

# **The Clarion**

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## **Reassessing the "New World Order"**

DR. RUTH A. BEVAN

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## **Social Decision: Answer to Market-Made Health Crisis?**

DR. ROSS ZUCKER

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## **Yeshiva University and the Church-State Question**

SENDER COHEN

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## **President Richard Nixon: An American Statesman**

DANIEL RENNA

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# The Clarion

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# Message From the Editor

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Most of us cannot recall the last volume of *the Clarion* published only a few years ago. This serves to give us a fresh start with no comparisons to previous years of publication. We, the editors, therefore ask your consideration of this new enterprise, reborn after some years of dormancy.

“Politics is not a bad profession. If you succeed there are many rewards, if you disgrace yourself you can always write a book.”-

Ronald Reagan

Politics often conjures up images of corruption, lies, and deceit. However, the science of the political system, how society governs itself, is crucial to understanding the way we coexist together as aggregate groups of citizens. The philosophy of government has its roots in the earliest city-states of the ancient world while having slowly evolved through the centuries. In modern times, societies can have their choice of systems of government whether it be according to varying political or economic philosophies.

These systems filter down into the laws which directly control our everyday lives. As Americans, we value our individual freedom and our multi-branch government. Other countries see a stronger central government, with less individual freedom, as the only path toward the preservation of a societal order. Each way is ripe with consequence for the individual and for society as a whole.

Democracy, the umbrella term for representative government, is coming under increased attack these days due to the forces of nationalism, tribalism, racism, and other forms of divisive behavior that divide the people and thus threaten the manner in which they are governed. Even in the United States, the bastion of stable democracy we are under threat from crime, drugs, and racial division that constantly test the limits of our constitutional rights.

It is imperative for young adults to become acquainted with the issues that shape our society and the laws which govern it. Furthermore, we must also look to the rest of the world as today no one nation can remain totally isolated from global problems. We, the leaders of tomorrow, must gain insight into the issues of today. It is our hope that our readers will use this journal to become more familiar with that which shapes our law, society, and country.

Michael A. Fragin  
*Editor-in-Chief*

-Ruth Bevan-

# REASSESSING THE "NEW WORLD ORDER"

by Ruth A. Bevan

Politics is about cabbages and kings, or who has power and who doesn't. In perennial efforts to redraw the lines, kings are toppled and some peasants revolt; we call this relentless process "history." Whenever the dust of battle settles, we anticipate the great awakening, only to find, yet again, cabbages and kings, metaphorically speaking.

The dust of the Cold War was still settling when President George Bush prematurely proclaimed the advent of a "New World Order." In fairy tale form, the wicked witch ("empire") of the east was dead; vassalage would be no more. With the collapse of Soviet communism and its East European satellite system, Francis Fukuyama, a U.S. State Department official, was inspired to write that the "end of history" had arrived; the contradictions of history had been resolved by the democratic victors. Capturing the sense of Western elation and Bush's optimism, Fukuyama predicted that peaceful democratic forces would take hold of and transform the world.

Symbolically, Bush projected the Gulf conflict as a bridge over gulf separating the "old" world left behind

from the "new" world envisioned by Fukuyama. It, firstly, was a "mopping-up" action against remnant tyrant. Furthermore, as Bush indicated in an August 1990 speech before a joint session of Congress, the force against Saddam Hussein was formed by a partnership of Americans, Asians, Europeans, Arabs and Africans" in defense of the principles and dreams of a New World Order. That is why they sweat and toil in the sand and in the heat of the sun.<sup>1</sup>

The yellow ribbons worn in support of the Gulf war were scarcely unpinned when Balkan "ethnic cleansing" commenced. A new contradiction was inserting itself at this proverbial end of history. Now tribal warfare engulfs Rwanda and Burundi, creating millions of refugees. In between, Somalia engaged us. In speaking to the captain of an American transport ship responsible for evacuating American soldiers from Somalia, I asked if the news at home that the Somalian warlords were now "peacelords" was true. "As soon as the Americans leave," he responded wearily, "they'll be warlords again."

What happened to the New World Order in so brief a time? From

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the outset, environmentalist Petra Kelly, cofounder of the German Greens Party, refuted the possibility of Bush's New World Order under prevailing international conditions. Her argument gives food for thought. The ideological conflict of the Cold War, she argued, was a facade obscuring the underlying dynamic of modernization. Rooted in the scientific-technological revolution of 17th century Europe, modernization is "the process of change from an agrarian to an industrial way of life that has resulted in man's knowledge of and control over the environment in recent centuries."<sup>2</sup>

Modernization is every state's objective (*raison d'etat*) as the world wide standard of power. Cold war ideology was not unrelated to this objective. Liberal democracy is generally considered the product of advanced capitalist development (characterized by the dominance of an urbanized, literate middle class and private property). By contrast, Soviet communists embraced Marxism as "modernization theory," hoping therewith to develop the feudal Tsarist state into an advanced socialist economy surpassing capitalism. All told, the dynamic of the modern state system is the drive for modernization.

As a process of industrialization (reindustrialization), modernization requires technology and technical know-how. Crucial to our purposes is the fact that it also involves the wholesale utilization (and development) of natural resources. The drive for modernization sets in motion the scramble for natural resources. This is a competitive scramble

among states of varying power, actually and potentially. Under present circumstances, it is a ruthlessly competitive search for ever *scarcer* resources. Access to these diminishing resources demands muscle and will be achieved only by the powerful.

The logic of this world wide dynamic, for Kelly, leads inexorably to the prospect of increased conflict (war) and even genocide. In her estimation the "victory" of one ideology over another in the Cold War was inconsequential given the persistence of modernization as the ultimate objective of all states. Accordingly, the Gulf conflict was, in truth, a resource war; it was not the bridge to a New World Order. Within the modernization framework, there can be no such order.

In the post-Cold War era the conflict between the "North" (industrialized or "core" states) and the "South" ("dependent" states formerly referred to as the "Third World") has replaced the East-West conflict. The conflict is not strictly geographic as suggested by its label and should more properly be understood as a core-periphery problematic. Peripheral elements exist within the "North" just as core elements exist within the "South." Denmark, for example, is peripheral to the European "core" (Germany, France and England). The city of Rochester is peripheral to New York City within the state of New York. On the other hand, Argentina is core to Latin America (or Israel to the Middle East).

Carrying economic-political weight, "core" areas, wherever they are found, simultaneously embody cultural

weight. This point is demonstrated in the extreme by the global prominence of American culture. If successfully achieving access to ever scarcer resources results in core power, that power translates also into cultural dominance. We now come to a second argument regarding the power configuration of the post Cold War era.

Samuel Huntington of Harvard University argues that the conflicts of this era will be cultural in nature. Witness the Balkans. Submerged by communism, nationalism has now been released as a vibrant force. Human beings are culture-builders; they define themselves and give purpose to life through cultural values. This has always been the case and always will be. Insofar as economic-political power is also cultural power, economic conflicts, whether of classes, tribes, nations or states, are invariably cultural conflicts as well. The cultural aspect of overt conflict, like ideology in the Cold War, tends to be more visible than the economic, which, however, should not be overlooked. The "right" to resources is the "right" to cultural "sovereignty." The globalization of the world economy will undoubtedly provoke cultural conflicts as core and peripheral areas are reassembled.

A less visible part of this "politics of identity", one just emerging, relates to the information revolution. Access to information is essential for economic, political and social power. Those who have access have power. Singapore, for example, intends to become a "global city" through its electronic highways connecting its citizens

to the farthest reaches of the external world. Information power is not only question of state power but, certainly within democracies, an important question of citizen power.

The ability of the average citizen to access information needed for his own economic well-being rests upon education as well as infrastructure. Of democratic concern is that information should not become the "closed cultural domain" of technocratic elites. France's President Mitterrand has, consequently, waged a multimillion dollar "cultural campaign" (fiscally outstripping economic programs) to break down, what he calls, the "little Berlin walls" that separate the informed from the uninformed.

These are the challenges of the 21st century. They are still about cabages and kings, though, in the words of Ernest Gellner, "modern man is not loyal to a monarch, or a land or a faith, whatever he may say, but to a culture."<sup>3</sup>

#### Notes

<sup>1</sup>Quoted in Glenn D. Paige and Sarah Gilliatt (ed.) *Non-violence Speaks to Power*. Honolulu. Univ. of Hawaii. 1982. pp. 79-80.

<sup>2</sup>Stephen Welch. *The Concept of Political Culture*. New York. St. Martin's Press. 1993. p. 5. The definition is Cyril Black's.

<sup>3</sup>Ernest Gellner. *Nations and Nationalism*. Oxford. Blackwell. 1983. p.86.

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# Social Decision:

## *Answer to Market-Made Health Crisis?*

by Dr. Ross Zucker

### Introduction

This article is about the way methods of decision-making affect the substance of decisions. Particularly it is concerned with the way in which the substance of decisions about health and safety matters is affected by the form of the decision-making processes. Issues of health and safety are increasingly important in late capitalist economic development, as capitalist systems enter into a phase in which they are increasingly capable of producing hazardous consumption products. Until recently, industry hadn't the capacity to utilize so many chemicals in food stuffs, much less to genetically engineer them. Only in the past few decades have doctors achieved the ability to perform cosmetic operations, though still at a high order of risk to the patient. Industry can now produce safer cars but safety is not always a high order production value, for reasons which this article reexamines.

Usually we suppose that the results of decisions are largely influenced by the initial ideas, preferences, and prejudices that we bring to the decision-making situation. But a question can be raised about whether the very methods of making decisions can

also have a great effect on the content of decision than these other premises of decision. In particular how does making a decision about health and safety differ when the decision is made through the market mechanism versus through the political state? I will contend that the flood of recent health crises peculiarly emanate from within the particular forms of decision making in the market. The aspect of market decision that is explored as a possible cause of these problems is the inherent and generic form of preferential decision making in exchange relations as opposed to "externalities," non-market interactions or other atypical processes associated with the conventional idea of market failure. The crises alleged to flow from the "inherent" and "generic" market decisions include a seemingly heterogeneous catalogue of cases such as carcinogens in food, excess fat and cholesterol in processed foods, silicone breast implant operations and silicone heart valves, the need for heart bypass operations, dangerous automobiles, asbestos, and countless others. Though these cases are seemingly extremely disparate and different kinds of problems, they may nevertheless have much more in common if their etiology is traceable to the "form" of market decision making (as

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compared with public decision making).

The purpose of the article is to consider whether there is a fundamental difference between decision-making in market and (democratic) state that leads to different implications as far as the generation and control of such occurrences. Is there something inherent in the nature of private market decision that is particularly prone to the production of such crises? Alternatively, is there something about the character of social decision in a democracy that is equally inherently inclined to limit such occurrences, particularly when the social decision process is sufficiently relied upon?

A very substantial part of modern political and economic decision science (Stigler 1975, p. 137; Arrow 1969, 1963; Samuelson 1954; Eckstein 1973; Musgrave 1959; Lindblom 1977), indeed perhaps the dominant school, can be shown to presume the opposite premise that there is not a fundamental difference between the content of individual decisionmaking in market and state; that these are not qualitatively different types of choices.<sup>1</sup> The procedure is recognized as different: the one utilizes exchange relations, the other proceeds by collective authority relations like elections and referenda (See Eckstein 1973, p. 16). But the object of decision-making, the quality of the thought process, the degree of individualism versus social considerations--all these are presumed to be the same.

The want in state and market is the same, but the "social" want cannot be provided by the market because the

market lacks the procedures for excluding non-buyers (Musgrave 1959, p. 8). In the notion of "collective consumption goods" and "private consumption goods", proposed by Samuelson (1954) in the pure theory of public expenditure, it is not so much the content of social and private wants that is distinguished as much as the mode of their fulfillment. And, the reduction of market and state to distinct modes of consumption tends to reduce them to different procedures of decision without much substantive difference.

Although the public finance literature draws some distinctions between social wants fulfilled through the state and private wants satisfied in markets, these distinctions do not constitute what may be called a "fundamental" difference. Social wants, as conceived in public finance theory (Musgrave 1959, pp 8-12; Eckstein 1973, pp. 8-11; Houghton 1970; Margolis 1970), cannot be provided for by the market since they can only be made available for general consumption. Since no one can be excluded from consumption of public goods, people will not in general voluntarily pay for the good. But "social wants" are not fundamentally different from private wants, in that they are reducible to the wants of independent individuals. And, the individual evaluates the value of the public goods according to his own subjective calculation of its benefit to him (Musgrave 1959, p. 11; Baumol 1969, p. 20). Consider for example a flood control project. The want is deemed social in that the benefit accrues to an entire region rather than exclusively to a pri-

private individual. But the individual evaluates the project according to the benefit she derives from it separately, and in this sense the benefit pertains solely to herself, and her interest wholly regards herself. For this reason, at a fundamental level the social want/private want distinction breaks down: "Indeed, social wants are quite similar in this fundamental respect to private wants" (Musgrave 1959, p. 13). The difference between social and private wants in public finance theory is not fundamental in this simple but important respect: people do not differ in the object of their wants in state and market spheres of life. This assumption about wants is plainly evident in Musgrave's (1969, p. 10) statement that "The difference between social and private wants . . . does not lie in the psychology of wants or in the ideological attitudes towards social versus private objectives." It is also evident, furthermore, when Kenneth Arrow (1969, p. 60), a leading neoclassical economic theorist, states that "Since the same agents appear in the two systems [the "state" and the "price system"] it becomes equally natural to assume that they have the same motives." But it is not only economists who adhere to this view; many political scientists who use rational choice theory promote a similar approach. The conception of the citizen of the state as a rational individual in Downs's *An Economic Theory of Democracy* does not distinguish the citizen in terms of his ends, but merely likens him to the consumer in the rational manner in which he attaches means to his ends. Expressing a mainline view in

political science, Robert Dahl (1976, p. 15) holds: "[N]othing is quite so strong a buttress to social institutions as a firm foundation in self-interest." Political institutions, in this conception, are stable to the degree they are founded on exactly the same--self-interested-- motives as the market is. The wants of individuals, according to these schools of political and economic thought, are the same in all spheres of life, but different procedures--government administration and market-- may for certain reasons sometimes have different advantages and disadvantages as means of providing for the same wants.

But evidence from the recent history of political economy suggests that people may not in fact want the same thing in the market and the sphere of the state. Where do these differences come from? Further, evidence (given below) suggests that the procedures of market and state decision may themselves account for the differences between wants in these spheres, in turn suggesting that the procedures are not just procedures but become contents of decision.

The view of wants in public finance theory is essentially similar to that found in the neoclassical theory of market failure. In cases of market failure (Arrow (1969), the conditions for the efficiency and competitiveness of the economy have broken down, and consumers resort to the state to restore the efficiency and equilibrium of the economy. But decisions in the state and economy are guided by exactly the same purpose: to maximize utility. Modern political economy recognizes certain

kinds of differences: the state can take into account social costs neglected by individuals' market decisions and it can, sometimes, overcome certain informational deficiencies. The view of utility maximization as a general theory of behavior suggests that these differences are not grand ones, as they have shared kinds of optimizing objectives.

However, evidence to be presented from the health field suggests that individuals in the market who will buy and consume products with serious health risks will, nevertheless, frequently vote to regulate these same products when acting as citizens of the state. Market preferences for products with health implications frequently differ and even conflict with political preferences regarding these products when expressed in the state. All this suggests that fundamentally divergent types of substantive goals are being pursued through the alternative procedures of state and market decision making. Mainstream political-economic theory already seemingly recognizes this, but not really. What such theory recognizes is that differences in preferences in politics and economics can occur under conditions of imperfect information. But I submit that the differences go beyond the problem of imperfect information because different modes of reasoning within different contexts produce different preferences even when the information levels are comparable in market and state. It is important to consider that there may be a more fundamental difference between market and state decision that may help account for phenomena of the foregoing type which the traditional

approach does not recognize nor explain adequately.

A "fundamental" difference, as defined here, would be one concerned with the kind of objective that is decided upon; the way in which the individual makes up his mind; the degree to which the individual's thinking takes others--and the system--into account; and finally the degree to which the individual chooses simply on the basis of immediate wants or deliberates broader criteria of judgment.

The prevailing view that preferences (volitions, wants, etc.) are similar in market and state and that these systems are merely procedurally different, is also embraced in certain ways in the influential political economy of Charles Lindblom (1977), though his thinking also departs in a number of respects. Lindblom's (1953, 1977) formulation of exchange and authority as "politico-economic techniques" for coordinating individual volitions is clearly in line with the view that these decision processes are merely instrumental procedures for the achievement of ends (as opposed to the idea that they also shape the wants and volitions). Though Lindblom's approach also differs from traditional public finance theory in that, to some significant extent, he sees market and state as contexts for the formation of the substantive contents of volitions. The present approach shares in common with his work the view that market and state are spheres of determination of preferences. But the different modes of social determination of preference in the two spheres need to be distinguished in ways Lindblom does

not seem to consider. There are distinctive modes of social determination that arise in connection with the consideration of market and state as, respectively, private and public spheres. Lindblom does not acknowledge a distinction along these lines. Preferences (or "volitions," to use his term) do not vary as between the two spheres with respect to the degree to which they are other-regarding or self-regarding, preferential or judgmental, deliberative or impulsive. However, evidence developed in this article suggests the existence of difference along these lines, in turn calling for examination of possible differences in the modes of social determination as between the two spheres that may account for the differences in substantive content of volitions in state and economy.

While Lindblom's work thus partly differs from conventional rational choice theory, major elements of his work share such theory's assumption about the fundamental similarity of wants across the spheres of market and state. Market and state are distinguished, according to Lindblom, by the fact that the former are based on exchange relations and the latter on authority relations. But as we will see the object of the relation and the character of the person's volition in these relations are not fundamentally different in his formulation. An authority relation is one in which one individual grants to another individual the right to make decisions for him or her. In exchange, by contrast, each individual voluntarily enters the relation for a reciprocal benefit. Note these two kinds of relationships are not distin-

guished by the character of the ends of the persons in the relations. In particular, as in the conventional public finance theory, the wants in state and market are not distinguished by the degree to which they regard the interests of others, and in this sense are not distinguished by the degree to which they are public or private. In fact Lindblom tends to collapse the distinction between public and private volitions when he refers to consumer preferences as "votes," thereby conflating public wants and modes of expressing them with private kinds. Not only the state but also the market is characterized as a "system of popular control", as if to highlight their fundamental similarity of purpose amid secondary differences (Lindblom 1977, p. 146). Wants and decision methods in market and state are only distinguished in terms of their degree of precision, not in terms of their fundamental character or their public or private character. Lindblom (1977, p. 146) characterizes market exchange as "precise voting", with authority implicitly characterized as woolly voting, if you will. The market is able to tailor objects to particular wants, whereas authority, characterized by "strong thumbs no fingers" provides a more blunt service. But the more or less precise signalling of volitions within the two major social spheres does not constitute a broad categorical difference in the substance of the wants; does not distinguish them in terms of the degree to which they regard others; does not distinguish them in the degree to which they are deliberated or preferential.

But in contrast to this mainline

view, a growing body of literature suggests that more fundamental differences distinguish individual willing in market and state. This article seeks to contribute to this literature (Habermas 1991; Barber 1984; Etzioni 1988; Lodge 1987; Reich 1983; Jean Cohen 1990), first, by clarifying the "fundamental distinction"; second, by providing evidence of its existence in actual politics and markets; and third, by clarifying the differences between decisions in conventional market failure and the substance of genuine social decision; and fourth by bringing out the vital importance of the difference for an appropriate handling of the current health crisis in capitalist societies.

The differences can be collected in the form of two "models" of individual decision making:

#### **Model I: Individual Decision Making In Markets**

1. In the market the individual makes his/her decision within an individual decision making procedure.
2. He makes a decision that regards his own benefit. The objective of the decision is a gain to himself.
3. The process of willing takes the form of preferential choice. This means that the individual does not need to justify his choice to any one else. Formal social criteria do not pertain to the choice, and in this sense the preferential choice is arbitrary.
4. The decision making in the market is concrete. Since the focus is on self benefit, he need only take a more abstract point of view to a very limited degree.

5. A preferential choice in the market is not a deliberative choice. He does not have to subject his choice to sustained thought nor does the matter need to be subject to extensive evaluation. It can even be a matter of immediate gratification.

5. In the foregoing sense, the market choice is fully "private". It is made without reference to others; it may be secret. It need not be defended. No justification is required. It need not even be in the individual's real self-interest.<sup>2</sup>

7. Individual decision making in the market often rests more on preference than judgment.

#### **Model II: Individual Decision Making In the State-Sphere**

1. In the state the individual makes up her mind within a social process of decision making which directly impacts upon her own thought process and rationation of goals and views.
2. Her decision regards her own benefit but also the benefit of others, and indeed the benefit of the system of individuals. Why need it regard others? In collective decisions, relatively few alternative candidates and policies can be considered. In order to schedule one's own preferred alternative one must interest others in it. They will not be interested unless ego's preferences concerns their own interests as well.
3. The process of willing involves some significant degree of deliberated choice rather than only preferential choice. As in a Presidential campaign, one forms a preference over an extended period of time, from the primary period through

the national campaign, lasting nearly a year. This may seem surprising in the era of the sound-bite, and some (Fishkin 1991) have rightly pointed to the need to increase the degree of deliberation in contemporary democracies. But in seeking to increase citizen deliberation through the democratic process rather than through the exchange system Fishkin is acknowledging what Lane (1991) denies: that, in some significant ways, the public sphere affords greater opportunities for other-regarding deliberations than the market.

4. Individual decision making in the state often utilizes a higher quotient of judgment than preference.

The differences between individual decision-making in these two models are matters of degree rather than being black or white. It is not my contention that every single decision made by an individual in the state is more highly deliberated than any decision made in the market. Surely some person's choice of a good doctor will involve a good deal more deliberation than some other person's deliberation on who to vote for. But I do wish to assert that in broad categories of consumer and political decision there is a significance difference, albeit one of degree, distinguishing decisions in the market and the state.

#### **Evidence of a Qualitative Difference**

The recent history of political economy provides numerous instances in which individual decision making in the state has altered the character, objectives and direction of individual decision making within the economic sys-

tem. Individual decision making within the state has "corrected" individual decision making within the economic system to make it more oriented to take account of others. Government regulation of unhealthful chemicals in food, of hazardous cosmetic operations, of unsafe products, all reflect the fact that individual decision making in the state has been more deliberative in reaching a conclusion; more abstract rather than just focusing on the concrete individual case at hand; more deliberative as opposed to preferential; more social rather than individualistic in the thought process leading up to a decision; and in some ways more rational in the choice of objectives to pursue.

One major instance is that of the introduction of seat belts. Seat-belts were first introduced by a private enterprise, Ford Motor Company, but consumer demand was not sufficient for the company to continue its production. Provision of seatbelts did not become an established practice until required by government regulation (Robert W. Crandall 1986, pp. 51-55; Dolan and Goodman 1989, p. 56). Another instance of a purchase "corrected" by individual decision making in the state is provided in the case of silicone breast implants. At considerable risk to their health, millions of female consumers purchased breast implant operations. In most cases the objectives were cosmetic (whether reconstructive after mastectomy or cosmetic per se), but the risks were always fundamental. Any major operation poses a significant risk to the life of the individual, even when the implanted substance is safe. The F.D.A. estimates

that 1.2 million American women have had implants since 1962.<sup>3</sup> Until 1992, the average number of the operations performed each year was 150,000.<sup>4</sup> Indications are, and have been, that the operations are unsafe. Some of the relevant information was suppressed, some of it has always been rumored, other pieces of information were known but ignored, but another part of the information was always available: "Looking back at the long history of silicone, it is now clear that there were many warning signs . . ." <sup>5</sup> The risks of silicone have been known at least since the 1960s. The character and extent of the available knowledge of its hazards has varied since that time, but there has always been some knowledge of its dangers, ever since the American occupation of Japan when transformer fluid was injected into the breasts of Japanese women to please American soldiers' preference for larger breasted women.

In the case of the breast implants, the manufacturers' own studies of silicone demonstrate its dangers. Dow Corning, the leading manufacturer, performed a study of 38 dogs that were given silicone implants. Of these animals, one died, one developed a benign tumor, and two suffered long-lasting inflammation.<sup>6</sup> Extrapolating to the human female population, the implications are ominous, threatening to rival the asbestos crisis. Immune system disorders have long been associated with silicone implants. Studies in the 1970s showed that the immune system reacts against implants, producing antibodies that attack both the silicone and the bodily tissues associated with it.

These studies are increasingly being confirmed. Silicone implants also block mammography tests because silicone is opaque to X-rays. One study reported that cancer spread to the lymph nodes in 39 percent more women with implants than those without implants.<sup>7</sup> Silicone gel breast implants ruptured ten times more often than manufacturers and plastic surgeons reported, according to university researchers.<sup>8</sup> The silicone migrates from a rupture in the implant leading to neurological problems and to gangrene of the hands. Recent complaints point to the breakup of silicone and to its fragmentation throughout the breast.

The stop to breast implant operations did not come from a decision by women in the market-place to decline such operations, even amid a wealth of new-found information on their hazards. Instead a moratorium on these operations was declared by the Federal Drug Administration in 1992 pending further study of their safety.<sup>9</sup> Private suppliers of the "service", the American Medical Association, charged the FDA with sexism for disallowing women to make their own decisions.<sup>10</sup> Meanwhile women, as citizens within the state, have tacitly expressed their political will on the matter by contributing to the election of a representative government that now prohibits these operations.

A clear pattern emerges from these cases. A marked preponderance of the calls for safer products come from individual decision making within the state more than from individual decision processes within the market. It is the

state which mandated seat belts. Ford initiated seat belts, but it was finally the state whose insistence made them a regularized part of automobile production. A similar pattern emerges in the case of the many carcinogens in the food supply. The consumers don't stop buying products with carcinogens. More often than not when progress is made in this area it is individual decision making within the state-sphere that leads the government to ban the carcinogens. Occasionally this is not the case, as in the instance of the intense popular support for aspartame, more familiarly known under the market name "Nutra Sweet". But the rather more characteristic pattern is discernible in the case of silicone breast implants. Consumers continue to obtain them when left to their own preferences in the market. Individual decision-making in the sphere of the state is what led to the moratorium on further breast implants. Individual decision-making in the state, not in the exchange system, initiated the many automobile safeguards that we take for granted today. It is government officials representing individual citizen decision makers within the sphere of the state that mandated padded dashboards, that required rubber bumpers, window defrosters, head restraints, energy absorbing steering columns, safer windshield glass, increased side-door strength regulations, and on and on (Crandall 1986).

The fact that the individual as consumer buys the hazardous product and frequently as citizen of the state supports the product's restriction or prohibition suggests that consumers and

political individuals often have qualitatively different kinds of wants, rather than displaying the consistency between market and state posited by public finance theory and other conventional schools of political economy.<sup>11</sup> A survey of 39 individuals finds serious substantive contradictions in their preferences within the market as well as numerous inconsistencies as between their preferences in market and state (See Table 1 below and Appendix for fuller information). Of this group, there were some 31 cases where an individual reported having bought something that the person thought he/she should not have purchased. There were 8 individuals who said that they like to purchase certain things in the market that they think, as citizens in the state, they would vote to have regulated or prohibited.

**Table 1 Economic Preference and Political Judgment**

	<u>Yes</u>	<u>No</u>
1. Do you buy or do anything that you think you should not?	28	11
2. Do you buy or do anything that you wouldn't want a loved one to buy or do?	16	23
3. Do you buy or do things as a consumer that you think the government should prohibit or regulate? <sup>12</sup>	12	27

(n=39).

This questionnaire is designed to probe whether individuals think there



are criteria of decision which they leave out in the market which they would take into account in their decision-making as citizens of the state. The data indicates that a substantial number do leave out important criteria of judgment in the market that they would take into account in the political sphere. The data also supports the contention of the model of individual decision-making in markets (see Model 1 above) that market decision tends to be self-regarding. Several answers indicate that their decisions in the state would be more other-regarding than their market decisions. For example, one person who reported purchasing pornography also favored a government ban on it because he thought pornography would be detrimental influence on his little brother. The data here also suggests that there may be differences between the level of judgment employed as between market and state decision. For example, one individual who would buy tuna fish as a consumer nevertheless support government restriction of tuna fishing for the lofty purpose of protecting Dolphins.

Let us see whether and how conventional concepts of market failure can deal with this kind of phenomenon. In particular we will examine the way in which one conventional concept of market failure might be thought to apply to the case of the purchase of breast implants. To begin with, suppose an individual is aware of the risks of a product, but desires it anyway. Suppose further that her consumption of the product does not hurt anyone else. And, finally, suppose that there is a seller who wants to provide the service or produce

the product. Since gains from trade can be made in this case, the economist would find the exchange efficient. In the conventional scheme of market failure we would assume that the individual did not understand the risks, and then that the individual is not really getting what she wanted. There would then be a market failure in that inefficient trade occurred. But the case that I have provided does not "fit" this conventional scheme of a market failure involving an information void. Many of the consumers who knew the risks of breast implants still sought out the implant operations, and continued to seek them out right up to the point where the FDA restricted performance of the operations amid a noisesome national controversy. The notion that market failure can occur even in the presence of understanding and knowledge of risks supersedes the forms of market failure acknowledged by many economists.

But what about the relation of this data to the view of market failure on the part of economists who believe consumer preferences should not be second-guessed by third parties? To these conservative economists, such as Friedman and Friedman (1990, pp. 189-227), the purchase of the operation or of the cigarette is still efficient despite known hazards, if there is no social cost to others. Put aside the last consideration (of social cost) for the moment so that we can consider the first part of the conservative economists' conception of market failure in isolation, for these are really two separable matters. What the conservative market failure theorists fail to take into account is that

many of the same consumers who purchase implant operations or who buy cigarettes vote in the state for candidates who propose to ban or restrict these products and services. In this case, it is not any third party who is second-guessing the consumer. Rather many consumers are second-guessing themselves when acting as citizens of the state. Insofar as consumers second-guess themselves in the state, it validates the contention advanced here that a market failure occurred in the case of available information and willing choice. Nothing in the conservative or liberal idea of market failure anticipates or allows for this. The actual scope of market failure within the United States is, then, far surpassing the scope of available concepts of market failure. The preceding incidents can not be brought within the conventional rubric simply by pointing to the unpaid social costs of the operations now arising in connection with the serious side-effects needing costly treatment. For it still remains that the consumer in many cases is second-guessing herself, thereby gumming up the standard utility calculus. Our concepts of market failure therefore need to be revised and expanded in order to better recognize this kind of phenomenon.

This pattern raises a question of why we see a qualitatively different type of outcome from individual decision making in the state versus individual decision making in the market. What causes individuals to reach a very different outcome of decision in the state than they do in the market? The characteristics specified in the two models of

decision may suggest an answer. Safety measures may tend to be mandated by government rather than demanded in the market because individual decision making in the state utilizes more judgment than it does in the market; because it tends to rely less on individual preference; because it tends to be more deliberative in the state and less deliberative in the market; because it tends to be more abstract in the state and more concrete in the market; because it is more other-regarding in the state and more self-regarding in the market system; and because it is more rational in the state in the sense of taking into account criteria of judgment besides merely matters of taste.

As we have seen, much of modern economics does not recognize any difference in the degree to which individual decision-making in markets and state utilizes reasoned judgment. For George Stigler, there is only one basis of decision-making: utility maximizing behavior. The context of decision, state or market, does not in Stigler's view change the amount of reasoned judgment employed. Nor are social choice and individual choice distinguished for Arrow in terms of their degree of rational judgment. Social choice is simply a collection of individual preferences, not a choice utilizing a differential amount of rational judgment. "The social choice from any given environment is an aggregation of individual preferences" (Arrow 1963, p. 103). Note he does not say that a social choice within the state is marked by enhanced judgment and reason. It is simply reducible to the individual preferences, which are never

differentiated as between preferences in a public sphere and preferences in the market.

### Abstract and Concrete Thought in Decision Making

In attempting to explain why individual decision making in the state promotes concerns of safety and health, while market decisions frequently neglect such issues, it is useful to take into account abstract and concrete reasoning and the conditions that promote one or the other.<sup>12</sup> Consider for example the choice of a loaf of bread. Today many makers of bread add a host of different chemicals. Bread, once a primordial substance of Western subsistence, is now a complex processed good utilizing a variety of chemicals. Some of the additives to bread may be carcinogens. Others, like palm oils, may add saturated fats that contribute to the excessive amount of fat in the American diet. And when coupled with all the other unduly fatty food products on the market, it contributes to the 500,000 heart bypass operations performed in the United States yearly.

Preference in the market is often insufficiently abstract in its reasoning to evaluate the new form of bread. In concrete preferential choice, the consumer focuses on what is right in front of him, what he directly experiences. The chemicals in the bread may be tasteless. They are not an object of consciousness to the consumer mind. It is not the microscopic chemicals which are consciously consumed, it is the macroscopic substance "bread" that is present to the mind. Although the

chemicals are in the bread, they are beyond consciousness in a concrete preferential choice. In order to bring the issue of the chemicals into consciousness, and make them the object of evaluation, it is necessary for the consumer's mind to move beyond immediate perceptual experience, and to form an abstract concept of the bread as a particular kind of social substance.<sup>13</sup>

Taking into account chemicals in bread, meats, and fruits can be considered a more rational standpoint than simple preference. Before the fairly recent advent of modern processed agricultural goods, it was rational to evaluate meats without taking into account the issue of their healthfulness. But once processed meat (such as those with sodium nitrate) becomes a vehicle not only for providing nutrition but also for carrying carcinogens into the body, it is rational to be aware of the issue. Abstract reasoning can therefore be judged more rational than preferential choice in the sense that it takes into account criteria of healthfulness and not only of perceptual experience or immediate experience.

Abstract and concrete dimensions of reasoning are also relevant to the prospect of a breast implant operation. In the sphere of private decision, a woman considering such an operation is inclined to consider the advantages or disadvantages from the standpoint of appearance. The needs can be urgent. A breast implant operation relates to her need to be able to compete in the sexual market place. She may be trying to please a man. He may be evaluating with her the prospect of her operation,

and taking into account only the issue of appearance, and his own sexual status or the prospect of his own greater sexual stimulation. But an adequate evaluation of the prospect of a breast implant operation calls for abstract reasoning. One needs to piece one's way through the evidence on varying types of implant, each with its own distinctive types of hazards. Some are more dangerous than others. But do they eradicate hazards common to both types? The concern with safety may be itself relatively abstract. Some of the dangers may not crop up for 20 years. When the dangers are not immediate but far off, they require an ability to evaluate the hazards from a more abstract point of view. But if a hundred thousand operations a year is any guide, the choicesituation in the market evidently does not encourage people to utilize this abstract reasoning and make a more far-sighted decision. But many of the people who would obtain an operation like a breast implant also vote into office representatives who will empower a bureaucracy to ban the very same operation. Many of those who would have a breast implant operation would not encourage any one else to have such an operation; might even support a general ban on the operations.

#### Contextual Versus A-Contextual Reasoning In Decision Making

If we were to follow modern economics in our attempt to explain differences in decisions reached within state and market, we would learn that decision-making is essentially a-contextual. Kenneth Arrow (1969, 60) states

that "since the same agents appear in both systems [the "state" and the "price system"] it becomes equally natural to assume that they have the same motives." In so saying, he implicitly adheres to a view that the context of decision does not affect the character of decision. If one adheres to this view then there is not a qualitative difference in the kind of decisions we can expect within the differential contexts of state and economy. This is inferable from Arrow's statement because motives would be invariant in different systems only if context left motive untouched. On this basis, decision-making in much of modern economic thought can be designated "a-contextual". The idea of preference-maximizing subject to constraint does not preclude that such decisions are a-contextual in neo-classical thought.

But John Stuart Mill gives us reason to think the context of decision matters to the outcome of decision by affecting the formation of decision. One of the most illuminating points of his important analysis in *Considerations On Representative Government* is the account of why some decisions tend to be more other-regarding and abstract while another set of decisions tends to be self-regarding and concrete. Differences in context of decision provide the basis of explanation for self-regarding and other-regarding decisions.

The discipline of performing a social task enlarges a person's conceptions and sentiments, broadening them to take account of other persons and other criteria of judgment. Activity within the state reinforces broader sen-

timents and conceptions by providing tasks of citizenship that give experience in performing social functions.

What is . . . important . . . is the practical discipline which the character obtains from the occasional demand made upon the citizen to exercise, for a time and in turn, some social function. [J.S.Mill 1948, p. 149]

Presuming a-contextual decision, modern economic thought leaves unexamined the ways in which ordinary life scarcely contributes to the formation of any extended conceptions and sentiments on the individual's part. The need for such an examination is therefore as great now as it was when Mill identified it many years ago:

It is not sufficiently considered how little there is in most men's ordinary life to give any largeness either to their conceptions or to their sentiments. [J.S.Mill 1948, p. 149]

The character of work significantly accounts, Mill explains, for the self-regarding character of the individual.

In work, one is primarily occupied with the problem of satisfying one's wants, and so, work focuses the person on the most self-regarding dimension of the self: the satisfaction of wants. The degree to which wants are perceived as self-regarding in modern economic thought is indicated in Arrow's statement that men do not share stomachs, and so must of necessity be oriented toward self-benefit in their consumption decisions. The routine character of work contributes to making the self-regarding orientation habitual and characterological, not simply a discretionary perspective donned as one deems

appropriate. As a routine performed day in and day out, for much or most of the waking hours of a person's life, whatever character work has is likely to be deeply inscribed on a person's nature. With that routine directed at the satisfaction of wants, which is primarily self-relating activity, the person's consciousness is inscribed with all the sentiments of self-regard, and scarcely any regard for others or for the whole. "[N]either the thing done, nor the process of doing it, introduces the mind to thoughts or feelings extending beyond individuals" (J. S. Mill 1948, p. 149). Indeed, as Mill instructs, the conditions of ordinary life form an active force breaking down broader consciousness, rather than simply being passively deficient in the supply of conditions formative of general perspectives: "[W]ork is . . . not a labour of love, but of self-interest in the most elementary form" (J.S.Mill 1948, p. 149).

Neoclassical economic thought does not take these perceptions into account in part because it is blind-sided by its conception of the individual as a utility maximizer, that is, a person for whom the amount and kind of work is simply a derivative expression of his preferences (dispreferences) toward labor and leisure. Where preferences are taken to be elemental parts of the self, and work is consequently simply the expression of preferences and a means to their satisfaction, work experience itself can't be understood as something that reacts back upon the self, as a formative condition of consciousness and its perspectives. Thinking this way, neoclassical economics strongly tends

to assume that a narrowness of spirit and of perspective is inherent in the person, leading neoclassical theorists to the view that this spirit is something one cannot--and so should not--try to do anything about. But Mill's simple description of work, and of how it fixes minds on narrow perspectives of the self, refutes utility maximization as a general theory of the self. Pace Stigler (1975, p. 137) when he says "there is only one general theory of human behavior, and that is utility maximizing theory." The theory of utility maximization is revealed to be an overextended theory of human behavior, whose postulated self-regarding aims and actions are merely derivative of the context of work, and other conditions of market life.

Another mode of reasoning and another "larger" and more abstract perspective of the self is generated within another context, the public sphere, and the experiences it affords the individual. This then suggests the existence of a second theory of human behavior, in which a second context of decision effects reasoning in a different way. Many philosophers contribute to this argument, beginning with Aristotle. But the dominance of neoclassical thought in political economy indicates that the argument needs to be reinvented or at least the faltering banner needs to be upheld. Participation in the public sphere and in public functioning educates a person, increasing the range of ideas and the development of faculties.

Giving him [the ordinary man] something to do for the public, supplies, in a measure, all these deficiencies. If circumstances allow the amount of pub-

lic duty assigned him to be considerable, it makes him an educated man. . . . [T]he practice of the dicastery and the ecclesia raised the intellectual standard of an average Athenian far beyond anything of which there is yet an example in any other mass of men. . . . A benefit of the same kind . . . is produced on Englishmen of the lower middle class by their liability to be placed on juries and to serve parish offices; which . . . makes them very different beings, in range of ideas and development of faculties, from those who have done nothing in their lives but drive a quill, or sell goods over the counter. [Mill 1948, p. 150]

Having a greater range of ideas and higher intellectual standards, better equips a person for the tasks of abstract reasoning that enable him to take into account factors that are not in the immediate environment.

Public life does not only provide more information, but also affects the character and quality of reasoning. And so the failures of the market can not simply be understood in terms of its limited capacity to provide information. The failures of the market has to do with the kind of person it produces relative to the kind of person produced within the state. Life in the state sphere affords the person more information about other persons, and changes the person by involving him with the welfare of others rather than simply his private interest. Still more salutary is the moral part of the instruction afforded by the participation of the private citizen . . . in public functions. He is called upon, while so engaged, to weigh interests that are not his own; to be guided, in case of con-

flicting claims, by another rule than his private partialities; to apply at every turn, principles and maxims which have for their reason of existence the common good. . . [Mill 1948, p. 150]

Instead of merely gaining better information for optimizing a given preference function, immersion in public life transforms the person's preferences in a way that increases his/her orientation toward general interests:

[H]e usually finds associated with him in the same work minds more familiarized than his own with these ideas and operations, whose study it will be to supply reasons to his understanding, and stimulation to his feeling for the general interest. He is made to feel himself one of the public, and whatever is for their benefit to be for his benefit. [Mill 1948, p. 150]

De Toqueville also sees a socially determined choice, not choice per se, at the bottom of the individual decision to attend to the interests of the public; and he sees this choice as conditioned, more specifically, by experience of serving the public good:

Men attend to the interests of the public, first by necessity, afterwards by choice; what was intentional becomes an instinct, and by dint of working for the good of one's fellow citizens, the habit and the taste for serving them are at length required. [1945, II, p. 112]

Different kinds of decision processes--market decisions and decisions in the state sphere--are then, not merely different ways of reaching decisions, they are ways of producing different desires and goals. Market choice is structured choice even though decen-

tralized. It is structured to produce more individualistic and more "concrete" outcomes than decisions in the state. The choice of market decision-making versus governmental decision making is, then, a choice of a way of forming needs and judgments. And it is, to some significant extent, a choice of which kind of need to have: the need to satisfy wants and preferences or the need to satisfy reasoned judgment.

### Implications for the Health and Safety Crisis

The foregoing analysis indicates that public decision contexts contribute significantly to the citizen's ability to deal with health and safety questions, and that the utility of the statesphere can not be superseded even if conventional market failures could be entirely overcome. In the prevailing health and safety crisis, the state sphere has special value due its effect on the person's capacity for abstract reasoning and abstract points of view. Correlatively, private decision-making carries an inherent deficiency in this area as a result of concrete reasoning patterns engendered by the market context. Because the market encourages acting on preferences rather than on deliberation, one is not as likely to take into account the criteria of safety relevant to the choice of a breast implant operation, choice of processed food with high cholesterol, choice of a car. Market decision-making concentrates the consumer's attention on satisfying immediate desires, rather than taking into account non-sensory and distant considerations like the chemical composition of the food. But once

food has been subject to a process of ongoing innovation affecting its basic chemical composition, there are other matters of importance to consider. Public decision-making on these matters has some special advantages because it encourages deliberative, abstract reasoning. In public where one's decision will affect others, those people will demand reasons or at least acceptable passions. Government is, as Thomas McCarthy (1991, p. xi) points out, "publicly monitored through the informed and critical discourse by the people". They can compel the government to justify its policy initiatives. This can force the government to give an exposition of the relevant scientific information and to justify its position in light of the scientific evidence. By increasing the degree of abstraction of choice, the deliberation of choice, and the other-oriented character of choice, public decision-making alters the substantive outcomes of choice. The utilization of the abstract reasoning encourages an individual's use of safety criteria. The difference between public and market decision is therefore not just a difference in venue; it is not just different in the degree to which it takes into account social costs; it is a difference in the kind of decision and the quality of the decision in certain matters.

#### **The *Aufgehoben* of Market Failure**

The problem of decision making posed and examined in this article was found to be irreducible to market failure as typically understood. The problem is a market failure in a sense, but of a more inherent and profound type than ordinarily contemplated.

Market failure usually arises when the market fails to provide an optimal result. The state steps in to provide a better solution to the optimizing problem given in the market. The failure to provide an optimal result is usually thought to arise from inadequate information or from a failure of decision makers to take into account the social costs of their actions. If people have the information about a dangerous product, but purchase it anyway, they would be considered to be solving a maximization problem (assuming there were no social cost). And no failure of the market would be in evidence.

In contrast to the conventional economists' view, this analysis shows that there can still be a failure in this case even if there are no social costs, and even if the person has adequately completed a market maximization problem. In many cases, people who will consume a hazardous product in the market, will nevertheless vote to have it banned when they are acting in their capacity as citizens of the state. In this case there is a failure of the market to elicit the kind of judgments that individuals ultimately wish to rest on. The individual knows the product is dangerous, believes the Corvair is "Unsafe At Any Speed", but buys it anyway as part of his utility-maximizing calculus. But in the state sphere the same citizen votes for a candidate who supports regulation of that car. There are numerous such examples. Many people who smoke nevertheless feel that smoking should be banned or restricted. This kind of example suggests that the optimizing problem in the market is misconstrued,



not merely that the market fails to provide adequate information for a valid optimizing game.

In the other fundamental case treated in this article a woman in the market decides to purchase a silicone breast implant operation. She feels particularly strong needs to improve her appearance, assuming that this would improve her appearance. So she as a private decision maker wants, and is willing, to get the operation done. But when the matter comes up for a political decision, and she must contemplate the rightness of the operations for society as a whole, she concludes it's a bad thing, and votes for the candidate who opposes the legality of these operations. This too shows the failure the standard market failure approach. In fact the results of the social decision suggest that the private optimizing decision in safety and health matters can be a reckless way of going about safety oriented decision-making.

The kind of problem defined here can not be subsumed under conventional market failure. Neoclassical political economy does not recognize a difference between judgment and preference. It does not acknowledge that the preference ordering in the state is more other-regarding that it is in the market system. It does not recognize that there is a categorical difference, between abstract reasoning and concrete reasoning, in the kind of information available in the public sphere relative to that in the market. If these factors come into play, and not only the amount of information or the incorporation of social costs, then the market failure paradigm is inad-

equate. In order to grasp the full magnitude of the market's incompetencies we need to move beyond a formal distinction between markets and state, and continue to move toward a qualitative difference in the kind of decision affordable by these systems.

### Conclusion

This analysis suggests that instead of there being a single general theory of decision, there are two qualitatively different kinds of decision: one is characterized by a public form of individual decision making; the other consists of more independent decisions within the exchange system. The analysis further suggests the difference between them specifically takes the form of a class of decisions, on one side, which are more abstract, more oriented toward others, and more oriented toward safety and health; and a second class of decisions, on the other side, which are relatively concrete, oriented toward self-gain, and focused on the satisfactions of wants and preferences. The endemic problems of health and safety within the market are attributed to the character of decisions engendered by the context of the market. Empirical evidence suggests that greater impetus toward safety and health measures originates with public decision-making within the state. Regulation receives "three cheers" on this account. Recourse to increased public decision making in the health field can be held out as a way of dealing more effectively and reasonably with problems of carcinogens pervasively found in the food supply, the purchase of dangerous consumer prod-

ucts (like 150,000 silicone breast implant operations every year since 1962), and excessive fat and cholesterol in the food supply (significantly responsible for 500,000 heart bypass operations needed every year).

The preliminary "theory" of social decision sketched here suggests that a great deal more social decision making is justified, in contrast to the view of "free" market advocates. If there were only one form of decision making, utility maximization, then any interposition by the state, undertaken to alter market allocations, would indeed be a coercive violation of individual freedom, quite as Friedman contends in his classic work *Capitalism and Freedom*. But the finding here, that free willing has dual forms, suggests that according nearly unlimited scope to private decision simply negates freedom's other half. The results of this analysis further qualify Lindblom's assessment of the relative merits of exchange and authority as methods of social decision. As noted earlier, the former are privileged by Lindblom in terms of their degree of precision. If individual decision-making in the state promotes judgment, other-regarding concern, and the use of abstract reasoning, then market exchange is correspondingly less "precise" along these dimensions, thereby justifying greater government intervention in substantive consumption decisions than Lindblom's political economy generally provides a basis for.

#### Appendix

In order to determine if there

are differences between private decision making and public decision making, a class of students were asked three questions:<sup>14</sup>

1. Do you buy or do anything that you think you shouldn't do or buy?
2. Do you buy or do anything that you think you wouldn't want your brother, sister or loved one to do or buy?
3. Is there any thing that you would buy or do in the market but which as a citizen of the state you would prefer that the state prohibit or regulate?

The purpose of the first question is to determine if there are criteria of decision that private decision makers think that they leave out. Instances of this kind can be a basis for considering whether another decision forum would evoke categorically different kinds of decision. The purpose of the second question is to determine if decisions differ when one takes other persons into account. Examples of this kind tend to suggest that public decision would differ from private decision because it tends to force people to take a public perspective. The argument that it causes a difference in perspective is well presented by J.S.Mill.

1. A. Do something or buy something that one thinks one shouldn't do or buy: 28 students.

B. Do not do or buy anything that you think you shouldn't do or buy: 11 students.

C. Examples of things you do or buy that you think you shouldn't do or buy. Eating processed food, missing classes, not studying, eating red meat, not pay-

ing attention to my diet, underage drinking, driving without studded tires and without four-wheel drive, driving with others who are drunk, chewing tobacco, eating unhealthy food, living in a city, being passive when I hear racist remarks, driving in Alaska, rockclimbing, drinking soda, driving in Alaska, snowboarding, using aerosol sprays, making love to my husband, eating sausages, riding show horses, eating chocolate and Haagen-Daz, eating fast food and Whoppers, eating at McDonald's, downhill skiing, driving unsafely, snowmachining, bungee jumping, racing motocross, watching television, smoking, eating too much, and speeding.

2. A. Do something that you wouldn't want your brother, sister or loved one to do: 16 students

B. Do not do or buy anything that you wouldn't want your brother, sister or loved one to do: 16 students.

C. Examples of things that you do or buy that you would not want a loved one to do.

Buying soldier of fortune Magazine, reading pornography, birth control, dating a hockey player, eating unhealthy foods, chewing tobacco, birth control pills, riding a Harley Davidson, casual sex, not wearing a hardhat when riding, eating campus food, taking acid, pot, alcohol, smoking, dog-pulling while riding bike, riding motorcycle.

3. A. Willingly do or buy things as a consumer which as a citizen you think the government should prohibit or regulate? 12 students

B. Do not buy anything that one would

want prohibited or regulated: 13 students

C. Examples of things that you do or buy things that you would want regulated or prohibited: pornography, buying tuna fish (want it regulated to save Dolphins), food, food additives, gasoline, want to be rich but think income should be taxed, smoking, alcohol.

### Notes

<sup>1</sup>There are a number of analysts who formulate social wants in a fundamentally different way than private wants, but they are usually though not always found outside the mainstream of economic and political theorists. These include Habermas 1991; Barber 1984; Etzioni 1988; Lodge 1987; Reich 1983.

<sup>2</sup>Some utilitarians such as Harsanyi and Mirrlees (See Sen 1982, pp. 9-10) argue that the theory of rational choice should only utilize a person's "real" or "true" preferences. But such abstract posits only avoid the problem of the degree to which actual individual decision-making in markets aims at developing real or true preferences.

<sup>3</sup>Philip J. Hilts, "Studies See Greater Implant Danger," New York Times, February 19, 1992, p. A7.

<sup>4</sup>"Medical Journal Assails Curbs on Breast Implants," New York Times Thursday June 18, 1992, p. A21.

<sup>5</sup>Philip J. Hilts, "Strange History of Silicone Held Many Warning Signs", New York Times, January 18, 1992, p. 1.

<sup>6</sup>Editorial "Implants and Halcion: the Shadow" New York Times, Friday, January 24, 1992. See also Philip J. Hilts

"Strange History . . ." pp. 1, 8.

<sup>7</sup>Philip J. Hilts "Strange History . . ." p. 8.

<sup>8</sup>Philip J. Hilts "Studies See Greater Implant Danger" p. A7.

<sup>9</sup>Philip J. Hilts, "Strange History . . .," p. 8.

<sup>10</sup>"Medical Journal Assails Curbs On Breast Implants", New York Times, June 18, 1992, p. A21.

<sup>11</sup>In addition to the foregoing evidence there is a legion of anecdotal evidence for this conclusion. See for example "Sidewalk Talk," The Sun Star February 2, 1993. See also case of individual who rode a motorcycle without a helmet but who supports a law requiring a helmet. "Motorcycle Helmet Bill Elicits Wide Opinions," The New York Times, February 17, 1993, Section A page 15.

<sup>12</sup>An insightful analysis of the role of abstract and concrete reasoning in decision making is Levine The Fortress and the Market Version: July 1991, unpublished manuscript.

<sup>13</sup>The concept of bread as a social substance is introduced by David P. Levine

<sup>14</sup>Political Economy 100X Fall 1993.

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# Yeshiva University and the Church-State Question

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by Sender Cohen

*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

-Amendment I, Constitution of the United States, 1791

"Let us declare what the Yeshiva is not. It is not the street, the world, it is not America, it is not a place for women or for free thinkers. It never was. It can never be."

- Rabbi Aharon Kahn, Rosh Yeshiva, Rabbi Isaac Elchanon Theological Seminary, an *affiliate* of Yeshiva University<sup>1</sup>

Yeshiva University is a paradox. It exists in part because of the insight and foresight of America's founding fathers in their crafting of the constitution, yet (at least according to the right-wing rabbis of the Yeshiva side) it stands contrary to a good deal of what the founding fathers held dear. Yeshiva University (YU) would not have to think twice about its sometimes vehement opposition to the exercise of free

speech and freedom of religion by its constituents if it had never opted to accept government funding. As Rabbi Kahn has stated, "We should never have created structures which so depend on government funds that we have to compromise our attitudes and postures."<sup>2</sup> But Yeshiva did accept government funds, and ever since it has struggled to reconcile its acceptance of these funds with its religious and political stances.

In recent years, the Courts have gone farther than ever in applying the doctrine of separation of Church and State. In fact, various religious groups have joined in the litigation that led to recent separation decisions (including the National Council of Churches, the Baptist Joint Committee on Public Affairs, and the American Jewish Congress). Specifically, the American Jewish Congress has opposed the institutionalizing of Christianity in schools and public ceremonies, and southern Baptist groups have opposed aid to Catholic schools.<sup>3</sup> But as Gary Wills writes, "That is in a great American tradition. The churches that want to protect their own orthodoxy help disestablishment by keeping state support from 'heretics'."<sup>4</sup> Religious organizations fight constantly to keep the

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State from supporting the inculcation of religious values within any segment of society (witness the prayer in public school debate). The result of the verdicts in these cases have in turn broadened the doctrine of separation, making it increasingly difficult for private institutions to impart any sort of religious values to their students while simultaneously accepting government largesse. It cuts both ways; no religion in public institutions; therefore no government funding to religious private institutions.

In the late 1960s, Yeshiva University, like so many other educational institutions at the time, was suffering from a severe financial crisis as a result of over-extended budgets. The University felt compelled to accept government funding as a means of alleviating the strain on its budget. In 1967-68, the institution was thirty-eighth in the country in the amount of Federal assistance it received. In 1970, YU received a full twenty percent of its budget as government funding in various forms.<sup>5</sup>

As a result of this ever increasing need on the part of private institutions for government funds, Governor Nelson Rockefeller established a committee headed by McGeorge Bundy to study the feasibility of state aid to private institutions. This committee's findings led to the so-called "Bundy Law", which granted aid to private, non-sectarian colleges on the basis of the number of degrees awarded each year by the institutions. Yeshiva University, to qualify for this state funding, had to formally declare itself a non-sectarian school. This was done to comply with the New York State

Constitution's Blaine Amendment's provision that public money not be used to aid schools under the control and direction of any religious denomination<sup>6</sup>:

Neither the State nor any sub-division thereof shall use its property or credit or any public money or authorize or permit either to be used, directly or indirectly, in aid or maintenance... of any school or institution of learning wholly or in part under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught...

In order to satisfy the state's legal requirements, Yeshiva had to separate the religious division, RIETS, from the remainder of the University.<sup>7</sup> Already in 1967 the New York Board of Regents had issued a new charter to Yeshiva University making it an educational corporation; this was done in response to a University petition that Yeshiva should be changed from a "membership" corporation to an educational one. The new charter removed RIETS from the Yeshiva University corporate structure; despite RIETS having been called an affiliate at the time, however, its real corporate status was not defined until 1969. At that time Yeshiva applied, and received approval for, a new corporate structure for RIETS. RIETS became a separate corporation, divorced from all ties to the University.<sup>8</sup> The Seminary retained the Muss Residence Hall and Tanenbaum Hall, but all other assets remained under the control of the University's Board of Trustees.

The Seminary's trustees subsequently signed an affiliation contract with the University in which the Uni-

## -Yeshiva University and the Church-State Question-

versity agreed to provide its facilities for the Seminary's use and to cover all costs incurred by RIETS<sup>9</sup>. All the legal maneuvering from 1967 on had as its impetus the University's desire to conform to the Blaine Amendment's requirements.

With the revision of the University's charter came the abolishment of the BRE, Bachelor of Hebrew Letters, and Master of Hebrew Letters degrees, which were viewed by the state as religious in nature. Moreover, the course catalog was revised at the time, and specific mention was made of the irrelevance of race etc. in the admissions criteria - a policy to which Yeshiva had always been legally bound, but had never before been compelled to publicize. Rabbi Israel Miller, Senior Vice-President, pointed out that Yeshiva remains, "very conscious of the Church state issue here; in all of our publications we make sure that the wording is correct."<sup>10</sup>

Furthermore, the Bible courses were incorporated into the Hebrew Department, and the 1969-1970 course catalog made no mention under degree requirements of the necessity of attending a Jewish studies division.<sup>11</sup> However, under pressure from the Student Organization of Yeshiva (SOY), the University drafted a memo which stated: Yeshiva College has the unique feature of requiring each student to be enrolled throughout his stay in a full course of study either in the Yeshiva Program, the Erna Michael College, the James Striar School, or in any equivalent program approved by the University.

The University had omitted the

Jewish studies requirement from the catalog in order to assure eligibility for State funding. As a non-sectarian institution, YU is not permitted to require the teaching of religious dogma to the students. In response to a question on this issue, Rabbi Israel Miller emphasized that "We [Yeshiva] are not an indoctrinating institution", and explained that the required course-work of Talmud or Bible in Hebrew is no different than another university requiring the study of Plato in Greek. He emphasized that, "When you learn Talmud you are not indoctrinating religion; you are learning textual material", and that, "YU has Jewish studies, not religious studies."

He stipulated that enforcement of overtly religious practices, such as mandatory *shacharit* (morning prayers) attendance, is no longer permitted at Yeshiva, and concluded that, "We would not be permitted to require of every student that he take a class, let us say, in Jewish law, which would try to indoctrinate the students."

The revised University charter caused a great uproar among students who feared the secularization of the institution. On April 8, 1970, four RIETS students presented Dr. Belkin with a list of demands,<sup>12</sup> asking that :

a) The corporate structure of YU be changed so that RIETS (both graduate and undergraduate), Yeshiva College, Erna Michael College, James Striar School, Stern and Teacher's Institute for Women be established as a separate corporation independent of the other divisions of the University.

b) This new corporation be given as



assets classroom, dormitory and library buildings currently used by it, as well as an equitable share of the endowment.

c) All new catalogs issued under the pressure of the present charters be immediately withdrawn and new ones stating conspicuously the requirements for a double program be issued as soon as possible and forwarded to Albany.

d) Salaries of the religious faculty be raised to at least parity with those of the College faculty.

e) Faculty councils of the respective religious divisions be empowered to set definitive policy with respect to admissions, curriculum, and degree and *semicha* requirements.

f) The Belfer Graduate School of Science and its buildings should be totally shut down on *Shabbat* and *Yom Tov*.

But a YC student, Aaron Lewin, wrote in the February 19, 1970 *Commentator*:

From an objective, non-emotional stance, one must surely admit that no demonstrative effects have occurred in the day-to-day life of the school. Every student still attends Judaic studies classes, a *minyan* is still held each morning, noon, and evening, and *Shabbat* observance is still maintained in the dormitories.<sup>13</sup> There is, of course, deviation from the norm, but certainly no more than can be expected from the heterogeneous nature of the student population and certainly non-directly attrib-

utable to the newly discovered non-sectarian definition of the school.

A good part of the alarm recently expressed stems from the feeling that with this new legal posture YU forfeits the right or the ability to enforce "religiosity" within the school, and the specter is raised of a YU overrun by non-Jews and by Jews who openly flout religious values and who "opt out" of taking any judaic studies. But surely "religiosity" is not a forcible commodity and the success of YU till now in maintaining religious values and a religious atmosphere is due directly to the joined efforts and will of administrators, teachers and students alike. Its success in the future surely hinges on the same and not on legal posturings and catalogue productions.

Eventually, the controversy settled down as students were assured that in practice the University would in fact continue to operate as before. Explained Rabbi Miller, "A lot of people were afraid when RIETS was separated out as a corporate entity that we would not be able to maintain it [the atmosphere]... the Rav made a speech... students really reacted, we tried to calm them and say, 'Look, you're dealing with people you have to have confidence in, we are not going to take Yeshiva and move it down the wrong road.'"

When asked what the Yeshiva would do if these protesters' fears were realized and a non-Jew applied to Yeshiva College, Rabbi Miller answered, "Suppose a non-Jewish student were to register for Yeshiva College and say 'I'm going to take the Hebrew courses, that would not represent a problem to

us...It would be a problem for us if someone decided that openly he would eat a ham sandwich, but we would handle it properly, legally, and make sure to be able to maintain the atmosphere we have."

In fact, two non-Jewish women applied to Stern and were accepted in the early seventies, but, Rabbi Miller explained, "[ They were admitted because] they fulfilled all the requirements... but they found it very difficult to keep up with the Jewish studies..." and they both subsequently dropped out.

The legal fiction created by the RIETS-YU separation has developed into a situation that is somewhat peculiar. For example, when RIETS conducts classes in Furst Hall they pay, at least on paper, rent to the University.<sup>14</sup> The Public Relations Department (which is located, in its entirety, in Furst Hall) has two different letterheads on its stationery, one with the name RIETS and the address of the RIETS office, 2540 Amsterdam; the other with the name YU and the Furst Hall address, 500 West 185th Street. Other departments within YU, such as the Registrar and the Office of Student Finance, have a similar split personality,

This peculiar situation has put YU in a number of politically precarious situations. Most recently, the controversy surrounding last year's Israel Day Parade comes to mind. The Rabbis at YU roundly condemned the parade on the grounds that gay participation precluded Yeshiva's, as if to say that YU and its high school's participation in the

parade would be seen as a sanction of the gay lifestyle and the synagogue Congregation Beit Simchat Torah. However, Rabbi Lamm did not condemn the parade. An administrator<sup>15</sup> explained that as a result of the state aid the University receives, Rabbi Lamm has to be extremely careful about the positions he takes on issues that involve possible discrimination by the University. This administrator explained that a university such as St. John's, which is subsidized by the Church and receives no government funding, is allowed much more flexibility in dealing with groups it does not desire within its system. Last year the Student Council at St. John's decided, with University backing, to prohibit the formation of a gay student government organization, while Yeshiva would not be able to do this as a result of the aid it receives.

Rabbi Lamm is in fact president of two separate institutions, YU and RIETS. Rabbi Miller pointed out that, "if he were only the president of RIETS he could have done whatever he wanted [with regard to the Israel Day Parade], but there are rules, governmental rules, about not in any way discriminating against gays and lesbians, I mean the Catholic Cardinal can say what he wants, but Rabbi Lamm has to be careful because he is the president of Yeshiva University."

Rabbi Miller explained that the only aspect of the graduate schools that is remotely religious is the closing of the libraries and other buildings on *Shabbat* and *Yom tov*, and the requirement that only kosher food be served in their

cafeterias. Currently, both Einstein and Cardozo have homosexual student groups, and despite the condemnation of rabbis both within and outside the University, the school has to let these groups exist because of the prohibition against discrimination on the basis of sexual orientation that comes with the government funds. Earlier this year there was a move by the students in Wurzweiler (WSSW) towards forming a gay student organization. On Sunday afternoon, December 5, 1993, six Wurzweiler students met in Belfer Hall to discuss "issues of concern" to homosexuals. Moreover, it is estimated that 5-10 percent of the WSSW student body identify themselves as gay.<sup>16</sup> Yeshiva's official response to the meeting was issued through the Dean of Student's Office:

We understand that a small group of WSSW students plan to meet Sunday to discuss what they have called gay and lesbian issues. Our legal counsel advises us that we are required to permit the meeting to proceed. We will do what the law requires and no more. Another recent event that demonstrates the problem of Yeshiva trying to regulate the type of students it accepts is the application of a woman to RIETS. Haviva Krasner-Davidson, a 24 year old resident of Washington, D.C., submitted her application earlier this year. She acknowledged that a rejection was inevitable, "although I would like to be accepted, I'm really not expecting it. However, even if I'm not [accepted], I hope this paves the way for someone down the line."<sup>17</sup> RIETS did reject her,

but as Rabbi Miller noted, RIETS reserves the right to admit or reject whom-ever it wishes because it is independent of the University, and does not receive government funds.

Since first accepting government assistance, Yeshiva has managed to walk the fine line of remaining an institution with a religious Jewish environment, while at the same time meeting the Government's requirements regarding non-sectarianism. With hindsight, it appears that the fears of members of the University community that Yeshiva would lose its religious character as a result of accepting government funds have proven to be unfounded.

#### Notes

<sup>1</sup>*The Commentator*. Volume 58, issue 7 (December 22, 1993, page 15)

<sup>2</sup> *ibid.*

<sup>3</sup>Wills, Garry. *Under God: Religion and American Politics*. Simon and Schuster. New York; 1990 (page 378)

<sup>4</sup> *ibid.* (page 379)

<sup>5</sup>*The Commentator*. Volume 34, issue 1 (February 19, 1970, page 1)

<sup>6</sup>Gurock, Jeffrey S. *The Men and Women of Yeshiva*. Columbia University Press, New York 1988. (page 238)

<sup>7</sup> *ibid.* page 238

<sup>8</sup>The undergraduate division of RIETS was left within the University corporate structure as a non-degree granting entity known as Yeshiva Program (MYP).

<sup>9</sup>*The Commentator*. Volume 34, issue 2 (March 5, 1970 page 4)

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versations with Rabbi Israel Miller are taken from an interview conducted on Tuesday, December 14, 1993.

<sup>11</sup>*The Commentator*. Volume 34, issue 2 (March 5, 1970, page 4)

<sup>12</sup>*The Commentator*. Volume 34, issue 3 (April 15, 1970, pages 1 and 5)

<sup>13</sup>It should be noted that the receipt of government funding does not legally compel the University to allow the free exercise of religion in the dormitories. Residence halls fall under different legal requirements which allow for the establishment of regulations forbidding, for example, the operation of televisions on Shabbat. I was made fully aware of this at the time of the "KOL" literary journal controversy, when Dean of Students Efreim Nulman explained at a meeting with me that it was well within the University's legal province to confiscate "KOL" from the dormitories, as opposed to confiscating "KOL" from the classroom buildings.

<sup>14</sup> Interview with Dr. Egon Brenner for *The Commentator's* article on tenure in Volume 57, issue 4.

<sup>15</sup>Dean Efreim Nulman, in a meeting following *The Commentator's* interview with Rabbi Norman Lamm for issue 1 of Volume 58.

<sup>16</sup>*The Commentator*. Volume 58, issue 6 (page 10)

<sup>17</sup>From an interview conducted with Krasner-Davidson by *Commentator* Associate News Editor Yisroel Holczer.

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# The Jewish 'Press'

## *A Look at the Forces Behind the Major Jewish 'Weeklies' in the New York Area*

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by Moshe I. Kinderlehrer

### Introduction

For as long as I can remember, I have been an avid reader of the Jewish weeklies flooding my mailbox on Friday mornings. Anxiously, I would pull them out and rifle through their pages, glancing cursorily at the headlines, hoping to see my name somewhere in the mountains of newsprint. Then, I would sit down and proceed to digest each one -- cover to cover-- classifieds included. As I have gotten older, these newspapers, with titles such as *The Jewish Week*, *The Jewish Press*, and *The Jewish World*, have come to mean much more to me. As I sit and listen quietly to my father's friends in shul heatedly discuss the latest article in *The Jewish Week* or *The Jewish Press*, it occurs to me these newspapers are read carefully by a lot of people in my community, as well as in many others, be they Orthodox, Reform, or Conservative. These newspapers, with their feature stories and editorials, exert tremendous influence on the Jewish community-at-large.

As an editor on the student newspaper here at YU, I am keenly

aware of what goes into the making of a newspaper, especially a Jewish newspaper. This awareness led to me to wonder how my professional counterparts in the small, highly specialized world of Jewish journalism differed from me and from each other. What are the driving forces behind each paper? What messages, if any, are they trying to transmit to the Jewish community -- their primary market? What are the attitudes of the writers and editors of the papers towards the Jewish community? How do they view their papers and its role? What sets their paper apart from the others?

In researching this paper, I was assisted somewhat by the ongoing 'tempest' surrounding *The Jewish Week's* subsidization by the UJA-Federation. A number of enlightening articles have appeared recently in the general media, as well as in the Jewish media. The whole controversy, still unresolved, served to make this paper all the more timely.

In terms of the methodology of investigation, this paper entailed many hours on the phone, trying to pin down

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editors and senior writers in the middle of their busy days. Once I had them on the phone, I would ask them variations of the questions asked above, carefully integrating my queries into the flow of conversation. Some interviews, obviously, bore more fruit than others. But after speaking to at least one writer or editor at each of the major Jewish weeklies mentioned above, as well as at some of the newer, smaller ones, such as *The Jewish Sentinel* and *The Forward*, I sensed that I had been enlightened to the characteristics of each paper, their strengths and weaknesses, and to the role which they see themselves as carrying out. I sincerely hope that feeling is borne out in the paper ahead.

Jews in New York City, numbering well over one million including Long Island and Westchester, have the distinction of being one of the few Jewish communities in the U.S. able to support more than one newspaper. One expects with a community of such size, that the various weeklies published by and for Jews would reflect the diversity within the Jewish world on a broad spectrum of issues, ranging from the religious to the political. When taken together, they all reflect this diversity. But communal diversity aside, at the core of each weekly bearing the word 'Jewish' in its titles, lies a newspaper more or less dedicated to gathering, distilling, and disseminating the 'news.' All of the newspapers currently under study: the *Jewish Week* and the *Jewish Press* primarily, but to a lesser extent, the *Long Island Jewish World*, the *Jewish Sentinel*, and the *Forward*, share a similar role in the diverse Jewish

community -- they report on it.

Reporting on the Jewish community, according to the *Jewish Week's* Associate Editor Jonathan Mark, bears with it the responsibility of educating an extremely divided and cloistered community about the so called 'issues' facing it. The Jewish community is fractured into so many different groups cloistered together in isolated communities with little physical contact with each other. The newspaper serves as a forum where each group gains an awareness of the other. It serves as an honest broker of opinion and fact in a community where facts and opinions are often murky and misunderstood. One cannot rely on the others around him in the synagogue or sisterhood to present the facts clearly. A newspaper can.<sup>1</sup>

#### The Jewish Week

The *Jewish Week*, a Manhattan-based weekly boasting the relatively high circulation of 110,000, is a not-for-profit concern headed by Gary Rosenblatt, the former editor of the *Baltimore Jewish Times*. As one of the largest newspapers catering to the general Jewish community, it tries to "reach everybody in the community, not just the Reform, Conservative, or Orthodox, and to create a real sense of community."<sup>2</sup>

This all-inclusive approach to journalism stems partly from the *Jewish Week's* decade old affiliation with the \$200 million a year UJA-Federation, one of the wealthiest and most influential Jewish charities in the U.S. Aside from the financial subsidies in the range of \$825,000 a year, the UJA provides

the *Jewish Week* with the bulk of its readership, providing a free subscription to the *Jewish Week* to each of its givers. Only about 20,000 of the *Jewish Week's* subscribers pay directly for their subscriptions. The UJA supporters, comprising the majority of its readership, are a wildly diverse lot, ranging from gay Jews in Greenwich Village to the elderly in the Upper West Side. The *Jewish Week*, much as the UJA does, has an obligation to its varied readership to accommodate as broad a spectrum of Jewish life as possible and to foster a sense of community.

These past few months have been busy ones for the *Jewish Week*. With the recruitment of Gary Rosenblatt as editor-in-chief, the style and format of the newspaper changed dramatically. New writers, such as Larry Cohler from the *Long Island Jewish World* have been signed up. Before Rosenblatt, the paper featured coverage of Federation affairs and personalities, short and usually uncritical features on figures and events in the community, and articles on various communal organizations. Rosenblatt, in an interview with *Moment* magazine, explained the changes, "My mandate wasn't to maintain the status quo. Everything is sort of an open-page: the design, the contents."<sup>3</sup>

He certainly hasn't maintained the status quo. He invigorated the paper by introducing editorials and by writing a personal column. Provocative articles such as a recent series entitled the "Hidden Jews," designed to call attention to the plight of the Jewish homeless in New York have been published. An in-depth expose of the Pell Grant scandal in

Brooklyn, in which numerous yeshivas have been implicated, was printed. Articles critical of the Lubavitch community's handling of the Lubavitcher Rebbe's medical care after his stroke more than a year ago have also run in recent issues.

In terms of its role in the Jewish community, the new, updated *Jewish Week* sees itself as a force for enhancing the community. How so? Its Associate Editor, Jonathan Mark, explained emphatically, "The Jewish community is unique in that all its members have different ideas about where it should go...It also has a level of advocacy not present in other communities...Our paper is a vehicle for presenting as much as we can about the given issue...We want to empassion people with our stories. We want to affect the leaders by educating them... We seek to remove the cancers of society by talking about them."<sup>4</sup> He added wistfully, "In a way, we are the modern *Neviim* -- prophets -- as we inform the people of what is going wrong and give insight as to how to solve their dilemmas."<sup>5</sup>

On the political level as well, Mark noted, the *Jewish Week* exerts a significant impact. "Politics is about distributing resources to the community. We at the *Jewish Week* force action to be taken. We focus the communal interest on a particular story and things get done because of it. By writing about it, we force it to be scrutinized and acted upon."<sup>6</sup>

He attributed the recent brouhaha over the paper's financial support from the UJA to the revampment the *Jewish Week* has undergone under Gary

Rosenblatt. "We've become more aggressive in pursuing stories, we're becoming more of what a good Jewish newspaper ought to be. Why didn't those other papers who so recently began editorializing about the *Jewish Week*'s connection to the UJA, claiming that we're a 'Pravda-like organ' of the UJA, do this years ago?"<sup>7</sup> Rosenblatt, in an article in the New York Times, voiced similar sentiment about the whole affair. "There is a correlation between our critics stepping up their campaign and the fact that the *Jewish Week* is making every effort to become the best Jewish paper it can be."<sup>8</sup>

What does 'being the best Jewish paper' mean? Can a Jewish newspaper be a credible newspaper, maintaining its journalistic integrity and promoting a sense of community at the same time? Jewish journalism, many feel, can never be 'good' journalism. Stephen Isaacs, the associate dean at Columbia's Graduate School of Journalism said, "The fact of the matter is, that if you're really good as a journalist, you won't get published by the Jewish press. The best stories can embarrass Jewish institutions, and the readership of Jewish papers often doesn't want to read them."<sup>9</sup>

Another critic of the 'Jewish press', Steve Cohen, a professor of sociology at Queens College, asserted, "We don't have a critical press. We don't see stories about why some schools or rabbis are successful and why others are not."<sup>10</sup> Responding to these criticisms, both Rosenblatt and Mark replied similarly, stating that Jewish newspapers must "walk a thin line"<sup>11</sup> between good journalism and good com-

munal relationships. "We try to be as respectful as possible in reporting on the Jewish community, but if something is going on in the community, wherever the community, we will report on it,"<sup>12</sup> explained Mark.

It is interesting to note that a significant number of the editors and writers of the *Jewish Week*, including its editor-in-chief, are Orthodox Jews. Orthodox Jews live their life according to the Torah and the principles laid down in it. Among those principles are injunctions against spreading 'Lashon Hora' -- evil talk -- about fellow Jews, as well as other prohibitions forbidding Jews from embarrassing other Jews in public. In investigative journalism, it is well-near impossible to avoid coming into conflict with these prohibitions. How do the Orthodox Jews on the paper deal with these conflicts? "Well," Mark, an Orthodox Jew himself, explained, "We don't look at journalism with that perspective. We see ourselves as doing a necessary service for the community. Publicizing a 'hot' story may cause embarrassment for those implicated in it, but it also creates a sense of accountability where there wasn't any previously. The Jewish community can't just continue to close its eyes to the scandals that go on; there have to be forces at work to make the necessary changes."<sup>13</sup>

#### The Jewish Press

Over in Brooklyn, the home of the privately owned *Jewish Press*, a markedly different style of journalism is practiced. The *Jewish Press*, with its circulation of 125,000, is a newspaper



run by Orthodox Jews and "geared for the Orthodox community."<sup>14</sup> Its readership is politically conservative and family oriented. In the words of its news editor Julius Liebb, the *Jewish Press* is "a newspaper whose philosophy is Torah-oriented."<sup>15</sup> Unaffiliated with any major Jewish organization, it doesn't have to be as inclusive as the *Jewish Week*. It relies on twenty or so weekly columnists and correspondents writing on topics ranging from Israeli politics to Torah thoughts, all presented from a Orthodox viewpoint, to fill the bulk of its pages. The paper is divided into a large number of sections, with parts dealing with Israel, various communities in the U.S., as well as a whole host of other topics such as kosher food and education.

Steven Walz, an associate editor and weekly columnist for the paper, explained the *Jewish Press*'s less critical, 'softer' approach to journalism. "We definitely know about all the scandals that go on in the community. Yet we feel constrained by the boundaries of *halacha* in reporting them. We are not objective in our reporting... We take a firm stance on whatever we report. The *Jewish Week* represents a totally different brand of journalism from ours. Besides the fact that they have a larger amount of money budgeted for news and their writers are more skilled in handling these kinds of stories, we simply have no interest in investigating issues such like the recent Pell grant affair involving yeshivas in Brooklyn as it would only serve to further harm the religious Jews already involved. Our role in the community is primarily to

keep people informed of what is going on a communal level, not the malicious allegations one reads about in the other papers. We feel that we've carved out a real niche for ourselves by providing the Orthodox community with that service."<sup>16</sup>

Critics of the *Jewish Press* have charged that it is little more than a "bulletin board for the Orthodox"<sup>17</sup> and a "protector of the powerful and well entrenched interests in Judaism."<sup>18</sup> The *Jewish Press*, its detractors say, "stifles the forces of democracy... It just doesn't ask the tough questions."<sup>19</sup> Walz responded to these charges, stating, "they're right, somewhat. But one has to remember that we have no interest in being a paper practicing that sort of journalism."<sup>20</sup>

He preferred to focus on the strengths of the *Jewish Press*. "We'll pick a topic we feel is important and back it up one-hundred percent."<sup>21</sup> He cited the recently passed state law known as the *get* law, which concerns the legality of the religious bill of divorce - the *get* -- as an example of a successful cause which had been championed primarily by the *Jewish Press*. The *Jewish Press* had mounted a large scale effort, combining editorials endorsing the passage of the law with intensive coverage, in an attempt to get the law through the New York State legislature. The paper's strong support of the issue, he felt, was the main reason for its being written into the law books.<sup>22</sup>

Of late, the *Jewish Press* has also taken a strong position on the Israel-Arab peace accord. It vehemently opposes the accord, criticizing the Is-

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raeli government severely for the planned giveaway of parts of what it sees as the 'biblical' Israel to the Arabs. Recently, it has run numerous articles with headlines such as 'PLO Violates Peace Accord' and 'Arafat Going Crazy,' intended to undermine support for the accord and rally the Jewish community in its opposition against it. It has also published a seemingly endless stream of columns and editorials decrying the current peace agreement. "We have become the focal point in America for those opposed to this so-called peace accord,"<sup>23</sup> said Liebb.

#### The Forward

On the opposite end of the journalistic spectrum lies the *Forward*, a small, three year old offshoot of the longtime independent Yiddish language weekly, *Forvertz*. Run by Seth Lipsky, a former editor and writer for the *Wall Street Journal*, the *Forward*, with its comparatively minuscule circulation of around 13,000, is intended for a "sophisticated Jewish audience, well educated and nationally minded."<sup>24</sup> It strives to be known as the Jewish 'New York Times.'<sup>25</sup> With extensive reportage on cultural events and tough coverage of events in the national Jewish community, as well as the local one, the *Forward* has "actively pursued themes such as truth and honesty"<sup>26</sup> in developing its stories.

Senior writer Jonathan Rosen described his vision of the *Forward's* role in the community. "The *Forward* wants to be a fair and reliable general interest paper. We take a harsh critical look at the subjects of our news sto-

ries... We aren't transmitting a message of inclusiveness like the *Jewish Week* or one of exclusiveness like the *Jewish Press*, rather, we aren't transmitting any message at all."<sup>27</sup>

The high minded *Forward* has scored a number of journalistic coups recently, Rosen noted. Its original coverage of the Jewish student at the University of Pennsylvania who faced charges of racism after calling a african-american woman outside his window a 'behaima,' meaning a 'water buffalo,' percolated its way up into the national media, becoming a national news item. Rosen pointed to this as an example of the impact that a number of the paper's stories have had on the general media. "You see the kind of reach that the *Forward* has when stories like these take off like that,"<sup>28</sup> he exclaimed.

He added that the *Forward* loves to publish stories "with an edge."<sup>29</sup> The *Forward* recently ran an investigative piece on how senior officials of the UJA were keeping their salaries in six-figure levels while the UJA has been forced to cut back on some social services. "The *Jewish Week*, with its dependence on the UJA, would never be able to run a story like that. It might cause people to stop giving to the UJA. The *Forward*, however, is free to examine any organization it wants... We relish that freedom,"<sup>30</sup> he declared.

#### The Jewish Sentinel

New York's newest weekly, the *Jewish Sentinel*, can be found in bright blue boxes on street corners all over Manhattan. Edited by Andy Polin, the *Sentinel*, a free weekly, exists primarily

to sell advertising for services. It bears more of a resemblance to the many free secular weeklies in New York with its movie reviews and crossword puzzles than it does the other Jewish weeklies. Its news coverage, aside from reprints from articles by Jewish magazines and dispatches by the Jewish Telegraphic Agency, is limited to community events in Manhattan and Riverdale.

George Robinson, the Assistant Editor, explained that the paper's news focus is on "all things Jewish. We report on activities of synagogues and communities which we feel don't get enough attention by the larger Jewish weeklies. We're just filling a gap in the local coverage. In terms of investigative reporting, we just don't have the resources necessary to do pieces like that."<sup>31</sup>

Around 50,000 copies of the paper are distributed each week to thousands of door-manned buildings and other indoor locations in Manhattan, such as stores and synagogues. The goal of the paper, according to Robinson, is to become the "primary mass-distributed community paper for the Jewish community in Manhattan."<sup>32</sup> He further cited statistics indicating that nearly 82 percent of the roughly 300,000 Jews in Manhattan do not receive a Jewish newspaper. This untapped market, he felt, was the market that the *Sentinel* was targeting, not the current Manhattan subscribers to the other papers such as the *Jewish Week* and the *Forward*. "Their focus is just so much broader than ours that it is difficult to fairly compare the *Sentinel* to them,"<sup>33</sup> he

added.

#### The Long Island Jewish World

The *Long Island Jewish World*, published in Great Neck by the husband-wife team of Jerry and Naomi Lippman, has been the most vocal of all the other weeklies in the recent squabble over the UJA funding of the *Jewish Week*, running scathing editorials calling for the UJA to stop funding the *Jewish Week* entirely as well as full page ads explaining their position on the issue. Jerry Lippman, the leading voice in the the campaign against the UJA subsidies, admitted in the New York Times, that he was bringing the issue to the fore now due partly to "business reasons,"<sup>34</sup> hoping to take away any competitive advantage the *Jewish Week* might have by getting its funding cut off. He is afraid of the increased competition on Long Island from the *Jewish Week*, which already has over 20,000 subscribers on the home turf of his *Jewish World*, which claims a circulation of some 26,000.

However, the two papers, though sharing much in the way of inclusiveness and style, maintain different focuses in their coverage. Even with the *Jewish Week*'s newly expanded coverage of Long Island, the *Long Island Jewish World* reigns supreme in its single-minded focus on the community in Long Island.<sup>35</sup> It uses original in-depth reporting to cover stories such as recent bias attacks in various communities on Long Island, as well as the political uproar caused by the proposed opening of a Orthodox girls high school in Hewlett Bay Park. Newspapers like the *Jewish Week*, the *Forward*, and

even the *Jewish Sentinel* are simply unable to write the well researched articles about the community in Long Island that the *Jewish World* does. The result is that the articles in the *World* have a depth that the other papers cannot match.

### Conclusions

In reading a recently published *Moment* article entitled, "The New York Jewish Papers Face Off," as well as a recent Times story provocatively titled "A Battle Among Jewish Weeklies," one gets the impression that a major war between the Jewish weeklies is brewing. That couldn't be farther from the truth. After taking a look at each of the papers and in speaking to the personalities behind them, this author is hard pressed to see any 'war' occurring. Each newspaper differs quite dramatically in tone, quality, and length, almost precluding a newspaper war in the grand style of other famed New York paper rivalries.

The intended audience of each paper, is, in most cases, markedly distinct from the others. Generally speaking, the *Forward* aims for an intellectual readership; the *Jewish Week* tailors itself to the whole community; the *Jewish Press* looks only to the politically conservative Orthodox segment; the *Jewish Sentinel* seeks the 'yuppie' crowd in Manhattan; the *Long Island Jewish World* caters to the Long Island community. On the surface there wouldn't seem to be any direct competition between the weeklies. After all, each paper would attract various core groups of readers

interested in what it offered, right?

Wrong. In a crowded marketplace, newspapers like the *Forward* and the *Long Island Jewish World* are struggling to squeeze out a profit. The competition is not so much over subscriptions as it is over ad revenues. There are only so many advertising dollars to go around in the Jewish community and the papers with the larger circulations hold definite advantages on this front. The smaller papers have no choice but to try to compete with the larger ones for subscribers.

Though beyond the scope of this paper, another issue confronting the Jewish weeklies is a general decline in its readership. It is estimated that only 250,000 of New York's Jewish population receives a Jewish newspaper. "The reality is that young Jews aren't interested in reading Jewish newspapers," 36 said Philip Ritzenberg, the former editor of the *Jewish Week*. As the 'interested' members of the Jewish community grow older, the Jewish newspapers will have to fight harder to survive.

After looking at each newspaper, one comes away with the notion that each newspaper has earned, more or less, a niche for itself in the reading habits of Jewish New Yorkers. Some read all of them; some only one or two. Each paper shapes its stories uniquely; each paper reflects the different attitudes and conceptions of its editors and writers regarding Jewish journalism. Some, like the *Forward*, cast a more critical eye on the affairs of the community; others, like the *Jewish Press*, stay far away from the hard-hitting journal-

ism. Yet each fulfills, for better or worse, a necessary service for the Jewish community -- they report it.

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<sup>1</sup>Jonathan Mark, by author, Tape recorded, NY, NY, 1 Dec 1993

<sup>2</sup>Ibid.

<sup>3</sup>Daniel Gross, "New York's Jewish Papers Face Off," *Moment*, October 1993, 87

<sup>4</sup>Mark, interview.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>William Glaberson, "A Battle Among Jewish Weeklies," *New York Times*, 29 November 1993, p. D6

<sup>9</sup>Gross, 88

<sup>10</sup>Ibid.

<sup>11</sup>Ibid.

<sup>12</sup>Mark, interview.

<sup>13</sup>Ibid.

<sup>14</sup>Julius Liebb, interview by author, Tape recording, Brooklyn, NY, 30 November 1993.

<sup>15</sup>Ibid.

<sup>16</sup>Steven Walz, interview by author, Tape recording, Brooklyn, NY, 17 December 1993

<sup>17</sup>Mark, interview.

<sup>18</sup>Ibid.

<sup>19</sup>Ibid.

<sup>20</sup>Walz, interview.

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<sup>22</sup>Ibid.

<sup>23</sup>Liebb, interview.

<sup>24</sup>Gross, 86

<sup>25</sup>Ibid.

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<sup>27</sup>Jonathan Rosen, interview by author, Tape recording, NY, NY, 19 October 1993.

<sup>28</sup>Ibid.

<sup>29</sup>Ibid.

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<sup>31</sup>George Robinson, interview by author, Tape recording, NY, NY, 2 December 1993

<sup>32</sup>Ibid.

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<sup>34</sup>Glaberson, "A Battle Among Jewish Weeklies," D6.

<sup>35</sup>Gross, 88.

<sup>36</sup>Gross, 62.

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# Laboratory for the New World Order

## *Africa Approaches the Millenium*

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by Daniel Renna

No other place on the planet has so much to make amends for or has so much to look forward to as does the continent of Africa. With the dawning of the post-Cold War 'New World Order,' Africa finds itself in a prime position to optimize the opportunities which face it and the rest of the world. Prior to this, however, the African peoples must face the problems that are currently plaguing them, many which trace their origins from hundreds of years of African history.

The era of modern African history dates itself back to the first colonizing Europeans of the sixteenth, seventeenth, and eighteenth centuries. Fueled by desires for wealth, power, and prestige, European governments and explorers plundered the African landscape for natural resources and slave labor. The Europeans, inculcated with the idea that they were civilizing the natives with Christianity and European culture, raped Africa of its traditions, customs, religions, and cultures. They pitted warring tribes together to profit from the spoils and slaves. The nine-

teenth century saw the European domination of the entire continent; by the Treaty of Berlin in 1885, all of Africa was divided along borders designed by European explorers and was under the auspices of Britain, France, Germany, Belgium, Portugal, and Italy. At the turn of the twentieth century, only three independent nations existed on the continent: Liberia, Ethiopia, and Morocco; all had governments which were sympathetic to the Europeans.

With World War I and the Peace of Versailles to follow, agitation began to build up in the minds of Africans under European domination; the seeds of nationalism had been sown. By the end of the Second World War, the imperial system had collapsed, and over the next thirty years, each region of former Occidental control became independent political entities; these fledgling nations were quickly admitted into the United Nations and into the greater global community.

These newly independent countries of Africa soon found themselves to be pawns in the Cold War games of

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much of the second half of the twentieth century. Civil wars were sided upon by the West and the Soviet bloc with rival factions receiving military goods and training from either side. Stable and unstable leaders alike were assassinated, military coups were commonplace, and economic and, at times, political strife gripped Africa from the Sahara to the Horn to the Cape. The innocent civilian carnage was the worst aspect of these so called African 'growing pains': one need only remember the bloodbath following the Biafran independence movement's collapse in the late 1960s, the Ugandan dictatorship of Idi Amin in the 1970s, and the South African apartheid injustice throughout its postwar history.

With the fall of the Soviet Union and much of the Communist bloc along with the end of the Cold War, Africa as well as the rest of the world sees it at the dawn of a new age, of what has been called the New World Order. Many of the brutal Third World civil wars which have been waged via the encouragement of both First and Second World support have fizzled with the lack of continued backing. The ideas of freedom, democratic government, and free market economy are slowly coming into Africa, but this will by no means be a smooth process; many seemingly insurmountable problems face different regions of this vast continent.

#### North Africa

North Africa's long history of serving as the southern frame of the Mediterranean theater of the world affects its

dealings with the rest of the world today. Just as they were after having been incorporated into the Islamic Empire in the seventh century, the nations of North Africa are currently turning to their religious roots. Islamic fundamentalism, the likes of which have been seen repeatedly in the Middle East, has found its way into the minds and hearts of many of the peoples of the Mediterranean coast of the Sahara desert. The Islamic dictatorship of Muammar Qaddafi in Libya, the present fundamentalist government in the Sudan, recent pro-fundamentalist elections in Algeria, and substantial anti-government religious movements in Egypt and Morocco all stand to jeopardize the stability of those nations and their respectability in the eyes of the world, but more importantly, they threaten that of the governments of those surrounding them. Destabilization is already being felt in weaker nations such as Mali, Chad, and Mauritania, in which substantial Moslem populations find such fundamentalism enticing and refreshing to their mostly poverty stricken lives.

#### The Horn and East Africa

The greatest problem which plagues the horn of Africa is the chaos and anarchy which prevails in Somalia in the short time since the removal of US and other Western troops. What had been social turmoil resulting from severe famine fueled by civil war has turned into a state of total political collapse. Somalia does not have a government nor does it see an end to intertribal warfare in the foreseeable future thanks to the

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fomenting of the situation by well-minded Westerners. The United Nations effort to distribute food to those Somalis deprived of it by rival factional fighting lasted a year longer than its original mission had entailed. With the breakdown of law and order in Mogadishu following the UN troop withdrawal, the anarchy threatens to spill over the Somali borders into neighboring Ethiopia and Djibouti and endangers an unpopular regime in Kenya.

#### West Africa

The Gold and Ivory Coasts of the Northern Atlantic shores of Africa have been traditionally those most linked to Western influence and culture. It is within these nations today that much of that truth still pervades. The former French colonies, which since 1962 have been members of the *Communauté Française d'Afrique*, hold very close ties to their former mother country; Dakar in Senegal, Abidjan in Côte d'Ivoire, Accre in Ghana, and Freetown in Sierra Leone all are cities which exude French culture and ambience. Since the formation of the *Communauté*, however, France has subsidized the economies of its former satellites in the form of stabilizing the CFA franc, the currency used in most of former French Africa. In February 1994, the French *Assemblée Nationale* in Paris voted to cut funding from the CFA franc. Destabilized, the currency was devalued by over fifty percent, wreaking economic havoc on the millions of people who depend upon it. As economic hardships can very often lead to political problems, the governments of West Africa

must secure their countries all the more from civil unrest and violence while keeping their ideals of democracy alive.

Nigeria, the most populous country in Africa and a former British colony, which for years was seen as the jewel in the crown of the British Commonwealth in Africa, has come across bad economic times as of late. This coupled with the fact that democratic elections have been postponed twice by the new government in Lagos, threaten the political future of the country and, hence, the region, as well.

#### Central Africa

Africa as a whole faces its greatest challenge in its equatorial region. The former French and Belgian colonies in the area, principally Congo, Zaïre, Rwanda, and Burundi, since the end of the Cold War have experienced long periods of what at times has amounted to violent civil unrest. The former People's Republic of the Congo succumbed to the tide of the times and threw off its Tito-styled Marxist despot, Colonel Denis Sassou-Nguesso, in 1991, in the hope that freedom and democracy would prevail. What actually has occurred has been the disintegration of the country; the tribal rivalries which had been quieted under the communists have found new life under democracy. What has ensued is a situation resembling that of the former Yugoslavia with different rebel bands fighting in the streets of Brazzaville everyday to take control.

A similar, yet potentially more explosive situation is brewing on the other side of the Congo River. The coups in Kinshasa in 1993, as the result



of growing distress over corrupt government and dwindling world prices of the minerals which make up Zaïre's principal exports and economy have left many places in the country virtually ungovernable. Shortages of goods in many areas have led to widespread famine. Once burgeoning mining towns like Lubumbashi in the southeastern Shaba province have fallen prey to scavengers. This destabilization in the center of Africa's gold, diamond, and cobalt reserves leaves the rest of Sub-Saharan Africa vulnerable to similar problems.

The racial tensions between rival Hutu and Tutsi tribes in the countries between Lakes Victoria and Tanganyika which have existed since the twelfth century have sprouted again, this time with European influence. When Belgium declared Rwanda an independent country in the 1960s, it left a majority Hutu government installed while in Burundi, the traditional rulers, the minority Tutsis, were given power. Western education for the rich and the dregs of poverty which make these the poorest countries per capita on earth has recently sparked democracy movements spurred on by racial hatred and squalid economic conditions. These governments have subsequently been subjected to failed coups in which tens of thousands of villagers and peasants have been hacked to death with machetes. The assassination of both countrys' Hutu presidents in a plane crash in early April 1994, and the massacres in Kigali and in the Rwandan countryside which followed imply deep wounds which will

take an inordinate amount of time to heal. Furthermore, instigation from neighbors such as Uganda just exacerbates the situation for all the civilians involved.

### South Africa

Conflict in the South of the continent seems to have taken its toll; no where else in Africa has the idea of waging peace become so fundamental. The Angolan civil war which had been a classic Cold War struggle has been coming to an end since the UNITA rebels have taken Luanda and are forming a government. The North Koreans have relinquished their support for the Namibian SWAPO government in Windhoek since the latter has embraced democratic ideals. Mozambique, after fighting a sixteen year war in which over a million people have died, has succumbed to total exhaustion. Government soldiers and their RENAMO counterparts now are forging a new military under UN auspices and elections are scheduled for the near future. On the eastern shore of the Mozambique Channel what was once the hard-lined, Albanian-style communist dictatorship on the island of Madagascar has given way to a new birth of freedom. Recent democratic elections have ushered in a government in Antananarivo which is committed to economic and political reform. For the first time in 300 years, blacks in South Africa have voted to determine the regime under which they live, as had their neighbors to the north, Zambia, Botswana, and Zimbabwe, in the late 1970s and early 1980s. The prospects for Southern Africa look much

better than those for its neighbors to the north.

#### **Pan-African concerns**

In addition to the immediate regional concerns of each group of African countries, the continent as a whole faces some glaring common problems. Chief among these is the AIDS crisis. The disease's birthplace, Sub-Saharan Africa, is seeing the epidemic increase to horrific proportions. The journal *Africa Report* quotes disease specialists as predicting that nearly twenty million Africans will be infected by the end of this century. Over twenty percent of the population of Zaïre alone will be HIV positive. The crisis becomes exacerbated because of lack of education about the disease and safe sexual practices and the birth of AIDS infected babies in parts of the world in which the birth rate is very high.

A second, more theoretical problem involved in the politics of Africa is an issue which the eminent American diplomat, Max Kampelman, has discussed in several recent articles. While the notion of self-determination is cornerstone of American, and, indeed, Western foreign policy on the whole, the achieving of this through the disruption of established sovereign states via secession may be against international law. There are many places in Africa in particular where this question can be debated. On one side of the argument, that secession is illegal and other means must be sought to realize self-determination, lies the problem of Western Sahara. Ever since the Spanish be-

queathed the province to be divided by Morocco and Mauretania when they left their desert colony in the mid-1970s, Polisario rebels have been fighting the Moroccan army for independence. Mauretania's relinquishing of its part of the deal seemed to help the rebels while, in reality, it just served to give the Moroccans a greater claim to the whole territory. Recent United Nations talks on the region have stalemated over the right for the Polisarios to establish their own sovereign state on land occupied, if not owned, by Morocco.

At the other end of the continent, a thirty year struggle for independence came to an end in April 1993, with the establishment and recognition of the Republic of Eritrea, once a province of Ethiopia. The secession of Eritrea has effectively realized the aspirations of a people long subjugated by Emperor Haile Selassie and by the governments which followed him and has made Ethiopia a landlocked country for the first time in modern history. The enthusiasm, resolve, and reverence of the new country's citizens toward democracy, free-market economy, and especially their holy capital city of Asmara are assets with which Eritrea can serve as an example of, perhaps, the further rehashing of old borders in this new era on a continent with borders which were originally determined by foreigners.

This in itself is a major long term problem which Africa will have to face as it approaches the millennium: how to reconcile the European imposed past with the independent African present

and future. True independence will come to the nations of Africa when they can establish for themselves a political ethos which is uniquely their own. The unification of Africa on the European model is as likely as the same occurring in Asia; the nations of each region face such varied demographic, climatic, topographic, political, and socio-economic situations that such a unification could not bear any truth.

This analysis, however, does not reduce the role of the OAU. Begun in 1963, the Organization of African Unity serves as a round table for the discussion of issues unique to Africa; its role should be as a provider of support for blossoming areas of freedom and harmony without regard to ideology. At an increase of four feet a year, the Sahara continues to further divide the concerns of the north from those of the south, yet it should be the OAU which should be able to realize these differences and draft solutions to problems accordingly.

As Africa approaches the end of what has been the bloodiest century in human history, it must begin to see itself as more of an independent world player. Whether that means a dismantling of some of the obsolete institutions such as apartheid or even the more drastic approach of altering national borders to divide nations along more racio-cultural lines remains to be seen. Whatever happens will be painful in the short-run but will prove to be worth the hardship in the long history of the African continent. There is and has been no better time for Africa to seize its opportunities

for the future than now.

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# Liberal Capitalism: An Idealist's View

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by Evan Richman

The general direction of political life in the United States can best be described as a combination of the values of capitalism and democracy. This form of liberal capitalism is sustained and decided by the ideas of the populace and political leadership. They accept and maintain liberal capitalism by choice, not merely because it is pre-determined by the structures of the state.

The ideas of the citizens are tantamount to the formation of public policy. It is the duty of not only elected representatives, but of anyone involved in the public life of the nation, to carry out the wishes of his constituents. The politically active, or members of the "opinion elite", as Herbert McCloskey and John Zaller termed them in their book *The American Ethos*, participate in the affairs of the state in a disproportionate rate to the rest of the population. With the majority of the citizenry preoccupied with their everyday concerns, the opinion elite are the ones who understand the mechanics of the political system and have sufficient power to influence it. As a result, they are responsible for transforming the beliefs and preferences of the masses into policy. Since the opinion elite are not a singular

homogenous unit, but rather a conglomeration of a wide array of members espousing different political beliefs, there is little fear that their power would further the interests of one sector of the population.

The direction of political life in the United States is steered by a "commitment to freedom and individualism, limited government, equality before the law, and rational - as opposed to feudal or merely traditional - modes of decision making". (pg. 2) The political setting of the United States is such because the populace chooses to accept views which are compatible with liberal democracy and reject views which clash with it. Should the people deem it necessary to change these values and adopt an alternate form of government, their view would be relayed to the opinion elite, who would naturally adopt it as public policy.

Some argue that the agenda passed by the opinion elite is not reflective of the feelings of the public that chooses them as their leaders. Idealists rebut this contention, asserting that the viewpoint of the minority, while varying slightly, already fall within the general guidelines established by the majority. As Robert Dahl

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writes in *A Preface to Democratic Theory*: "With such a consensus the disputes over policy alternatives are nearly always disputes over a set of alternatives that have already been winnowed down to those within the broad area of basic agreement." (pg. 132-133) The majority and minority agree to the basic, underlying political principles of the state, those of liberal capitalism, and only differ as to the details of these principles.

Some believe that since there is inequality in society, a structural explanation of the state is more accurate. Structural explanations could be that either the class structure of the economic system, the parties or other major interest groups, multiple minorities, or a system of mutual dependence is responsible for determining what direction society will accept. The concept that ideas are predominant in society would be faulty since it is rational to assume that all men desire equality and if the opinion elites were successful in transmitting the preferences of the people, there should be no plausible explanation for this inequality.

The assumption that the consensus view of the American people is equality for all is flawed. Liberal capitalism has been chosen by the people as the guiding force behind American society and intrinsic to the notion of capitalism is inequality. In a market setting, preferences determine prices, regardless of the effort expended in the production of goods. This method of determining wages is employed to give people incentive to produce products that are needed in society. If people fail to receive appropriate incentives, the motivation to produce would decline. There-

fore, people do want a measure of inequality; for it is this inequality alone which allows for the the advancement of the individual and society as a whole.

In a socialist structure, the basic rights to property, free enterprise, and free trade in the market would be modified in order for equality to flourish among both social classes. If this were to occur, the individuals would become fully dependent on the state for their economic well being and would thereby forfeit any claim to self government. Based on this structure, the demise of capitalism would also bring about the decline of democracy because the two are interlinked. Since democracy is an institution that the American people have selected, the people also happily accept the inequality that capitalism creates.

Those who affirm that the structures of the state determine the general direction of political life can support one of two alternate versions. They can claim that the structures are based on the citizens or that the structures exist independently of the citizens. Either mode of argumentation can be refuted.

Those who are of the opinion that the structures are merely based on the citizens but it is the structures which predominantly direct the course that society travels, fail to take into account one basic premise. The structures themselves are only successful in shaping the state due to the fact that people have the power to create and influence them. If individual citizens do not act to maintain and support the existing structures, the structures would no longer exhibit the effect that they previously possessed in the state. John

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Stuart Mill states in *Considerations on Representative Government*:

"It is also to be borne in mind that political machinery does not act of itself. As it is first made, so it has to be worked, by men, and even by ordinary men. It needs, not their simple acquiescence, but their active participation, and must be adjusted to the capacities and qualities of such men as are available." (pg. 13)

If the masses did not have a role in the formation of the structures, the structures would cease to be persuasive since they would not maintain popular support. The populace must accept the structures if they are to be implanted in society. Therefore, the decisive factor in the molding of policy is the preferences of the public.

The notion that the structures in the state exist independently of the citizens is also not accurate. Should this premise be correct, then the structures that regulate power in the state would be determined through inertia. Whatever structures were employed in the past, would be retained in the present system. Since these structures are the only ones that the citizens have had any experience with, they should be unconditionally accepted by the populace. The people would be under the impression that they are incapable of actively attempting to develop new structures.

In modern society, the opposite is true. People are never fully satisfied with the existing structures so they engage in political debate in the hopes of improving the system. An example of this is the charters designed by the political parties that state the methods that the party would utilize in order to revamp political structures, such as the socio-economic class

system. Modern political thinkers contemplate over new ideas that may affect the structures of the state. This would all be futile if individuals were not convinced that if they discover a new and advanced method of determining the direction of political life, it would be instituted at once due to popular demand. The assumption that the citizens cannot influence the structures, since the structures existed before the citizens, is incorrect because it would not allow for any of this crucial political discussion.

In conclusion, the general direction of political life in the United States is liberal capitalism. Liberal capitalism is shaped by the ideas of the citizens and the opinion elites. The people chose liberal capitalism as the best possible system. Inequality is present in the system, not because the structures of the state predetermine it, but rather because the masses have rationally decided that it is in their best interest to maintain a degree of inequality.

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# President Richard Nixon: An American Statesman

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by Daniel Renna

When Richard M. Nixon succumbed to complications following a massive stroke on April 22, not only did the United States lose its thirty-seventh president, but it lost also one of the greatest political giants of the twentieth century. What was seen in Richard Nixon was a man who never feared to take risks and who never let defeat destroy him, for, like the phoenix from the ashes, he always found his way back to the top through his own indomitable spirit.

In the realm of foreign affairs especially, Nixon excelled. From his famous kitchen debate with Khrushchev in 1959, in which he predicted that the Soviet leader's grandchildren would live in freedom, until his last trip to Russia a little over a month before his death during which he met with Mikhail Gorbachev and Vladimir Zhirinovsky, leaders whose influence may impact on Russo-American relations in the very near future, his unique and sought after vision of international movements and events made his insights and counsel revered by his presidential successors and students of political science alike.

By just viewing his methodology of renewing talks with the Soviet Union in the early 1970s, the greatness of Nixon's political mind shines through. In order to relieve the stalemate within

superpower relations and the seeming negative position of the United States in the face of nearly a decade of war in Vietnam, President Nixon knew that the way to Moscow was through Beijing. Since the Communist Revolution had made Mao Tse-tung the ruler of the mainland in 1949, the United States had had no diplomatic ties with China. Unbeknownst to many Americans, the years following Mao's ascendancy had led to increased tensions between China and the Soviet Union. The famous Sino-Soviet split of the early 1950s made the two pillars of the Communist world bitter enemies. The establishment of an American relationship with the Chinese was the way to make the Soviet Union take note of this new diplomatic connection as a significant achievement for the US in the Cold War; this would encourage them to resume nuclear arms talks with Washington. As a testament to Nixon's intuition, his tactics paid off; three months after being the first US President to walk on the Great Wall and toast Chairman Mao in 1972, in complete irony, Nixon, who had caused Alger Hiss to be sent to jail as a Communist over two decades earlier, became the first president to sign a treaty with the Soviet Union in Moscow. With the normalizing of intersuperpower relations, the era of détente had begun.

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-President Richard Nixon: An American Statesman-

With the negotiating table open with the USSR, other areas in the world in which Cold War confrontations could flare were now accessible and available for support. In no place was this more important than in the Middle East. Following the Six Day War in 1967, most Arab countries cut off their diplomatic connections with the United States because of its support for Israel. These same Arab nations received their military aid from the Soviet Union which itself had ceased relations with Israel following the war. Nixon's détente proved invaluable in the situation which was to ensue on Yom Kippur, 1973, when a surprise pan-Arab attack on the Jewish state proved near fatal when Israel found itself bereft of supplies and ammunition within the first ten days of the war. Realizing the earnestness of the situation and the unthinkable probability that an Arab victory would not only mean disaster for Israel, but that the Soviet Union would gain control in the region via influence throughout the Middle East, Nixon did not hesitate to send tremendous amounts of fighter planes, tanks, and war munitions to Israel bypassing congressional approval in late October.

In the years following his resignation, Nixon went on to travel extensively meeting leaders of nations around the world. He imparted the insight of his experiences in the nine books on international diplomacy which he wrote in the last two decades. He always believed in America's necessity to fulfill its role of superpower as the leader of the world; this was a defined vital interest to him. Whether it was the ending of the war in Vietnam, the sending of troops to Iraq, Panama, or Somalia, or the need to establish friendly

relations with the former Soviet republics, Richard Nixon's view of America as the driving force behind world events was a primary objective for him. It was for this reason that his successors in the White House sought his advice on many matters. Even the unlikely pairing of Nixon and President Clinton, the former a Republican who fought for the winning of the war in Vietnam, the latter a Democrat who openly protested the war, proved valuable to the sitting chief executive. In his last book, *Beyond Peace*, published on the day of his funeral, Nixon warns Clinton that America's position cannot be compromised in a world of transition. Indeed, it was his advice to the President, especially regarding Russia, that instilled the unexpected respect and admiration which Clinton had for his predecessor.

Finally, it was Nixon's firm conviction that failure and defeat should be looked at in the face with the knowledge that there is still a tomorrow that permeated his life. With his successes in Congress, his ascendancy to the Vice Presidency, and then his narrow defeat to John F. Kennedy in 1960, followed by his defeat in the California gubernatorial race two years later, he managed to put himself back together to come back and win the presidential elections of 1968 and 1972. Although his time in the White House was marred by controversy and scandal which eventually led to his resignation in 1974, that was by no means the end of Richard Nixon's political life. His life ended on a high note; he had found his best role to play, that of elder statesman. His epitaph reads, "The greatest honor history can bestow is that of peacemaker"; it was in his final years that Nixon was at peace with himself.



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# Drugs and Crime: Tearing Society at the Seams

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by Jonathan A. Jacoby

Daily we read in the newspaper about violent crime taking place across the cities of this country. According to the FBI's Uniform Crime Report nearly 36 million Americans were the victims of serious crime in 1989. In the first six months of 1990, violent crime increased by 10 percent compared to the first six months in 1989. There were 23,000 homicides across the nation in 1990. More than half the males and 45 percent of the females arrested in 1990 tested positive for drugs of abuse. Nationwide drug arrests by state and local police forces jumped from 559,000 in 1981 to 1,155,200 in 1988. According to the 1991 National Institute on Drug Abuse (NIDA) National Household Survey on Drug Abuse 75.4 million Americans age 12 or older (37% of the population) reported use of an illicit drug at least once in their lifetime.

My initial hypothesis is that there is a cause and effect relationship between illicit substance use and criminal activity. The method of investigation used for this paper was threefold. Firstly I distributed a questionnaire to YU's Assistant Director of Security, Ernest McNamee. In addition, I also asked these questions to the 34th precinct, where Officer Steve McManeus

answered these questions. Also, I interviewed Dr. Jacob Jacoby, a psychiatrist, who is Director of Clinical Services of the department of Psychiatry at St. Barnabus Hospital in Livingston, N.J. He is also the Medical Director of the Substance Abuse Program in that hospital.

My initial intent was to study the relationship between drug abuse and crime in the Washington Heights area of Manhattan, but my efforts were met with bureaucratic red-tape. An attempt to have the local police answer my questions was deflected with a reply that only the Department of Community Affairs can answer such questions. When the Department of Community Affairs was called on at least five occasions, they responded that only the officer in charge could answer these questions and he would do so upon his return. He still has not returned my calls despite my repeated attempts. Eventually, Officer Steve McManeus answered my questions; however, his official role in the 34th precinct is the Highway Safety Officer. His knowledge seemed extremely lacking, as will be shown later when this paper discusses his answer's to questions posed to him. I also made contact with the local councilman's of-

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fice (Councilman Micheals), who in turn told me to contact the local community board (Community Board #12) where they keep the statistics for all crime and arrests in the area. When I contacted the Community Board, they told me the person in charge was on vacation and would not be back for three weeks. I asked if another authority could help me locate the information that I need for this research paper. I was told, "Only the Director can answer my questions and he was on vacation, sorry."

From all this stonewalling, I suspect that there is a widespread cover-up of Drug Lord influence in the Washington Heights Community, and that the Police and politicians have difficulties in controlling the rampant drug abuse and crime in the area. Their influence, as told to me by a local resident, a Yeshiva University van driver, is sizable. He said,

I am not going to protest against the drug lords. They don't care about lives, they'll come and kill me or my wife. We have three children that we have to care for. I am just trying to teach my children that they should work for an honest living when they grow up. The kids in the neighborhood see the drug dealers driving fancy cars and wearing nice clothes, it's hard to ignore. Hopefully, Giuliani will be able to do something about this problem.

This man's fears apparently reflect the widespread concern of others in the

community.

However a more optimistic assessment was offered by Officer McManeus. He stated that drug related crime is decreasing in the neighborhood because police have established a positive influence in the community and that most of the major dealers have been driven out. He said that very few of the drug related crimes are committed by people high on a substance. Most of the crimes are committed either by addicts who need money to purchase drugs or by drug gangs fighting over turf. These statements contradict YU's Asst. Director of Security, Ernest McNamee, a retired police detective, who told me how the drug lords rule the streets and that at least 80% of the weekly crimes committed in the neighborhood involves the drug trade:

Individuals on crack can't control their behavior and this leads to violence such as homicides and assaults. Crack is an instant high, which you always need to be up. The more you have, the more you need, and you will commit crimes to get it. At this time in the neighborhood and the rest of the country the police are losing the war on drugs. We will become a nation of zombies unless we end this problem.

These comments contrast starkly with those of Officer McManeus and do little to allay the fears of the community.

Michale Stone, in a feature for *New York* magazine (DEC 13, 1993), wrote about one of the city's most

deadly Drug Gang, the Wild Cowboys, and further underscores the extent of the problem. They were a 41 -member Washington Heights gang that sold more than \$16-million worth of crack each year. Government officials state that wherever the Cowboys ranged over their ten year association, they made up their own laws and left a trail of bodies who took exception. They exterminated local dealers, bullied tenants, and brutalized their own workers. In a dispute over stolen drugs, they drove one family out of their apartment and tracked them down to a different borough, and shot one of their sons in the head.(p.58-66)

In the past decade drug gangs have become New York's Number one crime problem. Such gangs are the main contributor to the city's homicide rate. These organizations own a percentage of the city's real estate. Special tactical units (TNTs) are good at arresting street sellers and low-level managers; however, these underlings are easily replaceable. Penetrating the top levels of these gangs requires long term investigation and follow up; only a few task forces in the city have the savvy and the resources to mount this kind of campaign.

I believe that what Officer McManeus said is improbable. The city, especially the area of Washington Heights, needs to clean up the Drug Gangs before the situation turns hopeless. I think the feelings of the YU van driver are indicative of the feelings of the entire neighborhood, especially since no other resident was willing to answer my questions. The reason for their silence was most probably the fear of

retaliation by the local gangs.

While I had initially intended to limit the scope of my study to the Washington Heights area, it soon became clear to me that the cooperation would not be forthcoming. This situation led me to investigate these problems on a national level. The drug problem is not a local problem, it is a global problem. The link between drug use and crime is complex. In many ways drugs and crime are problems closely related to each other. Using or distributing some drug is illegal, and violators are subject to criminal sanctions. Some crimes that are not committed under the direct influence of a substance or its purchase are still the result of illegal drug use or distribution. For example, some users steal to support their drug use. Prostitution is sometimes engaged in to support drug use. Violence in drug markets is used to gain a competitive advantage.

Illicit drug use is defined as the use of prescription-type psychotherapeutic drugs for nonmedical purposes or the use of illegal drugs. Some drugs, due to their power to induce compulsive use, are more likely to precipitate criminal activity than others. Cocaine and heroin are especially noted for their addictive power. Frequency of drug use is also a factor. For example, a person who uses drugs several times a day is at higher risk of involvement in crime than an irregular drug user. According to Jan Chaiken (*Drugs and Crime*), drug users report greater involvement in crime and are more likely than non-users to have criminal records. Persons with criminal records are more likely than ones with-

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out criminal records to report being drug users. Crimes rise in number as drug use increases. Although some drug users do not commit property or violent crimes such as burglary and robbery, many drug users are heavily involved in crime. High levels of criminal activity are strongly related to the frequent use of drugs. Criminal activity is perhaps two to three times higher among frequent users of heroin or cocaine than among irregular users or non users of drugs. (p.203-229)

In his article, Goldstein (*J Drug Issues*) further elaborates on the relationship between drug use and violence. He enumerates three separate factors: (1) the pharmacological effects of the drug on the user can induce violent behavior, (2) the high cost of drug use often impels users to commit economic compulsive violent crime to support continued drug use, and (3) violence is a common feature of the drug distribution system. This last category is protection or expansion of drug distribution market share or retaliation against market participants who violate the street rules. (p.493-506)

According to Dr. Jacoby, other factors will contribute to addicts committing crime. Addicts need a constant supply of drugs to prevent withdrawal (which is independent of its psychogenic effects). These addicts will go to great lengths to support their addiction. Also, different drugs influence the mind in different ways. Stimulants such as amphetamines or cocaine can act to make users grandiose or violent. These drugs can also induce paranoia that can increase violent tendencies. However

cannabinoids such as marijuana, can induce a more passive state. James Gionini (*USA Today Magazine*) has found that there is a direct connection between cocaine ingestion and spur of the moment violence. (p.11)

A 17-year-old daily crack user summed up the feelings of impatience associated with drug withdrawal or the paranoia associated with drug abuse saying,

"It doesn't seem to matter whether you're on or off crack... you're crazy both times. If you're high, you think someone's goin' ta do something to you, or try an' take your stuff. If you're comin' down or are waiting to make a buy or just get off, you seem to get upset easy... A lot of people been cut just because somebody looked at them funny or said somethin' stupid."

According to a report from the Bureau of Justice Statistics (Dec 1992) that evaluated the influence of drugs and alcohol among violent offenders in State prisons in 1986 more than half said they committed the offense under the influence of drugs or alcohol. Drugs or alcohol were most likely to be implicated in manslaughter cases (76% of offenders or victims were using either or both) and least likely to be implicated in sexual assault cases (50% of offenders or victims were using). (p.5)

A study of 414 homicides (BJS 1992) in New York City in 1988 found that in 53% of the cases, drugs or

alcohol were judged to be an important cause of the homicide. Cocaine in any form was involved in 84% of the drug related homicides and, in 32% of all homicides and 60% of the drug related homicides, crack or cocaine was present. (p.6)

Because so much of substance abuse crime is found in the young, most of the research on the causes of drug use is based on examining the initiation of drug use among youth. Drug use begins and continues largely because youths have contact with peers who use drugs and who provide role models for drug taking. Families with inconsistent discipline, drug abusing parents, or distant relationships between parents and children may foster drug use. Personality factors such as rebelliousness, orientation towards independence, low self esteem, alienation, orientation towards risk taking, and a high tolerance of deviance has been found to be related to drug use among youth. Poor school performance is often a precursor of involvement in drug use among youth. These deviant social factors then lead these youths to commit drug-related crimes.

Another major factor in drug related crime is the way dealers interact within the drug world. Legal industries rely on the judicial system to enforce contracts and punish those who violate the terms of agreements. In the drug world, buyers and sellers rely on their own resources to enforce contracts. Drug dealers feel violence is the only effective preventive measure against unfair trade practices. A dealer who is not wary risks having his drugs stolen and even being

killed. A reputation for violence is the dealer's best guarantee that his business transaction will be accomplished as agreed upon. Usually, once the reputation for violence is established, it is not necessary to continue violent acts to protect transactions. Also, failure to pay for a drug delivery is a common source of violence. Those who do not pay what they owe can expect to be disciplined violently or killed. A dealer who fails to pay for drug delivery risks losing his supply source. Dealers often fail to pay because they were cheated or robbed, or the drugs and/or money was confiscated by legal authorities. Revolving credit arrangements are important for drug distribution networks, but they often do not operate in an orderly way. This helps account for the "high" mortality rate among drug dealers and their underlings. Violence or financial collapse often puts them out of business.

An example of this is the Wild Cowboys (*New York Magazine*) who in May 1991 shot Oscar Alvarez, a Cowboy seller after he was caught smoking company crack. They shot him even though he offered to work off his debt. Six months later, the Cowboys caught another worker, Eddie Maldonado, stealing from them. One afternoon, three gang chieftains surrounded Maldonado in a park crowded with students and hacked him to death with their machetes. These are just two examples of the vicious ways the drug dealers handle their "judicial system". (p.62)

Drug related crime is not limited to the illegal side of the law. The police are closest to drug trafficking and therefore are at the highest risk of cor-

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ruption; but local officials. Some police of a sizeable proportion are corrupt. Corruption includes the information about telling the cops and undercover bribes to tampering perjury illegal drug drugs from failure to arrest drugs. These represent another spread across the drug

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## *-Drugs and Crime: Tearing Society at the Seams-*

ruption; but other Federal, State, and local officials are sometimes involved. Some police officers, tempted by the sizable profits in the illegal drug trade are corrupted. Examples of police corruption identified by David Carter (1990) include the following: a) selling information about upcoming police raids, b) telling the dealers who the informants and undercover agents are, c) accepting bribes to tamper with evidence or committing perjury in order to protect an illegal drug dealer, accepting money or drugs from dealers in exchange for failure to arrest the dealers or seize their drugs. These corrupting influences represent another problem facing cities across the nation in solving the widespread drug problem.(p.88)

Is there any hope for the future? Or are we destined as McNamee said to become a "nation of zombies"? In 1989 the Federal anti-narcotics' budget was \$8,800,000,000. This astounding sum of money will not be enough to solve the drug problem. More new and different approaches have to be tried to solve this dilemma. McNamee told me that more police are needed to enforce the law. He feels military action is necessary. Also, major drug dealers and individuals involved with the trade should be sentenced to life imprisonment or execution. Early education programs should be established to educate our children about the destructive nature of drugs. There is a need to set up good treatment centers and good work programs for individuals after they are discharged from these treatment centers. "Get them some work and try to teach them the importance of family. This is important

because our country survives because of the family, our love for our parents and children", stated McNamee. Officer McManeus said that besides education the police need increasing powers to make street level arrests. At the present time specialty units have to be called in to make street level arrests.

According to the National Institute of Justice (NIJ) *Report on Drugs and Crime*(1992) police drug crackdowns continue to evolve as a technique against drug dealers. Intense police activity has significant short-term effects in driving out criminals. However, evaluators found that longer-term follow-up actions are needed to make enduring changes.(p.12-14) This finding underscores the need to emphasize long-term programs to control drug use activities.

In part due to the Institute's evaluations, police executives around the United States are moving to a new understanding of the value of crackdowns. Police departments are following up crackdowns with activities that are intended to have longer-term effects. Now, Police will establish a mini-station with the intention of keeping it open indefinitely. Police department lawyers inform owners of crack houses of the activity in their buildings and ask their cooperation in closing the crack house and nailing planks over their entrances. The police have been moving towards more community style policing, increasing walking patrols. Early results of evaluations of this "crackdown-plus" approach, according to the NIJ are encouraging. First, citizen cooperation with police begins to rise. Officer McManeus indicates that the

Washington Heights community and the police are working more closely now. The dealers then seek out a new place to do business. This allows the municipal agencies to clean up trash strewn streets and alleys, repair street signs, and turn empty lots into playgrounds. Private businesses will find these cleaned up neighborhoods desirable and hopefully begin to open up stores.

The problem of drugs and crime is clearly neither trivial nor likely to just disappear. In order for this nation to rid itself of this major societal problem it will have to commit a tremendous amount of resources; both in terms of money and manpower. There has to be a veritable **WAR ON DRUGS**. Such a concerted effort is the only way the streets of this great nation will once again

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# US - Japanese Relations: A Look Into the Near Future

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by Ira Piltz

With the end of the Cold War, America entered a new era in foreign relations. Foreign policymakers no longer had to worry about maintaining a balance of power with the U.S.S.R. Instead, the United States could now enjoy the status of political superpower. Yet, on the economic front, the United States became increasingly dependant on foreign imports reaching the status of being one of the largest debtor nations in the world, running it up with many nations.

One nation has used this condition of the U.S. market, along with other markets, to solidify its economic base. She has become one of the most powerful economic nations in the world. This nation is Japan. In an essay entitled "Japan and the United States: Ending the Unequal Partnership" (Foreign Affairs Fall 1991) author Richard Holbrooke notes that "Japan and the United States have a special responsibility to work together to address the planet's most pressing problems, with each nation taking the lead in specified areas." This has not happened as of yet. Instead, there is a growing rivalry be-

tween the U.S. and Japan for the title of economic superpower. While the Japanese continue to invest heavily in American business and industry, Japanese markets remain closed for the most part to foreign investors. American investment is discouraged and American products looked upon as inferior.

Conversely, in the United States, Americans believe that Japan is "unfair" in its business dealings with the United States ( Foreign Affairs Spring 1992). Many Americans believe that Japan is trying to take control of the American economy and impose their "superior" ideals on the American people. This feeling of mistrust is growing on both sides. Many factors make this evident, including political rivalry, feelings of mistrust by both peoples (which has become more evident in the popular literature of both nations portraying each other as a nation out for world domination), and U.S.-Japanese relationship filled with what Holbrooke calls a relationship increasingly filled with friction, resentment, and mutual recrimination (Foreign Affairs Winter 1991).

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So what does the future of U.S.-Japanese relations hold? Looking into the year 2000, what will likely be in place is an American policy of protectionism against Japan while Japan continues to import massively to foreign markets. Bad feelings on both sides will continue to prevail throughout the 1990's, leaving the need for negotiations between the United States and Japan on such issues as the trade deficit, technological advances and exchanges, and specific definitions on each nations' role in dealing with global problems, such as pollution. Overall, the United States will look to save its economy by dealing harshly with Japan's refusal to import American products into its markets in order to bring up its GNP through exportation of more products. This should bring down its trade deficit both with Japan and worldwide trading partners by catering to new markets that have been traditionally open to Japan and closed to American businesses.

Entering 1993, a major event took place that is serving to reshape the United States as it enters the 21st century. A Democratic President was elected with a Democratically controlled Congress behind him. This "unity" of sorts puts the United States in a new situation; one it has not faced in twelve years: a unified House and Hill. Many experts believe that a unified Congress and White House will continue to put into effect changes that will bring about a lasting improvement in government. Since the reigning party is the Democratic Party, these changes will consist of demphasizing involvement in foreign affairs while concentrating more on

domestic affairs, a complete change from Republican policy. In the case of U.S.-Japanese relations, it fulfills what International Politics expert Hans Morgenthau recognizes as the way sovereign states conduct themselves; A return to self interest. In the past year, protectionist legislation has been proposed by both houses of Congress for dealing with Japan. President Clinton has continually stated his willingness to put the interests of the American people first in his economic policy. An old friend of President Clinton summarized his foreign policy stance by saying that he "...doesn't want to get involved unless there a direct American interest" (The Washington Spectator December 1, 1992). Therefore, not only does it seem that Clinton will support this policy when it passes both Houses, he will encourage it. Accepting a more asser-tive and independent Japan will prove difficult for many Americans (Foreign Affairs Winter 1991) which will make such protectionist policies popular and give them credibility with the demos.

Japanese reaction to this will not be mild. Japan relies on exportation as its major source of income (Facts on File 1992-1993) and the United States is one of its major markets. Japan will look at these protectionist measures, which will take the form of harsher duties on Japanese technology and automobiles and limitations on the amount of Japanese goods imported into the United States, as threatening to the relationship of the two economic super-powers. They will cite the fact that already the Japanese-American trade deficit is decreasing and that since 1987,

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*-US - Japanese Relations: A Look into the Near Future-*

U.S. imports to Japan has doubled to the point that the U.S. exports to Japan are as large as U.S. imports to the United Kingdom, Germany, and France combined (Foreign Affairs Winter 1991). This will lead to resentment on the part of Japanese investors and will add to an already existing degree of resentment, self-pity, and hypersensitivity that the Japanese feel from Washington's criticism due to its lack of ability to understand Japan's global responsibilities (Foreign Affairs Spring 1992). From this resentment negotiations between Japan and the United States will commence in order to iron out these contentions.

Negotiations can often break new ground. When assessing potential U.S.-Japanese relations in the year 2000, these negotiations, though still infrequent at this point in time, must be looked at in terms of what can be accomplished. Before any issues of substance can be addressed, the mutual mistrust issue needs to be ironed out. Granted, there will be apprehension from both sides which can be attributed to historical roots stemming from World War Two and the era immediately following (Foreign Affairs Winter 1991). There are also significant cultural differences which affect the dealings of both nations. At this point in time these differences are a major stumbling block. A poll conducted in April 1992 shows that 44% of Americans polled have a major mistrust in the Japanese (World Book Reader April 1992) which is reflected in American policy towards Japan. Japanese are beginning to show their frustration and anger with the

United States (Foreign Affairs Winter 1991). Therefore, this first round of negotiations must deal with these differences and work to break down the walls of mistrust by proposing programs such as cultural exchanges, educational exchanges, and an agreement of mutual understanding between Washington and Tokyo based on trust. This may sound implausible and naive, yet it is necessary in order to reach any long standing and far reaching agreement. One has only to look at the fact that several years of meetings between the United States and the U.S.S.R. were necessary before any major agreements could be reached and subsequently honored.

Once this obstacle is overcome, negotiations on specific issues can begin. The first issue that must be addressed is trade. Since there will likely be the aforementioned protectionist measures, Japan will already have had its export markets limited in the United States. Japan will ask for those measures to be lifted, which will not happen. The Structural Impediments Plan, known as SII, will become the device through which many of the negotiations take place. Briefly, this plan, conceived and accepted in 1989-90, creates an effort to form a broader system that would solve the commercial problems between the two nations through a structural approach (Foreign Affairs Fall 1991). What will probably happen is that both countries will set limits on the amount of goods that each nation can import and export to each other. It is unlikely that the overall trade deficit will ever equal out; American demand for Japanese goods will always be higher

then Japanese demands for American goods. Many American consumers feel that Japanese products are superior in quality to American products, an attitude that has not and does not seem to be changing. Japanese consumers, prompted by governmental regulations and national pride, would not consider buying an American product over a Japanese product. To compensate for this, Japan will have to accept lower limits on exports to the U.S., accept higher tariffs while lowering its tariffs on imported goods, and increase the amount of goods that it imports from the United States, at least until a significant dent is made in the trade deficit between the two nations. This may run well into the 21st century. Japan will feel slighted. Already, imports into Japan have soared to over \$200 billion annually (Foreign Affairs Spring 1992). However, in order to normalize relations with the U.S. it must accept these terms, being the first major item that changes U.S.-Japanese relations over the next ten years.

This does not mean that Japan needs to sit back and lose its edge in the economic arena by completely cutting back on exports. The next step in the negotiations will be to establish rules for exportation to world markets, both emerging and existing. This is a step which will lead to more normalized relations by the year 2000. In the past, markets that have been open to Japan but have been closed to the United States have been predominately stocked with Japanese goods, such as Eastern Europe and South Africa (Facts on File 1992). There is no reason for Japan to relin-

quish these markets, though leading economists predict that demand for American products will soar. However, Japan must accept the fact that it will face competition from the U.S. In a format of economic Imperialism, as Morgenthau would argue, the U.S. and Japan will sit down to negotiate where Japan will allow the United States to enter the market in its spheres of influence, and decide which markets will remain the domain of Japan and which markets will become the domain of the United States. This is not the same as limiting free trade or dividing up the world into economic trade zones. Rather, this will serve to put barriers on trade in order to keep competition alive between the two nations at a non-aggressive level while allowing both countries and the rest of the world to profit through this international marketing agreement. This will serve to keep relations stabilized well past the year 2000.

Japan and the United States have often disagreed over technology and technological development and as a result this is the next major issue that must be negotiated by both nations before the year 2000. Japan is considered the world's leader in technology. As the year 2000 approaches, American dependence on Japan for technology is likely to become more widely recognized and politicized (Foreign Affairs Spring 1992). Yet, it is to be noted that much of Japanese economic growth can be attributed in part to the fact that the United States spent millions of dollars following World War Two rebuilding the Japanese infrastructure and industrial capabilities which were shattered dur-

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ing the latter stages of World War II. Accordingly, many Americans find it perplexing that the United States allowed itself to be beaten in the technology race by Japan, yet it is the attitude and work ethic of the Japanese that have allowed them to surpass the Americans. The Japanese see the United States as a nation in decline (Foreign Affairs Winter 1991) and therefore work to beat the U.S. at the commodity it dominated for so long; the technological marketplace. Japan has succeeded in this by selling to any market regardless of political affiliations or governmental system. The United States limited its markets through the use of economic sanctions to many nations that were under the Soviet sphere of influence or had domestic policies that the United States disagreed with, such as South Africa. As these nations are now opening up to American corporations, the U.S. will not reap benefit from these profits for several years. In the meantime, Japan has continued to develop projects that many other nations, including the United States, have abandoned or cut back funding on, (Congressional Report 1991) and has continued selling these and other products to the markets that the U.S. refused to sell to. This has given Japan a clear cut lead in all aspects of the "hi-tech" industry.

What must be negotiated by the two sides is a stance which allows Japanese technological growth to continue while giving the United States a chance to catch up in its technological development. This goal can be accomplished through mutual cooperation. Already, Japanese and American indus-

tries have cooperated in the automotive and steel industries, allowing mutual benefit for each side. The process of industrial development has an important geographic dimension (Economic Geography April 1992) and in this case Japan benefits from the availability of raw materials and labor while the United States benefits from Japanese technology. In this manner, the Japanese are not forced to halt any industry or technological research and development; they simply have to share it. At the same time, American industry must improve its development of technology so that it can produce goods comparable to the Japanese. These treaties cannot force Japan to produce lower quality products. The only thing these treaties can do is oblige Japan to share its knowledge with an ally, as the United States did following World War Two.

One point that must be addressed is that of Japanese willingness to comply with the terms of these negotiations. Why should Japan want to give up its advantage in areas such as trade and technological advancement? As Japan approaches the future, it will realize that it needs to maintain a strong relationship with the United States (Foreign Affairs Spring 1992) for strategic and political reasons, and economic reasons. Japan can not afford to lose one of its largest and most lucrative marketplaces, even if that marketplace will limit what can be sold and at what rate (Economist April 8, 1992). Japan also cannot afford to lose its alliance with the United States on the political arena; the two are the two most powerful nations in the world (Foreign Affairs Winter 1991) and need

each other. This relationship is in danger and any assessment of the future of U.S.-Japanese relations must include these steps and conclusions for the simple fact that they are based on feelings that exist presently, thus solutions offered in this essay are based on current political trends and negotiations that are ongoing.

There is no definite way to know what the future holds, even in as little time as ten years from now. However, by understanding current situations and what is currently being done in regards to that situation, one can fathom a hypothesis of what will be. In the case of U.S.-Japanese relations, a strain exists between the two powers, an obvious fact. Yet in a new era of relations, negotiations seem to be the answer and compromise the outcome. Whether or not this will work between the United States and Japan has yet to be seen. In this look at the nature of the two nations' relationship, the prospects are positive. To be absolutely certain though, one must wait until the future in order to see what it holds.

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# The Right to Bear Arms: A Constitutional Discussion

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by Jeremy B. Lustman

The Second Amendment of the United States Constitution's Bill Of Rights states:

"A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed."

From its inception, this Amendment has stirred much debate regarding its scope. Some, the NRA (National Rifle Association) being the most prominent, argue that the Second Amendment sanctions private ownership of firearms. Others disagree, claiming that though the Second Amendment does grant the right to bear firearms, "gun control," would not be considered unconstitutional.

In contrast to the fierce debate amongst the general populace, the American courts have been one-sided in their interpretation of the Second Amendment. The United States Supreme Court has ruled "against" the Second Amendment on five separate occasions. In addition, nearly forty lower state courts have limited the range of this amendment. All have ruled that the Second Amendment guarantees a state's right to a militia, but not an individual's right to own a handgun. Three

key cases have been heard by the Supreme Court regarding interpretation of "the right to bear arms." The first of these is the case of *U.S. v. Cruikshank*. [U.S. v. Cruikshank, 92 U.S. 542, 551-53 (1875)] The case involved Ku Klux Klansmen who were charged with infringing upon the constitutional right of black citizens to assemble and bear arms. A divided Supreme Court acknowledged that the Fourteenth Amendment gave Congress the power to prevent interference with rights granted by the Constitution. The right of an individual to assemble and bear arms, however, were not rights conferred by the Constitution, the Court said. They asserted that the Second Amendment only protected state rights to bear arms. The second was the case of *Presser v. Illinois*, [Presser v. Illinois, 116 U.S. 252, 265 (1886)] in which the defendant was prosecuted for leading a band of armed men in a parade without a license. Presser had been convicted on a lower court level, and he brought this case on appeal before the Supreme Court. Excerpts from the decision read: "It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve militia of the

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United States, and, in view of this prerogative of the general government...the States cannot, even laying the Constitutional provision in question [the Second Amendment] out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resources maintaining the public security, and disable the people from performing their duty to the general government." The Court reaffirmed the precedent it set in *U.S. v. Cruikshank*, that the Second Amendment was only a protection of a state's right to protect itself, and did not sanction blanket ownership of personal firearms. In the third case of *U.S. v. Miller*, [United States v. Miller, 307 U.S. 174, 179 (1939)] Jack Miller and a friend were arrested for violating the National Firearms Act when travelling from Oklahoma to Arkansas carrying a double-barreled shotgun. The Supreme Court ruled that the weapon had no "reasonable relationship to the preservation and efficiency of a well-regulated militia," and laws prohibiting these shotguns were in no way a violation of the Second Amendment.

In a speech before the American Bar Association (ABA), former Supreme Court Justice Lewis Powell stated "with respect to handguns...it is not easy to understand why the Second Amendment, or the notion of liberty should be viewed as creating a right to own and carry a weapon that contributes so directly to the shocking number of murders in the United States." The ABA agreed and responded, "Neither the U.S. Constitution or any of its amendments grant anyone the right to keep and bear arms."

Congress has passed legislation restricting gun sales. Most notably, they include such laws as The Gun Control Act of 1968, The Gun Control Act of 1986, and The Brady Bill of 1993. Some forms of constraints within these acts include the outlaw on new machine gun manufacturing, required licenses for prospective gun owners, and a waiting period. In addition, twenty-three states have enacted sensible handgun and assault weapon laws consistent with their own environment and its needs. The NRA's attempt to challenge gun control has been unsuccessful. In 1981, for example, the legislature in Morton Grove, Illinois, passed an ordinance banning handguns, excluding just those owned by police officers, prison authorities, gun clubs, members of the armed forces, and licensed gun collectors. The NRA vehemently objected to this statute. However, the U.S. Seventh Court of Appeals upheld the ordinance, stating that there is no individual right to keep and bear handguns under the Second Amendment. In 1983, The U.S. Supreme Court declined to hear an appeal on the ruling.

As indicated by numerous court decisions, the legal foundation for gun control is clear. Although the debate continues, the solution for a more restrictive control of firearms seems self evident. For years, the concept of gun control was neglected, and it was during this time that gun related crimes skyrocketed. The NRA's cry for the "freedom" to bear arms is a perversion of the concept of liberty that Americans cherish. Society has the right to be free of the violence directly caused by the proliferation of firearms.

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# Freedom of the Press and the Right to Privacy

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by Nachman A. Troodler

The First Amendment of the Constitution of the United States of America says the following: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press ; or the right of the people to peacefully assemble, and to petition the Government for a redress of grievances." The Fourteenth Amendment is written as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any state deprive any person of life, liberty, or property, without due process of law." From these two Constitutional Amendments we derive the ever so powerful right of freedom of the press. This "right" allows the press to print it pleases. There are however certain restrictions placed on the press. For example, a newspaper cannot go ahead and print a story about "John Smith" which is entirely not true. This is what is known as libel. Libel is defined as any false statement, written or broadcast, which tends to (a) bring a person into public hatred, contempt, or ridicule ; (b)

cause him to be shunned or avoided ; or (c) injure him in his business or occupation. There are other instances other than libel where restrictions were placed on the press. I will discuss several of these cases in the forthcoming paragraphs.

There are certain cases where the press was punished after the fact. In other words, an article was written, and only after it was published did the press receive disciplinary action. This is called Subsequent Punishment. One such case that was brought before the Supreme Court was *Schenk vs. United States* [249 U.S. 47; 39 Sup. Ct. 247; 63 L.Ed. 470 (1919)]. Mr. Schenk was the general secretary of the Socialist party. He printed and distributed leaflets that advocated opposition and resistance to the World War I draft. Schenk used the prohibitions of the First Amendment against infringement of speech and press as his defense. The Court upheld the conviction with an opinion written by Justice Holmes, in which he launched the Clear and Present Danger Test. He said that the question in every case is whether the words used in such circumstances are of such a nature to create a

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clear and present danger that will bring about substantive evils that Congress has a right to prevent. Justice Holmes explained that when the nation is at war, things that could be said in times of peace are a hindrance to its effort and no court could regard them as protected by any Constitutional right. *Schenk vs. United States* was the first case brought to the Supreme Court under the Espionage Act. The Espionage Acts of 1917 & 1918 stated the following: When the United States is at war, one cannot willingly make or convey false reports with the intent to interfere with the operation of the military, or to promote the success of the enemy. One also cannot willfully attempt to cause disloyalty, or refusal of duty in the military. Finally, one cannot willfully obstruct the recruiting or enlistment service of the United States. Schenk's actions were in direct violation of the Espionage Act.

Another case involving Subsequent Punishment was *Gitlow vs. New York* [268 U.S. 652; 45 Sup. Ct. 625; 69 L.Ed. 1138 (1925)]. In 1925, Mr. Gitlow was convicted for writing a Socialist pamphlet which called for a Communist reconstruction of society. There was no evidence that anything resulted from the publication or circulation of the pamphlet. The case was brought under the 1902 New York Act that prohibited advocacy of criminal anarchy by word of mouth or writing. Any document encouraging rebellion against organised government by means of force or violence, or by the assassination of executive officers was deemed to be illegal. The court upheld the conviction,

but they did not use clear and present as their reason. Instead, "the natural tendency and probable effect" was used as their reason for upholding the conviction, regardless of the immediacy of danger. What this means is that although no immediate danger resulted from Gitlow's pamphlet, the court felt that there was a remote possibility that danger might result in the future.

There are also forms of censorship placed upon the press. An example of this is *Near vs. Minnesota* [283 U.S. 697; 515 Sup. Ct. 625; 75 L.Ed. 1357 (1931)]. Jay Near was the owner of "The Saturday Press." This particular newspaper was publishing many editions which were largely devoted to malicious, scandalous, and defamatory articles. This was in direct violation of the Minnesota statute which declared a nuisance the publication of (a) an obscene, lewd, or lascivious newspaper or magazine, or (b) a malicious, scandalous, and defamatory newspaper or magazine. The Supreme Court revitalized the age-old doctrine of Previous Restraint, or Prior Restraint. The Court said that if they knew that a reporter had biases, or was going to malign people and write scandalous articles, the reporter could be stopped. Several forms of Prior Restraint are, for example, that a reporter has to obtain permission from licensing officials before printing a story, or there could be court injunctions restricting future expression.

The *New York Times Co. vs. the United States* [403 U.S. 713; 91 Sup. Ct. 2140; 29 L.Ed. 2d822 (1971)] was another case involving censorship. In 1967, the Secretary of Defense, Robert

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McNamara, commissioned The Pentagon Papers, which was a massive top-secret history of the role of the United States in Indochina. The work took a year and a half. The result was about 3,000 pages of narrative history and more than 4,000 pages of appended documents, an estimated total of 2.5 million words. The forty-seven volumes cover the American involvement in Indochina from World War II until May of 1968. The New York Times obtained most of the narrative history and documents, and began publishing a series of articles based on them on Sunday, June 13, 1971. After the first three daily installments appeared, the Justice Department got a temporary restraining order against further publication. The government said that if publication continues, "the national defense interests of the United States and the nation's security will suffer immediate and irreparable harm." They argued for a permanent injunction. The New York Times said that the Pentagon Papers belonged in the public domain and that no danger to the nation's security was involved. On June 30, 1971, the Supreme Court freed the newspaper to continue publication of the articles. The Justices held that the right to free press under the First Amendment overrode any subsidiary legal considerations that would block publication by the news media.

How did the Right to Privacy Laws develop? It began in the colonial period when America was a rural nation. Villages and farms were very far apart. There was usually great similarity in nationality, background, habits,

and taste, which provided little stimulation to spy into other people's attitudes and activities. When the Industrial Revolution began, many rural inhabitants went to urban areas to find work. The development of indoor plumbing, electricity, telephones, etc., made urban life very attractive. People in the cities had to depend on others for such things as food, housing, clothing, and medical care. Urban dwellers were compelled to interact with society in order to survive. Families were also forced to live in close proximity to others in overpopulated cities. All this created the desire to know more details of the lives of those about them. There was an emerging concept of respectability among the urban working class which made it imperative that scandalous behavior be avoided, or at least hushed. However, there was a large, unskilled working class, which didn't share these beliefs. They lived in crowded tenement districts, where the private livings of their neighbors was amongst the more pleasant distractions in their monotonous lives.

Another factor that contributed to the development of the Right to Privacy Laws was the growth of the press. In 1800, there were only twenty-four daily newspapers. By 1860, the number had only increased to 387. During the next twenty years, the number of daily papers more than doubled to a total of 971. Between 1880 and 1889, more than 625 new daily papers emerged. This was the largest ten-year increase in the history of the American press. With this growth of the press, the number of papers circulated each day increased as

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well. For example, in 1850, only 758,000 newspapers were circulated each day. By 1870, the number had increased to 2,607,000. By 1890, the number of copies circulated each day had jumped to 8,387,000. Because more and more people were reading the papers, the news had to be made more interesting. The press began "digging up dirt" to entertain the people and increase circulation.

Samuel Warren and Louis Brandeis were the pioneers of the Right to Privacy Laws. In 1890, they published an article entitled "The Right to Privacy" in the Harvard Law Review. The article proposed a legally protected right of privacy. What prompted Warren and Brandeis to write such an article? Many believe that it was a result of the extensive press coverage of the wedding of one of Mr. Warren's daughters. Some of the suggestions of the article were as follows: (a) damage suits would provide monetary compensation for any injury to the plaintiff's feelings or suffering, and (b) criminal action might be appropriate in some cases to punish those individuals who invaded the privacy of others. This article prompted people to start viewing the Right to Privacy issue in a whole new light.

There were several major cases involving the Right to Privacy issue. One such case was *Corliss vs. Walker* [57 Fed. Rep. 434 (1893); 64 Fed. Rep. 280 (1844)] in 1893. Emily Corliss, the wife of deceased inventor George Corliss, sought to stop the publication of a biography and picture of her late husband. Judge LeBaron B. Colt dis-

agreed, stating that Corliss was a public man, just as authors and artists were public men. Colt said that there was no right of privacy if this right interfered with the freedom of expression, which he believed it clearly did in this case. He also said that a man who asks for public recognition surrenders his right of privacy to the public. This case was the first instance in which a defendant was sued for publishing what was clearly a news piece, and not an advertising or a publicity matter.

Another case involving the right to privacy was *Moser vs. Press Publishing Corp.* [109 N.Y.S. 963 (1908)] On April 27, 1907, "The New York World" published a picture and news story on John Moser, who claimed that the story, which was rather unpleasant, was untrue. Instead of suing for libel, he brought an action under the privacy statute, claiming that the sale of the newspaper constituted a trade purpose. The New York Privacy Statute went into effect on September 1, 1903. It limited court action to those instances in which a person's name or likeness was used without consent, for advertising and trade purposes. The New York Supreme Court disagreed with Mr. Moser. Justice James A. Betts ruled that the statute was passed to remedy situations such as that of Abigail Roberson, who found her picture on advertising posters scattered throughout the state. Justice Betts said that a newspaper or magazine was not meant to be included in this statute of trade purposes.

A third case that addressed the Right to Privacy issue was *Sidis vs. F-R Publishing Corp.* [113 F. 2d 806 (1940)]

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in 1940. William James Sidis could read and write English and French at the age of three. He prepared a paper on anatomy when he was five. He completed his first seven years of schooling in just six months, and, at age ten, he was enrolled in Tufts College. He then dropped out of sight until 1937, when a reporter from "The New Yorker" found him in Boston, a heavy-set, middle aged man. He was living in a dingy room, working as a clerk in a business house, and collecting street car transfers. Sidis brought suit against "The New Yorker" for invasion of privacy. Judge Charles E. Clark was sympathetic, but took little stock in Sidis' argument. He said that none of the court rulings in states which recognize the right of privacy went so far as to prevent a newspaper or magazine from publishing the truth about a person, however intimate, revealing, or harmful, the truth may be. Clark said that, at some point, the public's interest in obtaining information becomes dominant over the individual's desire for privacy. Sidis was once a public figure, and, despite his attempt to cloak himself in obscurity, the public was entitled to know of his success or failure.

The Right to Privacy issue still remains with us today. There are many instances in which the Right to Privacy is still asserted. One of the major issues today is whether or not to publish the names of rape victims. In a Newsweek poll taken in 1991 the question was posed to the public, should the names of rape victims be reported by the news media like the names of other crime victims? An overwhelming 77% said no while only 19% said yes. Another

question asked was if the person thought that a woman is more likely or less likely to report being raped if she knows that her name will be made public, or doesn't it make much difference? A majority, 86%, said that a woman would be less likely to report, 4% said she would be more likely to report, and 8% said that it doesn't make much of a difference. The results of this poll make it seem that most of the American public believes that a rape victim's name should remain secret. There are, however, arguments for both sides. David A. Kaplan of Newsweek said that by not revealing the name of the victim, it appears that the accuser deserves respect, and the accused humiliation. He also said that by not publishing the woman's name, it makes it seem that the stigma suffered by the alleged rape victim is greater than that of the alleged rapist. Katha Pollitt wrote in "The Nation," on June 24, 1991, that there are many reasons why a rape victim might not want her name in the paper that have nothing to do with shame. For example, she might not want her mother to know, or her children, or obscene telephone callers, or even other rapists. Everyone has secrets that are not necessarily shameful, but arouse false sympathy and evoke stupid questions from the ignorant.

A recent study by the Senate Judiciary Committee found that fewer than one in ten rapes is reported to the police. A committee aide predicted that if victims were routinely identified, that percentage would drop to one in two hundred. People who oppose printing names say that a victim's emotional state is fragile for months, even years, after

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the attack. Experts say that sixty percent of rape victims experience post-traumatic stress syndrome, the highest percentage of any crime victims. A Baltimore study found that rape victims suffered more nervous breakdowns than victims of any other crime; twenty percent tried to commit suicide. Veronica Ryback, the director of the Rape Crisis Center at Boston's Beth Israel Hospital, said that by revealing the victim's name, you are recreating the trauma of the rape. "You are taking away the person's control of the situation," said Ms. Ryback, "which reincites the feeling of helplessness and powerlessness that essentially mirror how she felt during the rape."

One particular case in which the victim's identity was revealed was the famous Palm Beach rape. "The London Sunday Mirror" first reported the alleged victim's name. "The Globe" then reported the name, and was followed by NBC and "The New York Times." Each said that they disclosed the name because another had already done so. Susan Estrich, a University of Southern California law professor, compared the media to toddlers misbehaving because their friends had done so. Everybody was playing follow the leader even though the leader was a scandal sheet from a supermarket checkout rack. William Woo, the editor of "The St. Louis Post Dispatch", said, "What we have is a case where a supermarket tabloid edited the most influential paper in America." The complaints about "The New York Times" profile of the Palm Beach victim focused on the tone of the piece as well as the disclosure of

her name. The story discussed the accuser's "wild streak" in high school, her mother's divorce and remarriage, and her bar-hopping in Palm Beach. Even "National Enquirer" editor, Iain Calder, chose not to publish the name. "If she had been a former Nazi prison guard or a happy hooker, I could see it. This was just gossip." Some critics believe that if the Palm Beach woman's background had been a little less colorful, she might have been spared such tawdry scrutiny. The Central Park jogger, who had degrees from Wellesley and Yale, and had a job in investment banking, was consistently portrayed as beyond reproach. In contrast, the Palm Beach woman was on the other end of the scale. The nature of the attack also plays a role in how the victim is perceived. The Central Park jogger was assaulted by a gang of strangers, while the Palm Beach woman willingly went back to the Kennedy compound after midnight. Victims of "acquaintance rape" are often viewed less sympathetically than victims of stranger rape, even though their psychic wounds are just as profound. The issue of the right of privacy for rape victims has not yet been resolved.

Another situation involving the right to privacy issue was that of Arthur Ashe. When he first learned that he was infected with the HIV virus, he broke the terrible news to his friends and family, but he had no intention of going public with it. He felt that privacy is precious and, once lost, it may never be retrieved. "USA Today" discovered that Ashe might have aids. They contacted Ashe and asked if he was

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HIV positive, or had aids, and Ashe responded "could be." He declined to go further and asked for thirty-six hours to prepare a statement. The next day Ashe held a press conference. Fred Bruning wrote in "Maclean's," on May 4, 1992, that personal concerns are secondary to the principles of free press. Ashe said that there was no reason to pry the details from him; he was not running for office, or seeking public trust. Bruning wrote, "Many whose names show up in the morning paper could say the same. Unlike the anonymous folks who occasionally draw media attention, Ashe occupies a place in American history."

A recent story that has been in the news is that of Katie Beers. On March 10, 1993, ten-year-old Katie issued an impassioned plea for her privacy. She wrote a letter to the Family Court, urging that a custody hearing be closed to reporters. "I don't want people to know what happened to me, because it is none of their business." Katie, who was held captive in an underground bunker for sixteen days, added, "If everyone saw my life on T.V., it would upset me alot. Please don't put my case on T.V. It's bad enough that it is in the papers." Despite her request, which was supported by her lawyer and the District Attorney's office, Judge James F. X. Doyle refused to exclude reporters from the hearing. He said that because of the unusual circumstances of the case, the media should be present. Mr. Disanti, her court-appointed guardian, told the judge that there were facts about Marilyn Beers' care of Katie and the sexual abuse allegations which, if

released, could embarrass Katie, subject her to ridicule, and adversely impact on her emotional well-being. "Katherine is not only a victim, she is a child who needs to be protected," Mr. Disanti said. "Her welfare and emotional state should be the primary concern of the court and not the public's right to be informed." Judge Doyle refused and said that the case had already become a well-developed public issue before it came to Family Court. He did, however, say that the court has continuing discretion to limit coverage that is warranted. He said that Katherine certainly wouldn't be subjected to such coverage. She probably would not appear in court, but rather talk with him in his chambers on the record, but with no one else present.

The final issue that I wish to discuss involving the right to privacy is the question of whether or not cameras should be permitted in the courtroom. There are arguments for both sides. Those who argue for cameras in the courtroom say that there is educational value, and it will give people a better understanding of the legal system. They also say that it will deter criminals if the questioning is grueling and the sentence is severe, and that people will be more ready to trust that the legal system is there to help victims, and to bring justice. Several of the arguments against having cameras in the courtroom are that judges and lawyers might act differently in front of a camera. For example, they might dramatize their cases, which might hurt their clients. The privacy of the people involved is violated, children involved could get hurt, and the victim

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will be plastered on everyone's television. Innocent defendants will be hurt in their future, because everyone will know who they are, and they might not be convinced that they are innocent. People might not want to come forward because they do not want to appear on television. And finally, emotions, crying, and drama, would be exaggerated if they are on television.

The right of freedom of the press is a right which is granted to the citizens of the United States by the Constitution. It allows the media to publish and broadcast news, as long as what is being published or broadcasted is the truth. There are however, several restrictions placed on the press as I discussed previously. Although we have freedom of the press in America, there is a large faction of people who believe that the people of the United States have a right to privacy. They feel that the media should not be allowed to examine people's "private lives", and then print stories about them. Should the media have absolute freedom, or should the American people have some degree of privacy? I believe that this controversy will remain with us for a long period of time. Until someone finds a way to make both sides happy, this question will remain unanswered, and the controversy will live on.

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*“America lives in the heart  
of every man everywhere  
who wishes to find a region  
where he will be free to  
work out his destiny as he  
chooses.”*

*-- Woodrow Wilson*