

Report from the Center for

# PHILOSOPHY & PUBLIC POLICY

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## Exporting Hazards

To make its research easily available to a broad audience, the Center for Philosophy and Public Policy publishes a quarterly newsletter: *QQ—Report from the Center for Philosophy and Public Policy*. Named after the abbreviation for “questions,” *QQ* summarizes and supplements Center books and working papers and features other selected philosophical work on public policy questions. Articles in *QQ* are intended to advance philosophically informed debate on current policy choices; the views presented are not necessarily those of the Center or its sponsors.



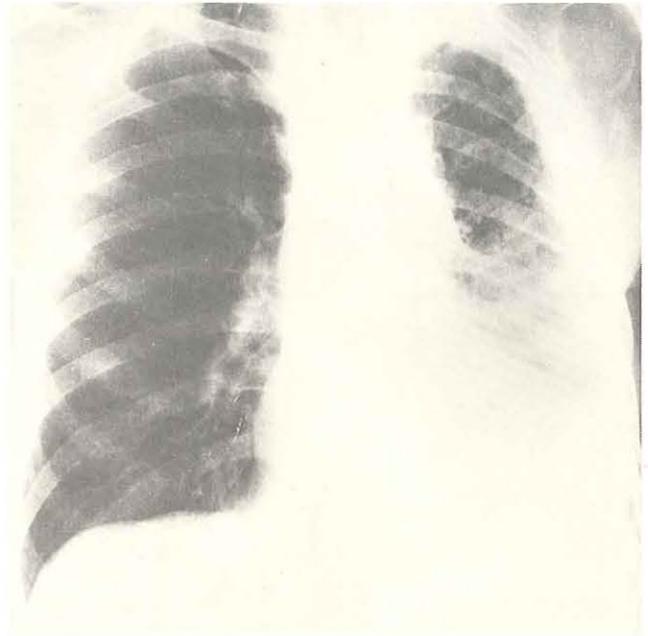
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It has been common practice for U.S. firms to market in the third world products and materials that have been banned or restricted in the United States. Pesticides and chemicals too dangerous for American use are shipped to developing countries, where regulatory standards are absent, weak, or poorly enforced. Such banned consumer goods as children's pajamas treated with cancer-causing chemicals have found their way into the cradles of third-world infants.

It has also been common practice for U.S.-based transnational firms to establish factories in third-world countries when minimum wage requirements and health and safety codes in the United States make the move economically attractive. A striking example is the processing of the pervasive product asbestos, long identified as a cause of asbestosis (cousin to “black lung” and “brown lung”) and various cancers. (The same number of Americans die each year from asbestos-related diseases as die in automobile accidents.) Standards covering asbestos processing have been issued by OSHA, and cleaner technologies have become available. But rather than installing the new technologies in U.S. facilities, some corporations are moving the more hazardous (but cheaper) methods into poorer countries, such as Mexico. Thus dangerous jobs are exported as well as dangerous products.

Such exports have been restricted and facilitated by differing U.S. government policies. Five days before leaving office, for example, President Jimmy Carter issued an executive order restricting the export of some U.S. products whose use is banned or severely restricted in this country. A month later, that order was revoked by President Ronald Reagan. Conflict is now brewing between the Commerce and State departments over further elimination of rules



*Hazardous products and processes continue to be exported across national borders. The export of jobs involving asbestos may have resulted in fatal lung damage for countless foreign workers. Photos credit World Bank (left) and Environmental Sciences Laboratory.*

that require manufacturers to notify foreign governments before shipping hazardous goods abroad. Current administration policy, then, appears to facilitate the export of hazards across our borders.

The result is that products and jobs deemed too dangerous for American consumers and workers are deemed acceptable for consumers and workers in other countries. Yet few would want to claim, straightaway, that the welfare of foreigners counts for less than the welfare of fellow citizens, that different moral standards govern how foreigners and citizens may be treated. Few would say that it doesn't matter, after all, if *foreign* workers are exposed to asbestosis, or if *foreign* children contract cancer from their sleepwear. Certainly few would say it out loud. How, then, can this clear application of lower standards to foreigners be justified?

### **It's Their Responsibility, Not Ours**

A first justification of current practices goes like this. The reason certain substances or manufacturing processes are banned in the United States is because the United States government banned them. The reason they are not banned in the third world is because third-world governments haven't banned them. If our government permits the export of hazardous products or facilities, this doesn't show a disregard for foreign welfare on the part of *our* government. It's not our government's business to

look out for the interests of foreign workers and consumers. That is the business of foreign governments, and if they don't act to protect their own citizens, it is not for the U.S. government to intervene on their behalf—especially when such intervention puts American industry at a competitive disadvantage. An argument like this one seems to underlie recent shifts in executive policy.

This implicitly assumes, however, that governments in the underdeveloped and desperately poor third world are able to defend themselves against the powerful corporations of the advanced, industrial nations. *Ought* implies *can*, and to say that third-world governments ought to protect their workers and consumers is to assume that they are able to do so.

Thomas Biersteker, Associate Professor of Political Science at Yale University, casts doubt on this assumption. In "The Limits of State Power in the Contemporary World Economy" (appearing in *Boundaries: National Autonomy and Its Limits*, edited by Peter G. Brown and Henry Shue), he argues that the global balance of power remains heavily tilted toward affluent nations and their transnational corporations. Third-world governments have little political and economic autonomy in the face of international corporate might.

In the past decade nations of the third world have made significant efforts toward greater independence. Third-world governments have launched massive programs of indigenization and nationaliza-

tion or embarked on ambitious agendas of economic self-reliance. These developments have led political scholars to talk about a "resurgence of state power" among the world's poorest nations. On Biersteker's analysis, however, despite strides toward greater autonomy and self-sufficiency, "transnational corporations are still able to constrain the exercise of state power in the third world."

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*Can governments in the third world protect their citizens against exploitative practices by foreign corporations? Despite greater strides toward national autonomy, the global balance of power remains heavily tilted toward the multinationals.*

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Biersteker's point is well illustrated by nationalizations. The frequency and scope of nationalizations increased dramatically during the 1970s, as states sought to take control of foreign enterprises by acquiring the assets of industries operating within their territory. "In theory," Biersteker explains, "once national control has been attained, exploitative practices of the past can be halted, and an increase in the state's revenues can be anticipated." In practice, however, wealth and control have remained in the hands of the transnationals. "The defensive capabilities of transnational corporations and the structure of the world economy have constrained and effectively neutralized the assertion of state power through nationalization."

It may indeed be that American corporations are put at a competitive disadvantage if they are required to upgrade foreign factory safety or notify foreign governments of hazardous shipments. But foreign governments are at a far greater competitive disadvantage, struggling among themselves to attract, and then to control, some portion of international investment and trade. They are hardly in a position to dictate health and safety standards to the multinationals. Responsibility for imposing and enforcing standards must be borne by those better able to bear it.

### **We Can't Help Out the Whole World**

It might seem, therefore, that the responsibility for protecting the interests of foreign workers and consumers should fall on the U.S. government. If foreign governments cannot effectively look after their own, let us look after them.

Unfortunately, however, the world is filled to overflowing with the hungry, destitute, repressed, and unprotected. It can't be up to us to take on all the manifold tragedies crowding every corner of the globe. We cannot legislate regulatory standards for

pesticide use in every field in Latin America. We cannot lay down codes of workplace safety for every factory in Africa. Our obligations cannot extend so far.

According to Judith Lichtenberg, Visiting Research Associate at the Center for Philosophy and Public Policy, it is a widely held view that nations do not have positive obligations to look out for the welfare of other nations or extranationals. Special treaties or agreements might generate such obligations, but, on the common view, one nation does not ordinarily have any duties actively to protect the citizens of another.

But this does not mean, Lichtenberg points out in her essay in *Boundaries*, that "nations and their members are thought to have no obligations to extranationals. The common view is rather that . . . such obligations are entirely negative: they are obligations to refrain from interference in extranationals' affairs." Citizens of one country certainly do have obligations not to harm foreign citizens; they are duty-bound to leave them alone.

The moral principle "It is wrong to inflict avoidable harm upon other people" is almost universally accepted. Few would assert that this "no-harm principle" makes an exception of foreigners. Yet Lichtenberg observes that the implications of this principle for international policy seem largely unrecognized. Even setting positive obligations aside, the no-harm principle itself requires that current practices be amended.

For corporations are bound by the no-harm principle, as well as individuals and nations. They have no special license to inflict harm upon foreign nationals. It would seem to follow that even if corporations have no direct responsibility to promote the interests of their workers or those who consume their products, they do have an obligation not to

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*Whether or not the governments of third-world countries act to protect their citizens from corporate harm, the corporations ought not to inflict it. Corporations, as well as individuals and nations, are bound by the no-harm principle.*

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subject their employees to excessive workplace hazards or to market products that endanger the health and lives of those who use them. Whether or not the governments of third-world countries act to protect their citizens from corporate harm, the corporations ought not to inflict it. That foreign workers and consumers are unprotected does not serve as an excuse to place their safety and health in jeopardy.

Furthermore, even if our government has no duty actively to protect foreigners from harm, it has a duty not to facilitate the infliction of harm by corpo-

rations based within its jurisdiction. If it is wrong for corporations to export hazards, then it is wrong for any government to facilitate their export. Governments ought not serve as accomplices to corporate wrongdoing.

It is true that our government cannot solve the problems of the entire world. This follows as well from "ought implies can." But our government can avoid causing further problems, by doing what it can to prevent the infliction of harm by corporations that bear its name. And insofar as corporations and governments do inflict harm, they are bound by the no-harm principle to make appropriate restitution to those who suffer from their policies.

people in the form of new dangers to health and safety, but new benefits are also part of the same package. Banned pesticides exported to insect-infested nations may provide agricultural benefits that outweigh any other risks. In countries with severe unemployment, hazardous jobs may be preferable to no jobs at all. "Money for food, plus some asbestos fibers in the air," Shue notes, "can be better than clean air and an empty plate."

This defense, however, Shue emphatically rejects. It can sometimes be acceptable to impose upon others costs that are greatly outweighed by concomitant benefits. But the costs of the hazards exported are costs of a special kind. Consider the costs faced by



Courtesy National Archives

*Do national boundaries set limits to our moral obligations?*

### Are Hazardous Exports Really So Bad?

A final attempt to justify these current practices suggests that the export of hazardous products and jobs does not really violate the no-harm principle. Henry Shue, Senior Research Associate at the Center for Philosophy and Public Policy, examines in *Boundaries* the plausibility of standard arguments for this position.

Hazardous exports do not violate the no-harm principle, it is argued, because they are not, on balance, *harmful*. There may be costs to third-world

asbestos workers in foreign plants using the banned technology. They involve physical damage that is serious and irreversible: lost lungs do not grow back; malignant tumors continue to spread. Furthermore, the health risk posed is undetectable and unpredictable for foreign workers without a level of medical knowledge and care to which they generally have no access. And this undetectability and unpredictability are avoidable at the choice of the firm's management: the damage can often be detected from a simple X-ray exam. Finally, the probability of the damage risked is very high. These central features are shared by

pesticide poisoning and chemically caused cancers as well. When all these conditions hold, Shue concludes, the cost in question is prohibited by the no-harm principle. Such costs are *harms*, if any costs are, and they cannot be imposed on other human beings without their free choice.

A second line of defense is therefore to claim that foreign nationals themselves consent to the new dangers—the harm is not inflicted on them, since they voluntarily accept it. But this defense is legitimate only if the workers and consumers are indeed fully informed of the severity and probability of the harm they face. Consent based on ignorance and false information will not provide any excuses. Yet the current administration dispute is precisely about whether or not manufacturers should be required to *notify* foreign governments of harmful shipments before proceeding with their export. It is the effective transmission of information that is under attack. Likewise, many firms with operations abroad have not informed their workers of health and safety hazards. Shue asks: “Why is informed consent not more appealing when it does in fact relieve a firm of the responsibility of having inflicted harm upon unsuspecting people? I believe that the real explanation . . . has a great deal to do with . . . the discounting of the welfare of people across national boundaries, especially when the boundaries also mark cultural, ethnic, or racial differences. Harm to foreigners is simply not taken as seriously.”

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### Coming Full Circle

The question underlying the export of hazards is a question about the moral significance of national boundaries. The map of the globe is criss-crossed with dotted lines, sometimes seemingly arbitrary, changing with colonizations and rebellions and wars. Yet those lines determine the extent of national sovereignty and the limits of citizenship. Frequently they determine how poor or rich those living within them will be and how able their governments will be to protect their rights and interests.

At one time, when nations were far more isolated

and self-contained, national boundaries may have set limits to moral obligation. They do not limit our obligations today. According to Judith Lichtenberg, a person’s, corporation’s, or nation’s obligations extend as far as the actual or potential effects of their actions. In an ever-increasingly interdependent world, the effects of actions are not easily contained. Our obligations no longer terminate at a nation’s borders, because the effects and consequences of our actions do not cease there. Through technological progress, international trade, and codependence on dwindling natural resources, all nations have come to form one moral community. And so, Lichtenberg writes, “the limits of the planet are the limits of our [moral] world.”

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*“Interdependence means that our wrongs come back to haunt us, and not just others.”*

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This interdependence provides self-interested as well as moral reasons to look after the welfare of other nations and their citizens. Lichtenberg suggests that by furthering the interests of other countries we may in the end further our own interests as well. “Recent world developments have begun to show the extent to which a nation’s long-term self-interest may dictate much greater attention to the interests of other nations. Interdependence means that our wrongs come back to haunt us, and not just others.”

This may be especially true for the exporting of hazards. Advanced and developing nations are increasingly bound together in one interdependent world economy. The United States imports food from some of the same countries to which it exports poisonous pesticides. The Food and Drug Administration reports that “nearly half of the green coffee beans imported into the United States contain various levels of pesticides that have been banned in the United States.” The coffee we drink, therefore, may contain substances intended for consumption only by unprotected foreigners. Our wrongs may come back to haunt us rather sooner than we had expected.

Boundaries: National Autonomy and Its Limits, edited by Peter G. Brown and Henry Shue, *Maryland Studies in Public Philosophy* (Totowa, N.J.: Rowman and Littlefield, 1981), contains the following six essays: “The Distribution of Membership,” by Michael Walzer; “Migrant Workers and National Boundaries: The Basis for Rights and Protections,” by Elsa M. Chaney; “National Boundaries and Moral Boundaries: A Cosmopolitan View,” by Judith Lichtenberg; “Exporting Hazards,” by Henry Shue; “The Limits of State Power in the Contemporary World Economy,” by Thomas J. Biersteker; and “Democracy in Developing Societies,” by Charles R. Beitz. To order, see page 15.

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# A Defense of Affirmative Action

*Thomas Nagel, Professor of Philosophy at New York University, presented the following statement on affirmative action in testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee on June 18, 1981. We thank him for his permission to reprint his testimony here.*

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The term "affirmative action" has changed in meaning since it was first introduced. Originally it referred only to special efforts to ensure equal opportunity for members of groups that had been subject to discrimination. These efforts included public advertisement of positions to be filled, active recruitment of qualified applicants from the formerly excluded groups, and special training programs to help them meet the standards for admission or appointment. There was also close attention to procedures of appointment, and sometimes to the results, with a view to detecting continued discrimination, conscious or unconscious.

More recently the term has come to refer also to some degree of definite preference for members of these groups in determining access to positions from which they were formerly excluded. Such preference might be allowed to influence decisions only between candidates who are otherwise equally qualified, but usually it involves the selection of women or minority members over other candidates who are better qualified for the position.

Let me call the first sort of policy "weak affirmative action" and the second "strong affirmative action." It is important to distinguish them, because the distinction is sometimes blurred in practice. It is strong affirmative action—the policy of preference—that arouses controversy. Most people would agree that weak or precautionary affirmative action is a good thing, and worth its cost in time and energy. But this does not imply that strong affirmative action is also justified.

I shall claim that in the present state of things it is justified, most clearly with respect to blacks. But I also believe that a defender of the practice must acknowledge that there are serious arguments against it, and that it is defensible only because the arguments for it have great weight. Moral opinion in this country is sharply divided over the issue because significant values are involved on both sides. My own view is that while strong affirmative action is intrinsically undesirable, it is a legitimate and perhaps indispensable method of pursuing a goal so important to the national welfare that it can be justified as a temporary,

though not short-term, policy for both public and private institutions. In this respect it is like other policies that impose burdens on some for the public good.

## Three Objections

I shall begin with the argument against. There are three objections to strong affirmative action: that it is inefficient; that it is unfair; and that it damages self-esteem.

The degree of inefficiency depends on how strong a role racial or sexual preference plays in the process of selection. Among candidates meeting the basic qualifications for a position, those better qualified will on the average perform better, whether they are doctors, policemen, teachers, or electricians. There may be some cases, as in preferential college admissions, where the immediate usefulness of making educational resources available to an individual is thought to be greater because of the use to which the education will be put or because of the internal effects on the institution itself. But by and large, policies of strong affirmative action must reckon with the costs of some lowering in performance level: the stronger the preference, the larger the cost to be justified. Since both the costs and the value of the results will vary from case to case, this suggests that no one policy of affirmative action is likely to be correct in all cases, and that the cost in performance level should be taken into account in the design of a legitimate policy.

The charge of unfairness arouses the deepest disagreements. To be passed over because of membership in a group one was born into, where this has nothing to do with one's individual qualifications for a position, can arouse strong feelings of resentment. It is a departure from the ideal—one of the values finally recognized in our society—that people should be judged so far as possible on the basis of individual characteristics rather than involuntary group membership.

This does not mean that strong affirmative action is morally repugnant in the manner of racial or sexual discrimination. It is nothing like those practices, for though like them it employs race and sex as criteria of selection, it does so for entirely different reasons. Racial and sexual discrimination are based on contempt or even loathing for the excluded group, a feeling that certain contacts with them are degrading to members of the dominant group, that they are fit only for subordinate positions or menial work. Strong affirmative action involves none of this: it is simply a means of increasing the social and economic strength

of formerly victimized groups, and does not stigmatize others.

There is an element of individual unfairness here, but it is more like the unfairness of conscription in wartime, or of property condemnation under the right of eminent domain. Those who benefit or lose out because of their race or sex cannot be said to deserve their good or bad fortune.

It might be said on the other side that the beneficiaries of affirmative action deserve it as compensation for past discrimination, and that compensation is rightly exacted from the group that has benefitted from discrimination in the past. But this is a bad argument, because as the practice usually works, no effort is made to give preference to those who have suffered most from discrimination, or to prefer them especially to those who have benefitted most from it, or been guilty of it. Only candidates who in other qualifications fall on one or other side of the margin of decision will directly benefit or lose from the policy, and these are not necessarily, or even probably, the ones who especially deserve it. Women or blacks who don't have the qualifications even to be considered are likely to have been handicapped more by the effects of discrimination than those who receive preference. And the marginal white male candidate who is turned down can evoke our sympathy if he asks, "Why me?" (A policy of explicitly *compensatory* preference, which took into account each individual's background of poverty and discrimination, would escape some of these objections, and it has its defenders, but it is not the policy I want to defend. Whatever its merits, it will not serve the same purpose as direct affirmative action.)

The third objection concerns self-esteem, and is particularly serious. While strong affirmative action is in effect, and generally known to be so, no one in an affirmative action category who gets a desirable job or is admitted to a selective university can be sure that he or she has not benefitted from the policy. Even those who would have made it anyway fall under suspicion, from themselves and from others: it comes to be widely felt that success does not mean the same thing for women and minorities. This painful damage to esteem cannot be avoided. It should make any defender of strong affirmative action want the practice to end as soon as it has achieved its basic purpose.

### Justifying Affirmative Action

I have examined these three objections and tried to assess their weight, in order to decide how strong a countervailing reason is needed to justify such a policy. In my view, taken together they imply that strong affirmative action involving significant preference should be undertaken only if it will substantially further a social goal of the first importance. While this condition is not met by all programs of affirmative action now in effect, it is met by those which address the most deep-seated, stubborn, and radically unhealthy divisions in the society, divisions whose

removal is a condition of basic justice and social cohesion.

The situation of black people in our country is unique in this respect. For almost a century after the abolition of slavery we had a rigid racial caste system of the ugliest kind, and it only began to break up twenty-five years ago. In the South it was enforced by law, and in the North, in a somewhat less severe form, by social convention. Whites were thought to be defiled by social or residential proximity to blacks, intermarriage was taboo, blacks were denied the same level of public goods—education and legal protection—as whites, were restricted to the most menial occupations, and were barred from any positions of authority over whites. The visceral feelings of black inferiority and untouchability that this system expressed were deeply ingrained in the members of both races, and they continue, not surprisingly, to have their effect. Blacks still form, to a considerable extent, a hereditary social and economic community characterized by widespread poverty, unemployment, and social alienation.

When this society finally got around to moving against the caste system, it might have done no more than to enforce straight equality of opportunity, perhaps with the help of weak affirmative action, and then wait a few hundred years while things gradually got better. Fortunately it decided instead to accelerate the process by both public and private institutional action, because there was wide recognition of the intractable character of the problem posed by this insular minority and its place in the nation's history and collective consciousness. This has not been going on very long, but the results are already impressive, especially in speeding the advancement of blacks into the middle class. Affirmative action has not done much to improve the position of poor and unskilled blacks. That is the most serious part of the problem, and it requires a more direct economic attack. But increased access to higher education and upper-level jobs is an essential part of what must be achieved to break the structure of drastic separation that was left largely undisturbed by the legal abolition of the caste system.

Changes of this kind require a generation or two. My guess is that strong affirmative action for blacks will continue to be justified into the early decades of the next century, but that by then it will have accomplished what it can and will no longer be worth the costs. One point deserves special emphasis. The goal to be pursued is the reduction of a great social injustice, not proportional representation of the races in all institutions and professions. Proportional racial representation is of no value in itself. It is not a legitimate social goal, and it should certainly not be the aim of strong affirmative action, whose drawbacks make it worth adopting only against a serious and intractable social evil.

This implies that the justification for strong affirmative action is much weaker in the case of other

racial and ethnic groups, and in the case of women. At least, the practice will be justified in a narrower range of circumstances and for a shorter span of time than it is for blacks. No other group has been treated quite like this, and no other group is in a comparable status. Hispanic-Americans occupy an intermediate position, but it seems to me frankly absurd to include persons of oriental descent as beneficiaries of affirmative action, strong or weak. They are not a severely deprived and excluded minority, and their eligibility serves only to swell the numbers that can be included on affirmative action reports. It also suggests that there is a drift in the policy toward adopting the goal of racial proportional representation for its own sake. This is a foolish mistake, and should be resisted. The only legitimate goal of the policy is to reduce egregious racial stratification.

With respect to women, I believe that except over the short term, and in professions or institutions from

which their absence is particularly marked, strong affirmative action is not warranted and weak affirmative action is enough. This is based simply on the expectation that the social and economic situation of women will improve quite rapidly under conditions of full equality of opportunity. Recent progress provides some evidence for this. Women do not form a separate hereditary community, characteristically poor and uneducated, and their position is not likely to be self-perpetuating in the same way as that of an outcast race. The process requires less artificial acceleration, and any need for strong affirmative action for women can be expected to end sooner than it ends for blacks.

I said at the outset that there was a tendency to blur the distinction between weak and strong affirmative action. This occurs especially in the use of numerical quotas, a topic on which I want to comment briefly.

A quota may be a method of either weak or strong

## The Equal Opportunity Myth

Affirmative action programs have subtly begun to change the tenor of American life. In the past, appointments and promotions to governmental service positions, government contracts, admission to universities depended—at least in theory—on individual achievement. Evasions and abuses there were aplenty. . . . But at least the principle of individual merit went unchallenged, and after World War II became increasingly effective in its enforcement.

L. H. Gann and Alvin Rabushka, "Racial Classification: Politics of the Future?" *Policy Review*, No. 17 (Summer 1981): 87.

There is a common argument, which we are likely to hear with even greater frequency in the Reagan administration, that giving employment preference to blacks (or other minorities or women) violates a widely acknowledged principle which, though not always faithfully followed, has never been challenged or repudiated. The principle is the equal opportunity/merit principle, which says that people ought to be selected for jobs on the basis of their job-related qualifications, and that jobs should go to those best qualified for them. The equal opportunity/merit principle is violated when factors other than an applicant's job-related qualifications—factors such as his or her membership in some group—are allowed a role in selecting or rejecting him or her for the job.

Perhaps all jobs, positions, and contracts ought to be given out on the basis of individual merit so defined. But it is a myth that official American policy has adhered even in theory to the equal opportunity/merit principle. For most of this cen-

ture it has been the explicit and continuous policy of federal and state governments to give preferences in government employment to veterans. Such preferences benefit or hinder the employment ambitions of millions of workers. In some states, non-veterans stand virtually no chance of moving upward into the best classified positions to which veterans' preference applies.

Veterans' preference has been continually upheld by the courts as a legitimate exercise of governmental power, the latest decision coming from the Supreme Court in 1979 (*Personnel Administration Mass. v. Feeney*, 47 LW 4650 [1979]). There has never been a significant popular clamor against veterans' preference nor any popular effort to overthrow it.

The preferences given to veterans cannot be justified on the grounds that they enhance the operations of the equal opportunity/merit principle since they operate most often to defeat it. For example, in Massachusetts, veterans who pass the competitive exam for a job are to be ranked, in order of their scores, above all other candidates. In 1974, to take but one common instance of the operation of the Massachusetts system, Carol Anthony tied for the highest score on the examination for the position of Counsel I; yet she was ranked 57th on the list of eligibles for the job, behind 56 veterans, 54 of whom scored lower than she. (*Anthony v. Commonwealth of Massachusetts*, 415 R. Supp. 485 [1976], at 490). It hardly makes sense to see the Massachusetts law as designed to enhance the chances of the very best qualified applicants to get government positions for which they apply. On the contrary, the law quite obviously reflects the willingness of citizens of the state to deviate from

affirmative action, depending on the circumstances. It amounts to weak affirmative action—a safeguard against discrimination—if, and only if, there is independent evidence that average qualifications for the positions being filled are no lower in the group to which a minimum quota is being assigned than in the applicant group as a whole. This can be presumed true of unskilled jobs that most people can do, but it becomes less likely, and harder to establish, the greater the skill and education required for the position. At these levels, a quota proportional to population, or even to representation of the group in the applicant pool, is almost certain to amount to strong affirmative action. Moreover it is strong affirmative action of a particularly crude and indiscriminate kind, because it permits no variation in the degree of preference on the basis of costs in efficiency, depending on the qualification gap. For this reason I should defend quotas only where they serve the purpose of weak

affirmative action. On the whole, strong affirmative action is better implemented by including group preference as one factor in appointment or admission decisions, and letting the results depend on its interaction with other factors.

I have tried to show that the arguments against strong affirmative action are clearly outweighed at present by the need for exceptional measures to remove the stubborn residues of racial caste. But advocates of the policy should acknowledge the reasons against it, which will ensure its termination when it is no longer necessary. Affirmative action is not an end in itself, but a means of dealing with a social situation that should be intolerable to us all.

—Thomas Nagel

strict merit hiring *for a moral reason*—because of a sense that it is fitting or worthy to reward in this way veterans for their national service, even at the cost of some inefficiency in state government services.



Courtesy National Archives

One could hold, of course, that although veterans' preference is a common American practice, it is nevertheless an unjustified practice precisely because it does violate the equal opportunity/merit principle. One can condemn both veterans' preferences and racial (or sexual) preferences without inconsistency. If, however, there are thought to be compelling moral reasons to continue to give job preferences to veterans—most of whom completed their service prior to 1960—then might there not be equally compelling moral reasons for extending job preferences at least to some blacks (and women) to make up for a history of exclusion and exploitation? We can certainly ask what distinguishes the moral claim of a veteran to special preference from the moral claim of a black (or woman).

There may be every reason in the world to condemn government practices that foster or require racial (or sexual) preferences. However, such preferences should be condemned for their real faults, if they are intolerable, and not because they violate an American tradition of merit hiring. Racial (or sexual) preference may be morally different from veterans' preference; but the difference cannot be that the one does, and the other does not, deviate from the equal opportunity/merit principle.

—Robert Fullinwider

Robert Fullinwider is a Research Associate at the Center for Philosophy and Public Policy. He is the author of *The Reverse Discrimination Controversy: A Moral and Legal Analysis* (Totowa, N.J.: Rowman and Littlefield, 1980). To order, see page 15.

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# Why People Fear Nuclear Power

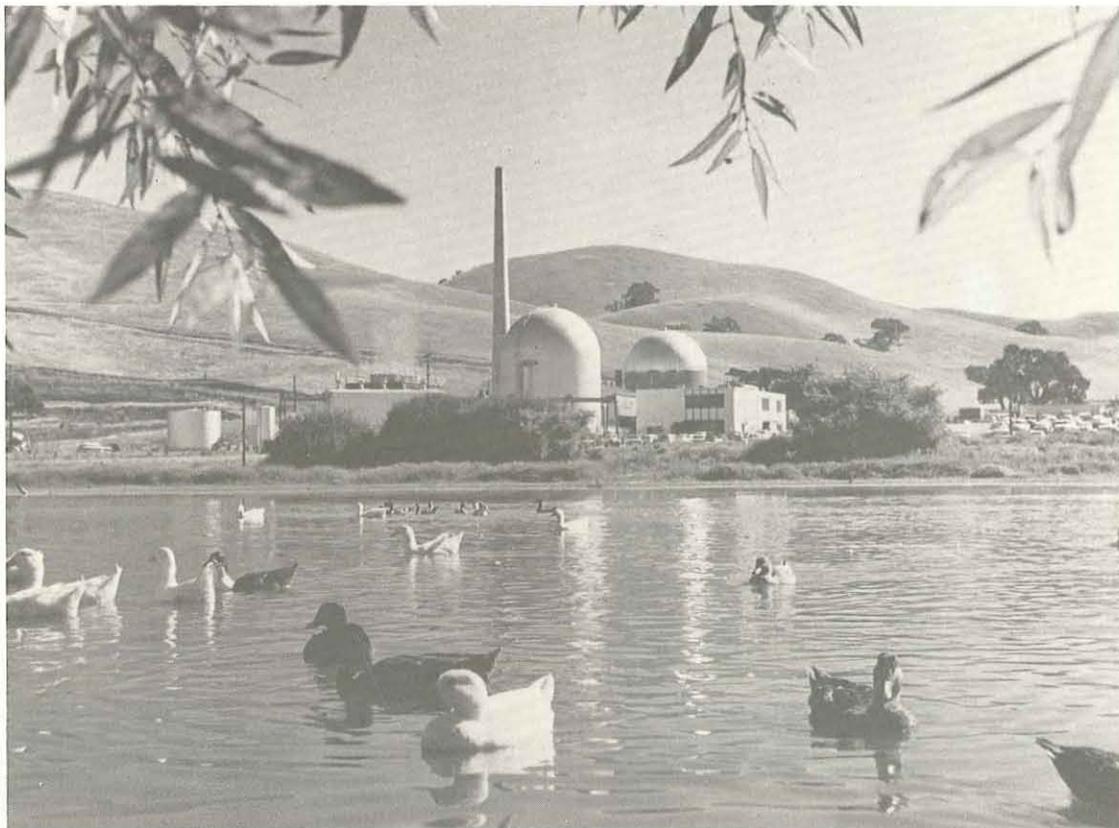
The debate over nuclear power, in the United States at least, is *the* technological debate of our times. Deep and acrimonious controversy surrounds the complicated set of risks and costs belonging to the production of nuclear energy. Is nuclear power a comparatively cheap or expensive way to produce electricity? Massive public subsidies for nuclear- and coal-generated energy make clear assessment of comparative economic value difficult; and while operating costs of nuclear plants may be lower than coal plants, construction costs are far higher, and "back end" costs of decontamination and waste disposal have not even been calculated. Do the risks of future Three Mile Islands and nuclear weapons proliferation make nuclear power too dangerous to pursue? The estimates of these risks are hotly disputed.

Questions about the risks and economics of nuclear power are putatively empirical questions. But even if these were definitively settled, the public fear

of nuclear power would be unlikely to go away. No new empirical facts or studies have much impact on public opinion in this area, nor do those involved in making or lobbying about nuclear policies think this impasse is likely to dissolve. Nuclear power is symbolic, and it has become a surrogate for a debate about some broadly social issues. In examining the possible reasons why people fear nuclear power, we raise a host of other concerns about the role of experts, the acceptance of risk, and the distribution of power in our society.

## Leaving Nuclear Technology to the Experts

Defenders of nuclear power sometimes charge that people are afraid because they are hopelessly ignorant about the facts of nuclear technologies, and led astray by an almost equally ignorant and often irresponsible press. This account presupposes that the



public opposition is basically technical, but misinformed.

It may be, however, that the contending parties have different political agendas in the dispute that centers on this technology. The nuclear power controversy is a political war, and the participants on both sides may be pursuing other goals on the battleground over health risks and safety standards, if this is where they think they can most easily achieve them. The perception of health and safety risks, by both experts and non-experts, is strongly colored by these other factors. Someone who thinks that nuclear technologies have bad political implications will tend to see the health risks as worse than others see them. And someone who is acutely aware of the economic costs of safety equipment might tend to see the risks as lower than others see them. The experts are not without their own political axes to grind, and objective assessments are hard to identify.

Furthermore, any "expert" who wants to render some general judgment about nuclear power must address subjects beyond his or her area of special competence. The issues involved require a greater understanding of physics, engineering, medicine, epidemiology, geology, economics, systems analysis, psychology, management techniques, and so on, than any individual can muster. So, in a sense, there are no experts, no individuals who have special insight into all the technical areas, let alone the non-technical ones.

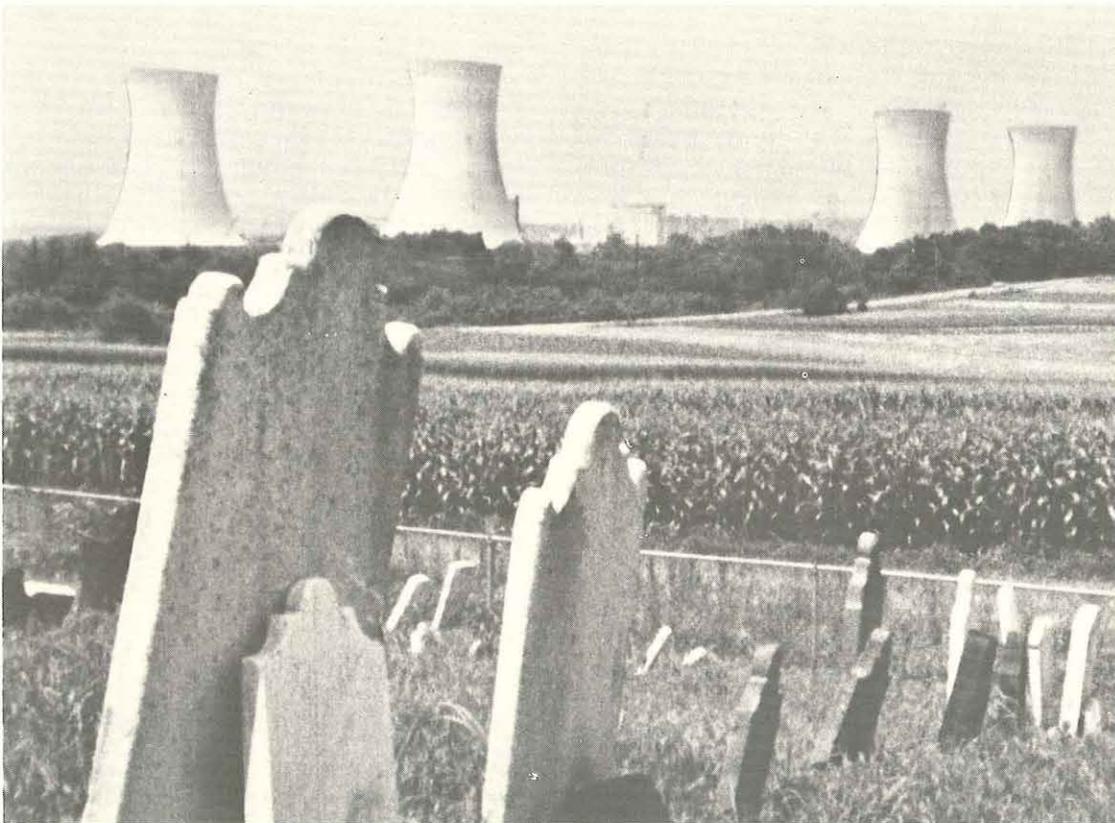
Finally, rather than relying on experts to assess nuclear technology, people increasingly want a technology for which such blind reliance is unnecessary. One technology may be preferred to another because it allows those served by it to make their own autonomous decisions about its risks and costs. If nuclear power requires a surrender to the authority of experts, this may itself constitute a reason to reject that technology.

### Technological Pessimism and Aversion to Risk

A second view is that people fear nuclear power because they are extraordinarily risk averse about nuclear power and basically pessimistic about new and sophisticated technologies.

The claim about technological optimism and pessimism can be dismissed as a red herring. Opponents of nuclear power are often quite optimistic about, say, the commercial feasibility of photovoltaic cells or sophisticated systems for converting biomass to fuel. Some nuclear engineers are paradigms of techno-

*Perceptions of nuclear risk vary with the political and economic perspective of the observer. Photo left courtesy General Electric Nuclear Energy Division and the Atomic Industrial Forum. Photo right courtesy Parallel Films, from We Are the Guinea Pigs.*



logical pessimism when they talk about solar power. Optimism and pessimism are technology-specific.

The risk-aversion charge is more serious. The public expresses fear about nuclear power far out of proportion to fear about other threats to their well-being. The risks of acid rainfall, for example, seem to inspire less general concern than risks of toxic radioactivity, even though the probability and magnitude of the former may make them no less threatening.

There is nothing necessarily irrational, however, about refusing a risk that is measurably lower than other risks one accepts. This would be clearly irrational only if the *qualities* of different risks (as opposed to the measurable balance of expected harms and benefits) are irrelevant to a rational decision to accept or reject them. This is at least counterintuitive.

The risks posed by nuclear power have several very special and disturbing characteristics. First, the risks and benefits are distributed differently across generations. The toxicity of nuclear wastes spreads risks over millennia, while the foreseeable benefits of using nuclear power are near-term in comparison. Thus the question of moral obligations to future generations is raised in dramatic form.

Second, the risks of nuclear power are in many cases catastrophic risks. These risks have a very low probability of occurrences with nearly infinite costs. Apart from the very real problem of assigning meaningful probability estimates to such catastrophes, it is difficult to know how we should evaluate them morally. One accident killing 50,000 people may be worse than a series of 50,000 single-death accidents.

Third, the risks of nuclear power include risks of genetic mutations as well as the risk of cancer. Even if the dose-response relationships are similar for these two kinds of feared side-effects, we might think one risk is a more serious concern. Women, for example, are significantly more likely than men to oppose nuclear power, perhaps primarily because of their more acute concern for the genetic effects of radioactivity on the unborn children of future generations. Some ill effects—including some ways of dying—are more dreaded than others. It matters to us not only when and where we die, but how, and the suffering we bequeath our children may matter to us still more. The nature and quality of these nuclear risks determines—and should determine—our judgment of their acceptability.

### Choosing a Way of Life

Finally, people may fear nuclear power because of the kind of economic and political system—the kind of life—that they feel inescapably accompanies it. Following Amory Lovins, many people see our energy policy in the United States as embodying an exclusive choice between a nuclear future (the “hard” path of technological development) and a solar one (the “soft” path). Nuclear technologies are thought by these critics to be necessarily highly capital-intensive and

highly centralized in their deployment, as a system for producing and distributing the socially basic good of electricity. Solar, or soft, technologies, on the other hand, are thought to be compatible with, or even to encourage, a decentralized superstructure of deployment and production. Nuclear technologies, then, are likely to concentrate capital and power in the utility and oil industries (who own most of the uranium) to an even greater extent than they are concentrated today.

Some people believe that this path of develop-

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*Sociodynamic reasons for fearing nuclear power call our attention to the kind of society we will create by the economic and technological decisions we make. These fears serve as reminders that economic considerations, though crucial, are not the only considerations. It is not only a level of welfare that is at stake in the nuclear power controversy, but a kind of life as well.*

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ment, like some other trends toward concentration of wealth and power in fewer and fewer industries, threatens the ability of individuals or even nations to control their own destinies. If the technology for producing energy requires centralized control, and if political power depends largely on energy, then technological development in the area of energy production can determine the distribution of social and political power in our world.

Fortunately, however, the dangers posed by the concentration of wealth and power can be resisted, for people can govern themselves and block this concentration. They can define individual rights and principles of distributive justice that they will act to defend. This is one of the primary purposes of government in a democratic society. We can make political decisions about the governmental and economic structures that our children will inherit.

This sociodynamic reason for fearing nuclear power calls our attention to the kind of society we will create by the economic and technological decisions we make. Like the fear about risks, it forces us to confront our moral requirements to future generations. Both these fears serve as reminders that economic considerations, though crucial, are not the only considerations. It is not only a level of welfare that is at stake in the nuclear power controversy, but a kind of life as well.

*This article is drawn from “Understanding the Nuclear Power Controversy,” by Douglas MacLean, Research Associate at the Center for Philosophy and Public Policy. He is co-editor with Peter G. Brown of Energy and the Future, in preparation, and is currently completing a book on the ethics of energy policy.*

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# How Well Off Should Welfare Make You?

One hears such stories all the time. A middle-class housewife carefully clips coupons for store-brand tunafish while the single man behind her in line buys sirloin steak with food stamps. A self-supporting family scrimps to meet its monthly rent, while a family in subsidized housing can afford a new T.V. These tales, whether fact or fiction, exert a powerful hold on the popular imagination. To many it seems wrong that someone on welfare should end up better off than someone who isn't.

A similar principle is recognized in debates over equity in welfare policy. Two different conceptions of equity are frequently cited in planning income support programs. *Horizontal* equity is the principle that those in similar circumstances should be treated similarly. *Vertical* equity is the principle that persons in different circumstances should be treated differently. Vertical equity is often taken to be relevant in explaining why we find the two opening examples disturbing.

According to Jodie T. Allen, formerly Special Assistant to the Secretary of Labor, vertical equity means that people in different social and economic situations ought to be treated differently. Redistributive taxes transfer income from more to less affluent individuals, and horizontal equity requires such redistribution to provide equal treatment of those with equal needs. But vertical equity limits the extent of this redistribution.

On Allen's view, "Given a distribution of income, the effect of tax or transfer policies should not be such as to reverse the position of persons in the resulting income distribution." If one family earns more than another before taxes and transfers, they should still earn more after, though the gap may be narrower. (Allen argues, however, that the gap should not be "unduly compressed.") This is not to say that the better-off should not be taxed at all to benefit others, but they should not be taxed to the point of losing their relative place in the distribution of income.

This principle, Allen points out, is persistently violated in the design of existing welfare programs, such as Medicaid, day care, and food stamps. Medicaid, for example, violates vertical equity on two scores. First, full coverage is extended to all families below a certain income (the eligibility limit for welfare), while families just slightly above the cut-off are left to fend for themselves. "If earnings on other income increase even one dollar beyond the eligibility limit for welfare,

the former eligible thus abruptly loses a benefit worth on the average some \$1,850 to his or her family." Thus a welfare family slightly below the limit ends up better off than a taxpaying family slightly above the limit.

Second, Allen charges that "there is an even more serious equity problem implicit in the Medicaid design. . . . At least in states providing broad-gauge Medicaid coverage, welfare recipients are assured a level of medical care beyond the financial reach of all but the most affluent. In dramatic but not unlikely terms, we may find the policeman's wife waiting in line at the clinic while the welfare mother meets her pre-arranged appointment with a Park Avenue specialist."

## Welfare and Work Incentives

There is a clear practical reason to care about vertical equity. If people who don't work get just as much, or more than, people who do, incentives to work will be considerably diminished. Most jobs, particularly those available to the uneducated and unskilled, are not intrinsically rewarding or satisfying. Without extrinsic financial incentives, welfare recipients would have less reason to take such jobs, and those employed would have less reason to keep them. To put it bluntly, many of us wouldn't work, or wouldn't work as long and hard, if it weren't for the money.

Studies have shown that independent sources of income do, as expected, reduce work effort. Allen reports, "Several major field experiments have been launched to measure the impact of transfer programs on the work effort of prime age adults in families. The largest and most reliable of the experiments, the Seattle-Denver Experiment, recently [showed that] cash transfer programs of the size and design most frequently discussed in political debate do reduce work effort, and those reductions can be related to . . . the level of benefits."

Working and saving increase society's overall wealth and resources. If productivity dips, the size of the pie available for distribution is accordingly shrunk, and there is that much less for everyone. It may therefore be to the best advantage of even the least well-off that a hierarchical income structure is maintained. If income differentials provide incentives

that stimulate productivity, in the long run all economic classes benefit.

However, the future benefits of trickled-down prosperity may not be great enough to offset inadequate welfare payments in the present. Vertical equity has been preserved by holding the level of welfare payments below the earnings of the poorest paid workers, and such payments may be insufficient to meet urgent human needs. Robert Fersh, formerly Confidential Assistant to the Administrator of the Food and Nutrition Service of the U.S. Department of Agriculture, points out: "The failure to provide for adequate work incentives . . . seems to be a rather academic and distant concern in comparison to the direct effect of hunger and substandard housing on human beings . . . . A system which maximizes sensitivity to these concerns would seem to be expressive of some fundamentally important human values."

### Welfare and Equity

There is another, more explicitly moral, reason to care about vertical equity. Just as it seems *fair* that people with equal needs should receive equal benefits, so it is taken to be *fair* that people in different economic positions should retain their different positions even after the needs of the less fortunate are met. The principle of vertical equity, after all, is supposed to be a judgment about what is *equitable*.

*Why* isn't it fair for the income ordering to be reversed? *Why* isn't it fair for someone who earns more to end up with less than someone who doesn't work at all? If the appeal to fairness is not just another expression of the need for work incentives, on what deeper principle is it grounded?

The underlying principle seems to be that income should be distributed on the basis of merit, where merit is measured in proportion to work. This principle can itself take various forms—for example, that income should be distributed according to effort, or according to achievement. The interpretation we choose determines our moral judgments very differently. But on this principle it certainly seems unfair for someone who works to earn less than someone who doesn't.

Norman Daniels, Professor of Philosophy at Tufts University, raises two strong objections against the application of this principle in welfare policy. First, the great majority of welfare recipients are those who are excused from the work requirement for one reason or another: the elderly, the handicapped and disabled, children, and parents solely responsible for child care. With the possible exception of the latter, these groups are not able or not expected to compete in the labor force. The able-bodied man of the opening example is hardly the typical welfare case. But if most recipients cannot be legitimately held to the merit principle, how does it violate that principle to distribute income to them on other grounds?

Writes Daniels: "If the population to whom Allen's equity principles are to apply is that part of the population which it makes no sense to hold responsible for their inability to meet their needs, then it is hard to see why it is so important not to reverse income rank orderings in order to guarantee them adequate benefit levels. Perhaps for those who fare badly because they merit little, [such principles] might be thought appropriate. But for those who are excused from merit considerations, and for whom we have some concern that their needs be met, adhering to these principles seems a misplaced scrupulosity, if not an outright contradiction."

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*Income is not generally distributed on the basis of how hard or well one works. It is unjustified, then, to impose a merit principle on the distribution of income to the poor, when it does not govern the distribution of income to other classes.*

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Daniels's first objection assumes that the merit principle does indeed apply, but argues that most of the welfare population is a legitimate exception to it. His second objection challenges the principle itself, as an accurate representation of how income is in fact distributed in our society. "Do we live in a system in which, on the whole, pre-tax, pre-benefit income rank order and income distances comply with some basic meritocratic principles?" he asks. He answers that we do not. Vertical equity cannot be grounded in the work ethic. Income is not generally distributed on the basis of how hard or well one works. (Consider, among others, the example of inherited wealth.) It is unjustified, then, to impose a merit principle on the distribution of income to the poor, when it does not govern the distribution of income to other classes.

*Should* a merit principle determine economic distribution? Before answering, we would need to reach some agreement on what is to count as merit and look more closely at the connection between merit and reward. Philosophers such as John Rawls argue that our talents and abilities—as well as our capacity for effort and discipline—are largely matters beyond our control for which we can claim no fundamental credit. To distribute wealth on such grounds seems capricious and morally arbitrary. Clearly we need a better and deeper understanding of these principles before we can elevate them into grounds for ignoring the needs of the least well-off in our society.

*The views of Jodie T. Allen, Robert Fersh, and Norman Daniels are taken from their chapters in Income Support: Conceptual and Policy Issues, Maryland Studies in Public Philosophy (Totowa, N.J.: Rowman and Littlefield, 1981). To order, see p. 15.*

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