and not altogether voluntary commitment to his or her destiny, just seems to be part of how families work, what families are *for*. It seems that the explanation of why children might owe care to their aging parents may lie in some notion of what families fundamentally are all about.

Daniels argues that to the extent that we believe in the institution of the family at all, as currently constituted, we may have grounds for carrying out the duties and obligations that make up family life. In our society, at least when they are functioning normally, "families are a fundamental cooperative arrangement," providing "a set of goods of mutual benefit to various family members." Legitimate expectations thus arise about "the importance of reciprocity and the importance of sustaining the kinds of interpersonal relationships which generate these benefits. . . . Filial obligations arise out of the obligation not to frustrate legitimate expectations of those with whom one in-

timately cooperates to produce mutual benefits of fundamental importance."

Daniel Callahan, director of the Hastings Center, suggests that children may owe at least love and affection to their aging parents simply because there is no one else who can meet these vital human needs: "In a world of strangers or fleeting casual acquaintances, of distant government agencies and a society beyond their control, elderly parents can see in their children their only hope for someone who ought to care for them." Sheer dependence can exert a powerful moral pull that is not easily escaped or evaded: "The issue, as it presents itself, may be less one of trying to discover the grounds of obligation that would require a response than one of trying to find a basis for ignoring a demand that so patently assaults the sensibilities. It is not so much 'Must I?' as it is 'How can I not?'"

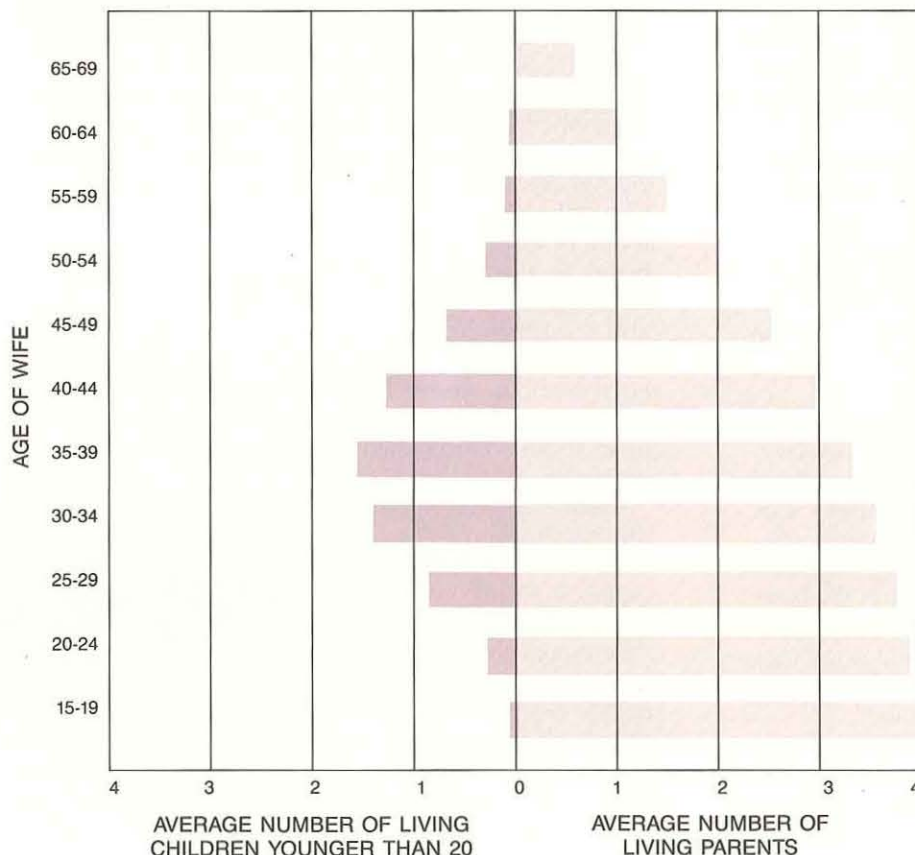
Daniels, Jecker, and Callahan insist that duties of children toward parents grounded in these ways do not legitimate demands that children make major sacrifices of their own life prospects to provide financial support to their parents. Such needs, for reasons that emerge below, may be better met communally. But the need for emotional support, for love pure and simple, can often be met only by family members. Care for the elderly cannot be consigned completely to professional caregivers; we need care as persons, not merely as ciphers on an institutional roster. Jecker reminds us that we share an intimate past with our elderly parents and

"the character of an earlier time imposes upon the present in a variety of ways." In their present relationship with their parents, grown children "ought not to betray the significance of a relationship that is now past." At least some duties toward the elderly seem to fall necessarily to families; they are duties no one else can assume.

The Role of Government

Some critics would like to see the government enforce a more stringent set of familial duties as a way both of reducing the public tax burden and of strengthening what they view as eroding family ties. Soaring budget deficits, as well as conservative concerns about the state of the American family, led legislators in the early 1980s to propose "family responsibility initiatives" in about half the states to hold family members legally responsible for costs currently paid by Medicaid. Despite strong support from the Reagan administration, these proved politically unpalatable, but calls for a renewed commitment to family-based care for the elderly continue.

It is not clear, however, that alarm about the current level of familial care is justified. While the creation of Social Security and Medicaid dramatically shifted financial burdens from the family to the state, families currently provide about 80 percent of all home health care to the partially disabled elderly. Fewer than 6 percent of the elderly at any time reside in nursing homes.



Balance of Dependents

The balance of dependents has shifted toward the elderly because of decreases in both birth and death rates. The chart shows the number of living parents and children under age 20 that the average working-age couple will have at each stage in life.

Source: Samuel H. Preston
"Children and the Elderly in the U.S." *Scientific American*, vol. 251, no. 6 (December 1984)

The oft-invoked good old days of multi-generational families in which devoted children outdid themselves in caring for their elderly parents appear a matter more of myth than of history. One sociologist points out that, for example, in pre-industrial England, less than 10 percent of households had more than two generations in them, and levels of care within families were similar to those found today. And even if golden-tinted pictures of the family in ages past were grounded in reality, the changing demographic balance between old and young has to alter our current expectations of family-based care. Parents today simply live longer, with fewer children to share the burden of their support. Housewives once able to provide extensive home nursing are now full-time members of the labor force. No amount of wishful thinking can turn the clock back on these far-reaching demographic and social changes.

Governmental enforcement of (governmentally determined) familial duties to the elderly is promoted as a cost-saving measure; but in fact it wouldn't reduce costs but would simply redistribute them. Daniels points out that "The overall costs of care for the elderly are not reduced through [family responsibility] initiatives, since individual families will still pick up the tab"; however, "the burden of bearing those costs will fall much more heavily on a narrower group of the young, those with frail elderly parents. For them, the burden of caring for elderly parents will intensify." Nor, Daniels observes, will shifting costs out of public budgets eliminate competition between the elderly and the young for resources: "It will only shift the locus and burden of that competition — from public budgets to family budgets."

Most important, some argue that governmental intervention into the private domain of the family can only weaken rather than strengthen family ties. Ferdinand Schoeman, professor of philosophy at the University of South Carolina, insists that governmental regulation of family life compromises intimacy within the family. "Such regulation," he argues, "transforms relationships into less intimate ones. . . . Practically speaking, the strength or very possibility of intimate relationships varies inversely with the degree of social intrusion into such relationships generally tolerated. . . . To give the state authority to regulate such relationships would inevitably result in a redirection or 'socialization' of [them]."

The best way to strengthen family ties, it seems, is to relieve excessive strain on them, rather than to strain them further. Parents and children are one in their fear of debilitating dependence on each other. To the extent that the state assumes at least the financial burden of providing a minimal level of income and health care support, the elderly retain a sense of independence and their children are spared a festering source of resentment. Callahan suggests that "A balance is sought between that independence which enables people to have a sense of controlling their own destinies, and those ties of obligation and affection which are for each an indispensable source of solace in the face of a world

that has little reason to care for them." This delicate balance would be wrenched by coercing children to make what might amount to crushing financial sacrifices for their parents.

On the positive side, government can actively assist families by funding services that make it easier for family members to continue providing home care to the elderly. According to Daniels, "Some who would provide care, or would do so for longer periods, are unable to meet the responsibilities they feel because appropriate support services are not available. This leads

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to frustration, guilt, and even rationalization that can undermine an individual's conviction that he or she has such family responsibilities." Thus Daniels calls for an increase in publicly funded day-care facilities for the elderly, social-support services to relieve the family, and tax incentives to reduce the stress on family obligations to younger children. Callahan concludes: "A minimal duty of any government should be to do nothing to hinder, and when possible what it can to protect, those ties which give families their power to nurture and sustain their members."

How Much? How to Decide?

None of this answers the question of how much we as a society should elect to pay for services for the elderly as opposed to meeting other pressing human needs. But it seems that we can at least conclude that this is a decision we do need to make collectively, that is, as a society. We cannot escape this dilemma by delegating responsibilities in this arena to individuals or to families. There are intensely private and personal choices to be made by parents and children facing the aging process, choices that government cannot make for them. But there are also societal choices that an aging society must make, not each of us alone, but all of us together.

Sources quoted in this article are: Daniel Wikler, "Ought the Young Make Health Care Decisions for Their Aged Selves?" *The Journal of Medicine and Philosophy* 13 (1988); Norman Daniels, *Am I My Parents' Keeper? An Essay on Justice Between the Young and the Old* (New York: Oxford University Press, 1988); Nancy Jecker, "Are Filial Duties Unfounded?" *American Philosophical Quarterly*, forthcoming; Lin Yutang, "On Growing Old Gracefully," in *Philosophical Foundations of Gerontology*, edited by Patrick L. McKee (New York: Human Sciences Press, 1982); Daniel Callahan, *Setting Limits: Medical Goals in an Aging Society* (New York: Simon and Schuster, 1987); Ferdinand Schoeman, "Rights of Children, Rights of Parents, and the Moral Basis of the Family," *Ethics* 91 (October 1980).

A Plan for Palestinian Statehood

In 1948, following the United Nations' call for Partition of Palestine, the State of Israel was proclaimed. The Arab world rejected partition, and in the war that ensued, the area that was to have been a Palestinian state fell under the control of Israel, Jordan, and Egypt. In the 1967 War Israel gained control over the entire area. The Palestine Liberation Organization (PLO) came into existence dedicated to the destruction of Israel. Today it seeks peace with Israel, a peace that embodies the two-state solution, the original ideal behind the Partition Plan. In December of 1987, in the occupied territories of the West Bank and the Gaza Strip, the Palestinians launched a massive and sustained Uprising which continues to this date. Thus far hundreds of Palestinians have died and thousands have been wounded and imprisoned.

Yet it is not obvious that the Uprising has moved the Palestinian people any closer to attaining an independent state. The present strategy of the PLO appears to be to put pressure on the United States to force Israel into an international conference, from which will emerge a negotiated agreement creating a Palestinian state. But it is exceedingly unlikely that Israel will ever agree to a Palestinian state. The failure of Palestinian hopes on this point is likely to lead only to a major upsurge in violence, spiraling toward disaster for both Palestinians and Israelis.

The present strategy for attaining an independent Palestinian state embodies a model that needs to be challenged. That model is that statehood emerges from negotiated agreements. Yet consider how Israel itself came into existence. Following the United Nations Partition Resolution of 1947, the Israelis simply declared the existence of the State of Israel. Indeed, they made that declaration contrary to the urging of the U.S. Department of State. They did not obtain advance Arab or Palestinian approval. They did not negotiate with the Palestinians. They proceeded unilaterally and gradually secured international recognition, admission to the United Nations, and effective control of territory.

There are important analogies and disanalogies here for the Palestinians. Today's military and political realities totally preclude achieving statehood through force of arms. But on the other hand, today's political, moral, economic, and psychological realities offer new alternatives within the same basic concept: The Palestinians do not need prior Israeli approval to bring a state into existence, nor should they cede such power to Israel. An alternative strategy is possible.

Declaring a State

Here is how the Palestinians might proceed. The PLO simply issues a declaration of independence and statehood, announcing the existence of the State of Palestine, in the West Bank and Gaza. As its final act, the PLO proclaims its transformation into the provisional government of the State of Palestine, pending the possibility of free elections by the Palestinian people.

Given the fact of Israeli military occupation of the territories, one is likely to scoff at the idea of a Palestinian declaration of statehood. The cat may call himself a king, but this does not make him so. In order to understand the logic of the unilateral declaration, it is important to think through exactly what a state is and to understand how states come into existence.

A territorial state exists when there is a piece of land over which some body makes a claim to sovereignty, a claim that is accepted by the people of that territory and by the other states of the world.

To gain control of a territory is essentially to gain control not over the actual land (no ruling body can physically occupy every square inch of territory), but over the people who occupy that land. Ultimately, it is to gain their acceptance of one's rule-making authority. States are social inventions, political entities. Their existence is dependent on the attitudes and behavior of people. When a state exists, its laws are broadly obeyed and followed, even in the immediate absence of armed authority. The motives for obedience may range from fear to loyalty; the key point is that citizens undertake a generalized obedience. They respect the state's laws and follow its conventions for, say, what ceremonies will count as legal marriage and what pieces of paper will count as legal currency. Once deposed by the people, either overtly or through collective disobedience and disregard, what was once the government of a state is now a band of individuals. Even if they are heavily armed, if they are able to control the people only at gunpoint, they are not a government. They are brigands, criminals, outlaws, foreign soldiers. They are not a state.

The Uprising has already meant that the Israelis have lost effective control of the territories. The unilateral declaration of statehood of the new State of Palestine will essentially be the establishment of a formal relationship between the people of Palestine and the entity that they accept as their government. Because the State of Palestine will have no significant power to

coerce obedience from the Palestinian people, its very existence of necessity will depend on the free consent of the people themselves.

The acceptance of one state's claim of sovereignty by other states can be expressed in many ways. On one extreme, it can involve formal recognition of the state, symbolized by the exchange of ambassadors. On the other hand, outside acceptance may lie merely in the absence of any actual challenge to its rule within the territory. The new State of Palestine should embark on a worldwide diplomatic effort seeking international recognition and admission to the United Nations.

States. Moreover, the viability of a Palestinian state depends on its ability to mollify even irrational Israeli fears on this score. Jewish fear, combined with the realities of overwhelming Israeli military prowess, guarantees that if the project of building a Palestinian state becomes part of a project of destroying Israel, not only will it fail, but catastrophe will follow. Put bluntly: there can be no Palestinian state unless it is truly and deeply prepared from the outset to live at peace with Israel and can convince the Israelis of its peaceful intent. Demilitarization is one good first step toward this goal.



Photo by Beverly Orr

Palestinian children display their flag.

The Peace Initiative

The first step of the new government should be to proclaim that the State of Palestine is at peace with the State of Israel; it should offer Israel mutual recognition, symbolized by the exchange of ambassadors. It should declare that the State of Palestine will not maintain an army. These two provisions, a unilateral declaration of peace and a self-imposed demilitarization, are closely related. They are essential not only for winning worldwide support and eventual Israeli withdrawal, but also for the long-term preservation of peace in the region.

Why must the State of Palestine undertake a peace initiative, instead of harboring hopes of establishing a base for a military offensive against Israel? For one, dreams of a Palestinian victory against Israel can never be more than the wildest fantasies. Israel possesses one of the most advanced military technologies in the world, backed by the military might of the United

A demilitarized State of Palestine will have to rely on outside powers for some of its national security needs, but in this it will not be unique. For example, Costa Rica by its constitution does not have an army, and it is the most prosperous and peaceful nation in Central America.

A Ban on Terrorism

The new State of Palestine should next issue a proclamation forbidding all acts of terrorism and announcing penalties for any violations.

From its inception the Palestinian cause has been harmed by the terrorism issue. For the average Israeli or American Jew, the association of the PLO with terrorism is so automatic that rational discussion of policy toward the PLO has been impossible. It is absolutely essential that the new state start off clean on this score. The rejection of terrorism is critical for relations with Israel because of the potent symbolic connection be-

tween terrorism and the Holocaust. Terrorism asserts the primacy of the project, of the struggle, of the cause, over the everyday existence rights of ordinary people. For the remnants of a people who survived the Holocaust, terrorism is not a phony issue.

Palestinians may well raise the issue of Israeli hypocrisy on this score: The Israeli leadership itself contains, as is well known, individuals with terrorist backgrounds. But double standards abound in politics. The fact remains that it would take a rare politician, Israeli or American, who would have the courage to sit down with PLO representatives when the next day a terrorist attack on Israeli civilians could be broadcast across the world's TV screens.

Objectively, the terrorist undermines and harms the Palestinian cause. Tactics of struggle that are most removed from the taint of terrorism will simply be the most successful.

Securing Israeli Withdrawal

If Israel does not respond to the peace initiative, the Palestinians should focus on motivating Israeli troop withdrawal. How can the State of Palestine achieve Israeli withdrawal from its lands?

First it is important to see how this will *not* be achieved. It will not be achieved by exercising lethal force against Israeli soldiers and settlers. A lethal strategy will not only fail to win withdrawal, it will result in the destruction of the new Palestinian state and bring staggering suffering to the Palestinian people. For this reason, the provisional government should announce a ban on all lethally violent attacks on Israeli soldiers and settlers.

The Israelis will withdraw not because they are physically forced out of the territories, but because they are forced out politically and psychologically. A country of over four million is not physically forced to withdraw by even thousands and thousands of deaths, and before the Palestinians could inflict 10,000 deaths on the Israelis, the Israelis could inflict a million deaths on the Palestinians. Essentially all strategies are a matter of affecting the costs and benefits of alternative Israeli policies as they are perceived by Israel.

Withdrawal holds out the real possibility for the Israelis that they will achieve their deepest aims: national security, preservation of Israel as a Jewish state, preservation of democracy. Israel faces insoluble problems if it does not withdraw. What can it do with the West Bank and Gaza? If it annexes the territories, then it must either institute apartheid or it must give the Palestinians the full rights of Israeli citizens. If it does the latter, it will soon have a non-Jewish majority. Thus, Israel as Jewish and Israel as democratic are incompatible so long as Israel holds the territories.

But, despite the evident benefits to Israel of withdrawal, it will probably not be achieved until Israel has come to appreciate the high costs of continued occupation: disruption to the Israeli economy, interruption of tourism, diversion of national security resources, danger of breakdown of the Egyptian-Israeli peace trea-

ty, and so forth. In time, however, these will take their toll. If the Palestinians also hold out a credible prospect of lasting peace, Israeli withdrawal is likely.

Creating the Sinews of Statehood

The real focus of Palestinian energies should be on building the inner sinews of national life and statehood even under foreign occupation.

The new Palestinian government will become a genuine government insofar as it begins acting like one. Governments are not mere roosters crowing their existence. They have jobs to perform, carrying out the functions for which people want and need governments. Many of the core functions of government — maintaining a functioning criminal justice system, adjudicating disputes, decision making on a range of issues — can be carried on despite the presence of Israeli troops.

The form of government most suited for present conditions is one that is highly decentralized, with a great deal of power resting on the organs of local government. Thus, within each village, now operating under the framework of the new government, there can arise secretly elected local councils and boards. Their role would be to carry out the normal functions of government, such as decision making with regard to schools and local police.

In building a sense of true statehood, the new Palestinian government should pay special attention to the symbolic dimensions of a state. Certain universal symbolic features are shared by all modern governments: flags, national anthems, national currencies, stamps, and passports. The State of Palestine should have these as well.

The Palestinians already have a flag, and already it is a symbol of resistance, persistently displayed by the Palestinians and removed by the Israeli soldiers. With the formation of the new state, this will become a state flag. The creation of a national anthem will also have a unifying impact on the Palestinian people. Every act of singing the national anthem will be an act of resistance against Israeli occupation and an affirmation of the independence of the State of Palestine.

With the assistance of the Arab states the provisional government should issue a new Palestinian currency. To ensure its use and value even during the period of occupation, its conversion into dollars could be guaranteed. A small gold coin could also be introduced; its inherent value will ensure that it is taken seriously even by Israelis. And every time a transaction is paid using this coin, Palestinian statehood will be affirmed. With international cooperation, Palestinian postage stamps can be issued as well.

To symbolize the end to statelessness, the new government should promptly issue passports to any Palestinian in the world who desires one. Palestinians who are citizens of other countries should be encouraged to apply for and travel on Palestinian passports.

In these and other ways, a Palestinian state will come into being.

A Personal Postscript

Let me add a final personal note. If it seems odd that a Jew should offer his thoughts on how Palestinians can be successful in their struggle for statehood, I should state my conviction that the struggle for an independent Palestinian state is also the struggle for a humane and safe Israel, and that there can be no Judaism without a commitment to justice.

— Jerome M. Segal

Jerome Segal's working paper, "How to Create a Palestinian State and Bring Peace to the Middle East" (170 pp.), is available from the Institute for Philosophy and Public Policy for \$10.00.

Property Rights and Environmental Law

It is a commonplace that people are or ought to be free, in general, to use their property as they wish, as long as they do no harm to — and respect the rights of — others. Yet environmental laws and regulations apparently impose further duties on landowners, obliging them, for example, to maintain the integrity of landmarks and scenic areas, to refrain from filling wetlands, to preserve open space, to restore mined land to its original contours, to maintain habitat for endangered species, to allow public access to waterways and beaches, to leave minerals in place to support surface structures, and so on. State and local governments, in general, impose these duties on landowners by regulation rather than by exercising eminent domain. States prefer regulation to condemnation so that they do not have to compensate landowners for the substantial losses in market value that often accompany statutory duties and restrictions. Governments may dedicate property to public use, then, not by taking property rights through eminent domain, but by regulating those rights away and, therefore, without compensating owners for the market value of those rights.

Courts are then called upon to decide whether a statute that imposes public-spirited duties on property owners complies with the Fifth Amendment of the Constitution, which provides that "private property [shall not] be taken for public use, without just compensation." When courts sustain these statutes and ordinances, as they frequently do, local governments gain an important legal weapon for protecting the aesthetic, cultural, historical, and ecological values that often attract people and, therefore, subdividers and developers to a region. If the courts sheathed this legal weapon, however, society may have to kiss these values goodbye, since it cannot afford to exercise eminent domain to purchase the property in question, nor can it depend, except in a quite limited way, on private action in common law courts to protect these values.

When should a regulatory "taking" of property re-

quire the state to pay compensation, when not? I shall argue that compensation need not attend a regulation that takes property rights unless it also burdens some individuals unfairly to benefit other individuals. The "takings" question, in other words, may not depend simply on an analysis of property rights. Rather, it may also depend on a conception of justice.

Takings and the Police Power

In *Just v. Marinette County*, the Wisconsin Supreme Court sustained a local statute that prevented owners from using landfill and from building structures on coastal wetlands. The court held that the takings clause of the Constitution does not protect an interest, however profitable, in "destroying the natural character of a swamp or a wetland so as to make that location available for human habitation." Citizens have no claim for compensation, the court reasoned, when an ordinance restricts their use of property, "not to secure a benefit for the public, but to prevent a harm from the change in the natural character of the citizens' property."

The power to zone arises under the police power of the state, for which there is no precise definition, but which is often associated with the power to protect the health, safety, welfare, and morals of the community. The Wisconsin court argued that "it is not an unreasonable exercise of [police] power to prevent harm to public rights by limiting the use of private property to its natural uses."

In a remarkable book, *Takings: Private Property and the Power of Eminent Domain*, Richard Epstein castigates the *Just* court for its decision. Epstein observes that "the normal bundle of property rights contains no priority for land in its natural condition; it regards use, including development, as one of the standard incidents of ownership." Epstein concludes: "Stripped of its rhetoric, *Just* is a condemnation of those property rights, and compensation is thus required."

The argument Epstein presents has the form of a dilemma. First, Epstein argues that the government relies on a narrow conception of the police power to regulate private activities in order to prevent or to redress various wrongs and harms, including trespass, invasion, and injury. This use of the police power does not *take* but *protects* property; hence it does not require compensation.

Second, under a broader conception of the police power, the government may force the transfer of property rights to secure efficiency gains and increase social wealth. Transactions of this sort, Epstein reasons, diminish the property rights of some to benefit others; these forced transactions may be legitimate, he argues, but only if they are accompanied by just compensation.

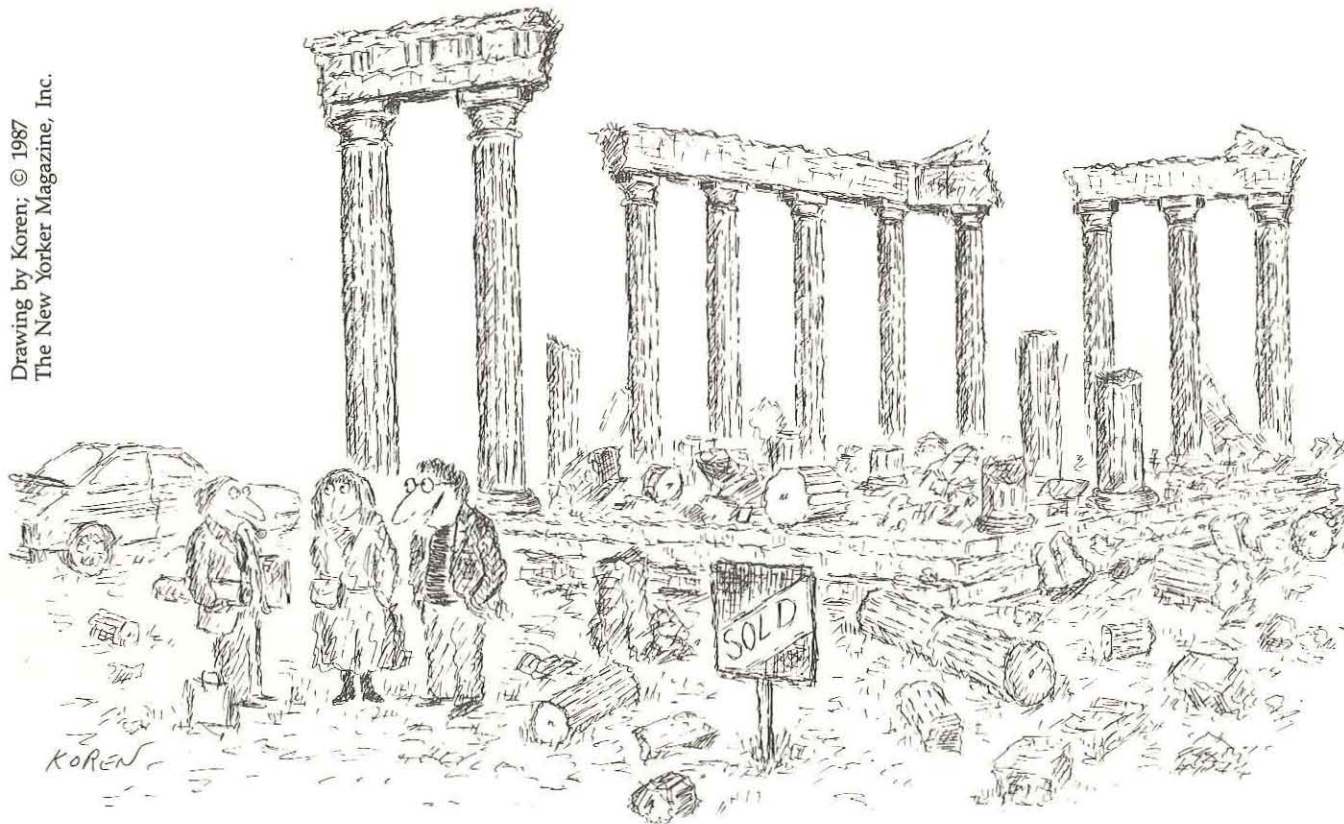
In Epstein's view, coastal zone, critical area, landmark, and similar statutes typically do not prevent harm to individuals or to the public in any sense that is remotely cognizable in common law. Ronald Just, the plaintiff in the Wisconsin case, for example, might point out that by filling his wetland, he pollutes his own property, not that of others; no one would have an action against him in tort. The narrow conception of the police power, then, would not apply to him. The government might act under the broader conception of the police power, to be sure, to preserve the last vestiges of scenic and ecological amenity in the coastal region. When the government uses its broad powers in this way, however, it burdens people like Just, while

it benefits those who have built houses and commercial establishments in the area and whose property will go up in market value as a result of regulations prohibiting further development. Regulations of this sort may be necessary, but the Constitution, on Epstein's view, insists that they be accompanied by just compensation.

If the state acts early enough, that is, while all landowners possess natural and aesthetic resources of which they may be made equally the trustees, then a zoning ordinance, which restricts uniformly the ways they may develop their property, may provide them implicit in-kind compensation, since it secures reciprocal advantage to all interested parties. Thus, an ordinance prohibiting *every* landowner in the District of Columbia from building a structure higher than the dome of the Capitol, for example, not only promotes the public good, but also benefits those it burdens, and thus implicitly compensates them.

The problem involved in most environmental zoning, however, is that it comes late in the day, when it makes winners of the many who have already subdivided and developed and losers of the few who have maintained the natural condition of their land. The Fifth Amendment, however, "prevents the public from loading upon one individual more than his just share of the burdens of government, and says that when he surrenders to the public something more and different from that . . . exacted from other members of the public,

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a full and just equivalent shall be returned to him" (*Monongahela Navigation Co. v. United States*).

Suppose this argument were sound; what would result if the courts accepted it? They may overturn statutes and ordinances that are the last hope of localities seeking to protect the character, ecology, amenity, and, one might say, the sanity of the social environment. What will replace these values? Mondo Condo. High Rise Heaven. Bungalow Bonanza. Move fast, 'cause they won't last. Let the courts adopt this vision of the Constitution — and the blitz is on.

Does the Right to Develop Imply a Right to Destroy?

The central incidents of property, however — the right to use, to exclude, and to alienate — do not include the right to destroy. The right to use a car one has borrowed or hired, for example, does not involve a right to destroy it; likewise, the right to use by consuming, for example, food does not entail a right to waste or spoil it. John Locke, to whom Epstein traces his theory of property rights, points out that spoiling or wasting is not an incident of use or possession. Locke reasons that a person can "heap up" as many resources as he can use or cause to be used economically — "the exceeding of the bounds of his just property not lying in the largeness of his possession, but in the perishing of anything uselessly in it."

To be sure, if an item is worthless, the possessor may have a right to toss it out. But the right to destroy does not attach to property that is valuable. For this reason, courts sometimes impose a "law of waste" to prevent property owners from destroying scarce resources that are of great value to others.

Mr. Just has no valid claim to compensation, according to this argument, because he is not entitled to destroy resources that have become scarce and are of great importance to society. The decision in *Just* is correct, on this view, because a regulation that prevents a landowner from destroying resources by filling a marsh does not take a right from him. He had no right to destroy those resources.

This result seems entirely consistent with a Lockean theory of property rights, which limits property not only to that which can be possessed without waste, but also to that which may be acquired from a commons without creating scarcity. As Locke put this thought, a person can rightfully acquire an unowned resource from the commons only if there be "enough and as good left in common for others."

One might argue that this famous Lockean Proviso covers aesthetic and ecological resources that belong as organic parts to larger systems and are destroyed when land is removed from its natural condition. Those who come to the commons early may legitimately appropriate these resources by consuming or destroying them; but when a common resource, such as natural beauty, becomes critically scarce, society may rule against further appropriations, because they significantly worsen the social situation from that which would obtain if the proposed "improvements" were not made.

We are now in a position to define a conception of harm to the public and, with it, a conception of the police power that lies between the horns of Epstein's dilemma. The *Just* court argued that a property owner may not validly claim compensation when he or she is prevented from "destroying the natural character of a swamp or a wetland. . . when the new use. . . causes a harm to the general public." The contention may be that the prohibited development would destroy resources that the public owns in common, owing to "the interrelationship of the wetlands, the swamps and the natural environment of shorelands to the purity of the water and to such natural resources as navigation, fishing, and scenic beauty." In the past, an individual may have been free to appropriate these resources without depleting the commons unduly, but those times are gone. Mr. Just has come too late to the commons; there is no longer as much and as good for others. To destroy the ecological, aesthetic, cultural, and historical commons, on this view, is to cause a harm to the public that may justify statutes that restrict the ways property may be developed.

To destroy the ecological, aesthetic, cultural, and historical commons. . . is to cause a harm to the public that may justify statutes that restrict the ways property may be developed.

Not Property Rights But Justice

This argument, while relevant, is not decisive. Statutes that protect an ecological or an environmental commons may nevertheless restrict the use of property in ways that require compensation. The question whether compensation must accompany a regulation, as we shall see, need not turn on the relation between property and the police power. It may depend on whether the statute forces individuals to bear burdens that "in all fairness and justice, should be borne by the public as a whole" (*Armstrong v. United States*).

If Just were one of a very few landowners in the coastal area who had not yet developed their property, for example, he might reasonably argue that not he but his neighbors damage the ecological commons. The statute simply takes his land to buffer their pollution. Likewise, he may argue that he and other affected landowners constitute a minority too small to represent its interests fairly in the political process. He might argue the statute is unfair, moreover, if its primary effect is to promote the economic interests of those who have already developed their land.

Courts, in fact, generally will not uphold a land use restriction if its primary effect is to limit competition in an area or otherwise to benefit a few individuals at the expense of others. Regulations that restrict property

to its "natural" uses may always be justified on ecological grounds, and in that same sense, on the basis of protecting the public. But these statutes should not be sustained if their economic effects are grossly unfair to individuals.

How do courts determine whether these effects are unjust? They rely generally on rules of thumb, that is, they look out for particularly common injustices. They ask: is the economic loss imposed by the challenged statute terribly severe? Can the aggrieved property owner still make reasonable and profitable use of his land? Is the benefit to the public sufficient to warrant the burden the statute imposes on individuals? Are the restrictions reasonably appropriate and necessary to obtain the desired results? Does the regulation burden relatively few landowners — too few, perhaps, to represent their interests in the majoritarian political process?

Courts typically raise questions of these kinds — not theoretical questions about the nature and extent of property rights — in settling takings cases. The courts thus try to determine whether the plaintiff's interests have been treated equitably. This requires that the

courts have a working concept of justice and fair play. It does not require that they apply a sophisticated theory about property rights and the police power. The Fifth Amendment bears upon environmental policy, then, not by grounding a theory of property rights, but by assuring that the laws that protect the environment do not do so at the expense of justice.

— Mark Sagoff

Quoted in this article are: *Just v. Marinette County*, 56 Wis. 2d 7, 201 N.W. 2d 761 (1972); Richard Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, Mass.: Harvard University Press, 1985); *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 325 (1893); John Locke, *Second Treatise of Government*, chapter 5; and *Armstrong v. United States*, 364 U. S. 40, 49 (1960).

To order *The Economy of the Earth* by Mark Sagoff at the special discount for QQ readers, see page 15.

Learning Morality

The "ethics crisis" is box-office boffo these days. Political corruption, insider trading, racial bigotry, Abscam, Watergate, Contragate, street crime, vandalism, divorce, teenage pregnancies, Ivan Boesky, Gary Hart, selfishness, greed, pornography, Joseph Biden's plagiarism, Jim and Tammy's fall from grace — these and countless related subjects fill our headlines and dominate our airwaves. And, as usual with a crisis in our society, our first instinct is to look to education. President Reagan and his Secretary of Education are only the most visible of the many who urge renewed teaching of morality in the schools. Derek Bok, President of Harvard University, is in the vanguard of those who urge the colleges and universities likewise to attend to the moral growth of their students. So we might ask: what is moral judgment, how does it develop, and how can the schools assist or retard it?

Moral Learning

Start with a simple analogy: learning morality is like learning how to write. It is not like learning geography or mathematics. Learning how to write consists in learning a few elementary concepts — noun, verb — and a few simple pieces of grammar — subject and predicate should agree in number — and then *doing it*, that is, writing over and over and over, with the ad-

vice, recommendations, and corrections of those who already do it well.

Moral education is the same. The child in his earliest experiences and interactions on the playground and at home picks up rudimentary concepts such as taking turns and simple rules such as don't hit people and don't call them names. In his interactions within this simple framework and under the tutelage of adults, the child will come to attach feelings of shame and regret to bad behavior, experience the pleasures of sharing and giving, and feel appreciative and grateful for benefits and resentful at wrongs. With this elementary foundation, moral learning is set in motion: it is simply, as Aristotle says, learning by doing. There is not a science of moral judgment any more than there is a science of writing. Instead, in both cases, we get better through increased experience and practice, which enables us to make finer and sharper discriminations. We develop the capacity to *see* a sentence or a paragraph as clumsy, graceless, plain, clear, or needed, and to *see* a moral action as ungrateful, cowardly, generous, or obligatory.

Rules and directives play a part in this development, just as "rules of good composition" aid learning to write. The young moral learner is told not to lie and not to take other people's property. The novice writer

is told that every paragraph should have a topic sentence and that no sentence should end with a preposition. The point of the rules in both cases is the same. The good writer does not mechanically guide his composing by the "rules of good composition" and frequently violates them. This is because, as a result of early practice according to the rules, the good writer has come to see through the rules to the underlying values of clarity, economy, and grace the rules are meant to serve, and is able to serve them directly without mechanical guides. Likewise, moral judgment, as Aristotle observed, is not a kind of rule-application but a "judging of the particular." By early training according to the simple, basic moral rules, the moral judge learns to see through them to the underlying values of respect and well-being they are meant to advance.

The Role of Stories

Now, with this extremely rudimentary sketch in place, let us ask how education can assist, or at least not seriously retard, moral development.

If moral learning is essentially learning by doing, then the central and ongoing resource for moral education is experience, real or vicarious. The school can make room for assigned responsibilities where, for example, students oversee and help other students; but limitations of time, place, resources, and structure mean that any major broadening of moral experience must come by way of vicariously living through the moral lives of others. This is accomplished principally by a curriculum in literature and history. Through stories, historical and fictional, the child enters imaginatively into the moral lives of other people and sees the various moral concepts exemplified in action.

Consider the parable that Nathan tells David in II Samuel 12: "There were two men in the city; the one rich, and the other poor. The rich man had exceeding many flocks and herds: But the poor man had nothing, save one little ewe lamb, which he had bought and nourished up: and it grew up together with him, and with his children; it did eat of his own meat, and drank of his own cup, and lay in his bosom, and was unto him as a daughter. And there came a traveler unto the rich man, and he spared to take of his own flock and

of his own herd, to dress for the wayfaring man that was come unto him; but took the poor man's lamb and dressed it. . . . And David's anger was greatly kindled against the man; and he said to Nathan, As the Lord liveth, the man that hath done this thing shall surely die: And he shall restore the lamb fourfold, because he did this thing, and because he had no pity."

Children who read this story will have the same reaction as David, one directly responsive to the palpable ugliness of the rich man's behavior. This reaction will anchor their understanding of selfishness — of "having no pity" — and will guide their future reactions to other instances of selfish behavior. By living through a rich variety of stories, real and imagined, simple and complex, straightforward and ambiguous, young people sort out their moral emotions and acquire moral concepts that help them develop their powers of moral discrimination.

The Failure of Primary and Secondary Schools

Schools fail to provide the resources of moral learning by impoverishing their offerings of literature and history. This failure works in two ways: schools provide little enough history and literature as it is, and what they do provide is not selected and shaped with an eye toward moral development. This problem is especially acute in the teaching of history, which for some decades now has been subordinated to a social studies curriculum infused with the concepts of the social sciences. History as moral and political narrative is replaced by history as indirect sociology, designed to explain to the student the social, economic, psychological, and cultural forces that shape her life.

These kinds of explanations work at cross-purposes to moral education when they replace, rather than augment, moral narrative. They view human action not from the point of view of the participant's self-understanding but from the perspective of the outside observer. Your explanation of why your anger, like David's, is kindled against the rich man is that he was *without pity*; you bring your response under a justifying moral concept. The sociological or psychological explanation of your anger will leave out of account or explain away your own justifying point of view. History as indirect sociology is bereft of the very concepts that

From Pogo Even Better



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young people need to acquire for "judging the particular."

Nor is this deficiency adequately made up by instituting explicit courses in moral reasoning. Moral reasoning is reasoning *about* experience, not a substitute for it. It would not make sense to set up a course in critical reflection on good writing for students who had very little experience writing, and it is generally useless, if not counterproductive, to put students with limited moral experience in courses to talk about moral reasoning. Because they are in the early stages of their moral development, students have limited capacity to "judge the particular" and will disagree about even exemplary moral cases (just as writing students may be a long way from seeing that George Eliot and Henry James are good writers). Teachers can try to cope with these disagreements in three ways: (1) adjudicating them by appealing to their own broader experience and maturer understanding, (2) abdicating a directive role by letting student discussions take their own course, and (3) adverting to rules and principles as effective and objective ways to get conclusions.

The first way is almost never taken. Teachers in high school lack confidence in their own moral knowledge, older students there are too swell-headed to listen to anyone, and there is no reigning educational dogma to give this way support. The second way produces variations on values clarification. Students are set free to "clarify" their own experiences. Not much clarifying takes place, of course, since no more structure is brought to the discussions than what the students can bring themselves, which is very little. The third way drives courses in the direction of the intellectualist fallacy, the belief that mechanical and deductive manipulations of rules and principles will yield answers where discussion of particulars won't. Disagreement about cases is transposed to the level of disagreement about rules and principles, where it is thought that there are theoretical and philosophical solutions.

Ideally, high school students should take away from courses in moral reasoning a variety of intellectual virtues: how to listen, how to clarify a point of view, how to assess arguments, and how to respect honest differences. Instead, students come away from these courses, and from their school experience generally, not very well grounded in the practice of morality, limited in their capacity to make discriminations, and suspicious about the whole enterprise. In short, they come away ready for college.

The Failure of Higher Education

And here we wait, ready to fail them, too. What college students need is what younger students need: richer and richer experience. Now, colleges can't help but provide great opportunities for growth. After all, students have to take charge of their own lives once in college and the curriculum is varied and broad-ranging. Even so, we hardly maximize these advantages. We take in students with limited moral concepts

and experience and let them spend their college careers in the social or physical sciences or in some form or another of vocational training. At most we require them to take a shallow core of humanities.

One idea coming into vogue is to have all students take courses in ethics. This is good for keeping philosophers in business but is unlikely to do students any good. What our students need is experience; what we philosophers give them is theory.

The English Department takes the middling writers it gets out of high school and sets out to make them better by making them do more writing and reading, not by introducing them to theoretical linguistics. We philosophers take *our* students, who have very limited moral experience and relatively impoverished moral concepts, and dose them up on utilitarianism and Kantianism and existentialism and other exotic exhibits from the museum of moral theory. Why do we do this? It is because philosophy teachers are deeply wedded to the view, as one philosopher puts it, that "normative ethical theories...offer a means of determining in specific circumstances whether an actual or proposed course of action is right. . . . Normative theories compete as to the best general means of arriving at particular normative judgments." This view is representative of a widespread approach in introductory ethics courses. But we don't serve students well with our theory-mongering.

One idea . . . is to have all students take courses in ethics. This is good for keeping philosophers in business but is unlikely to do students any good. What our students need is experience; what we philosophers give them is theory.

As moral experience develops, individuals acquire from the culture a variety of rules and principles, ideals of various stripes, knowledge of social practices, and so on, out of which they fashion reflections and arguments on moral action. Theories may help make some sense out of this welter of rules, principles, and particular experiences, but *not* by serving as decision procedures for arriving at particular normative judgments. The idea that we should throw out our acquired habits and knowledge of moral practice and guide ourselves instead by something like the principle of utility belongs right up there with the orgone box, the perpetual motion machine, and other single-nostrum solutions to all our difficulties.

Good moral theories don't offer competing answers to moral problems just as the contending schools in theoretical linguistics don't offer competing solutions to writing problems. Linguistic theories tell explanatory stories about the sentences all competent writers agree to be good sentences; moral theories tell explanatory

stories about the moral rules and judgments that good moral judges accept as sound and well-established. Rights-based, duty-based, and utility-based moral theories are all trying to account for the same core moral experiences and practices. No theory will produce a different evaluation of the rich man in Nathan's parable.

Students do need intellectual substance that well-conceived ethics courses can provide. Experience without concepts is blind (someone once said), and their grade school and high school background has given students few conceptual resources to work with. They don't have names for their moral emotions and for the virtues; they can't make elementary distinctions within moral considerations. They don't distinguish the good and the right, they confuse justifying and excusing, they conflate desert and entitlement, they commit the genetic fallacy with uncanny frequency, they can't separate attacks on a position from attacks on the person who holds the position, and on and on. Moreover, they already have their own dumb theories that need contending with: their relativisms, skepticisms, nihilisms, mysticisms, religious enthusiasms, and political schemes. There is no end to their need for opportunities at analysis, reflection, systematizing, and intellectual correction but these opportunities need to be conceived not as substitutes for moral experience but in concert with the provision of experiences profoundly rich and illuminating in their power to yield moral insight.

I have dwelt on how we fail our students in their

development toward mature moral understanding. But I don't want to overstate the seriousness of the failure. The young human animal seems able to bear without suffering too much damage almost any educational regimen we can inflict. It always manages, somehow, to get reasonably grown up and to lead a more or less normal and productive adult life. If we educators don't contribute a great deal to this process, we probably don't retard it a great deal either, except in one respect.

If moral development is a life-long learning through experience and reflecting on that experience, then the basic task of the schools is simple. It is not to produce a sophisticated and finished moral thinker but a person with a few basic tools and a love of reading and learning, who will continue to read and learn throughout her life. This modest and simple goal would seem achievable without effort, but in fact it is hardly achieved at all. This is the real crime we commit against our children. It doesn't really matter very much what we teach them so long as we generate in them the joy of learning and the pleasure of reading. If we do this, we have done well enough.

— Robert K. Fullinwider

My account of Aristotle and "judging the particular" leans heavily on Martha C. Nussbaum, *The Fragility of Goodness* (Cambridge: Cambridge University Press, 1986), Chapter 10, and M. F. Burnyeat, "Aristotle on Learning to Be Good," in *Essays on Aristotle's Ethics*, edited by Amelie Oksenberg Rorty (Berkeley, Calif.: University of California Press, 1980). The quoted material about ethics teachers is from Bernard Rosen, "The Teaching of Undergraduate Ethics," in *Ethics Teaching in Higher Education*, edited by Daniel Callahan and Sissela Bok (New York: Plenum Press, 1980).

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