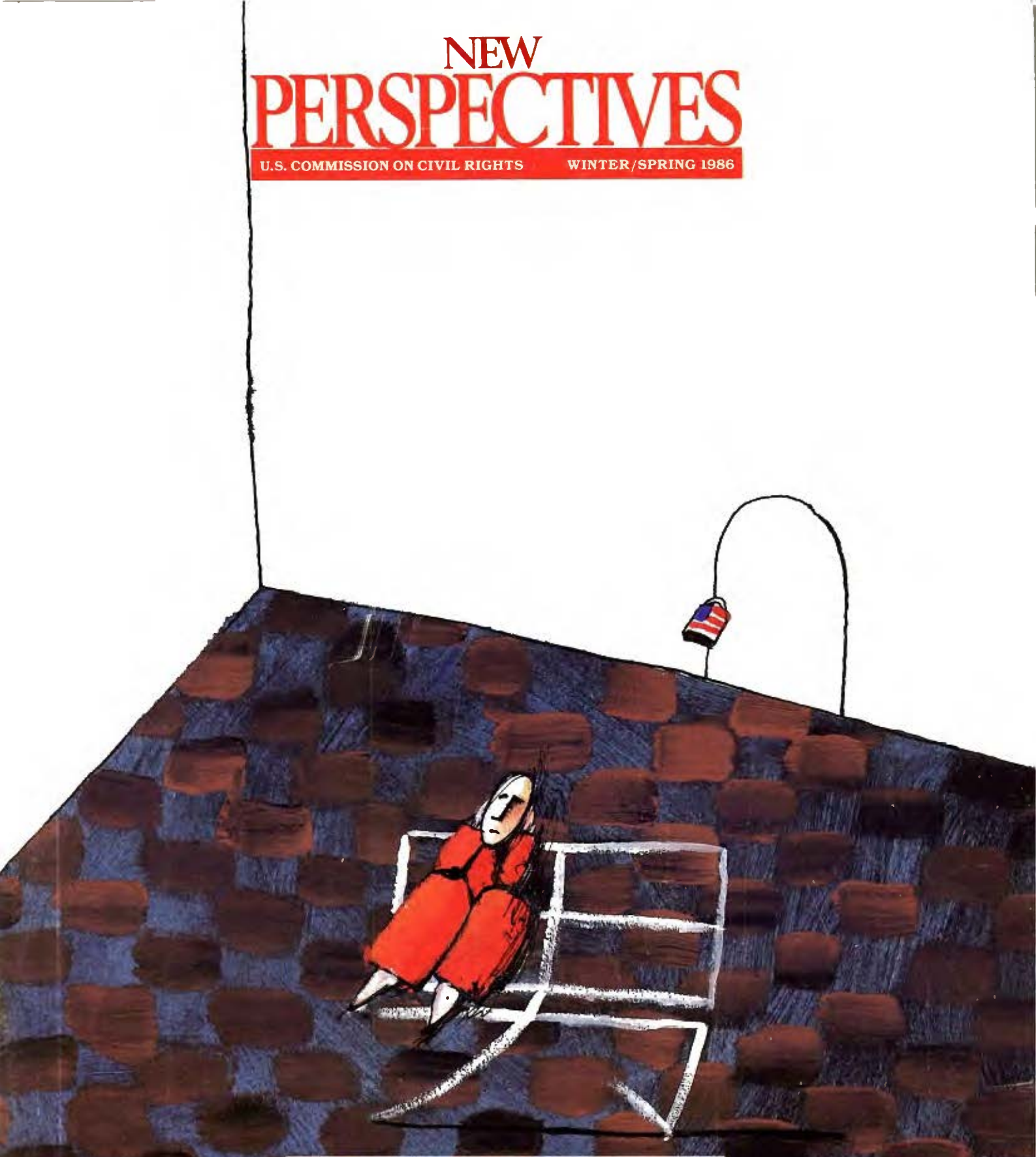
NEW PERSPECTIVES

U.S. COMMISSION ON CIVIL RIGHTS WINTER/SPRING 1986



Japanese Americans During WWII: Two Views on Redress
by Peter Irons and Ken Masugi

The Latest Apologias for Preferential Treatment
by Fred Baumann

Civil Rightsspeak
by Walter Williams

Jeremy Rabkin on Ronald Dworkin

Editorial

Individual Rights Versus Governmental Prerogatives

This issue of *New Perspectives* examines the philosophical premises of the civil rights debate. On what grounds should our government reach into private life to favor members of protected groups over other Americans? Precisely how far should the government be allowed to reach? Political scientist Fred Baumann looks at the theoretical supports proponents of color-conscious affirmative action have settled on now that remedial color-consciousness has become more or less part of the social landscape. Baumann asks us to consider whether our ideal of equal treatment under the law might best be served—and actual cases of discrimination most effectively attacked—by the tempered kind of intrusion into private life that the Civil Rights Act of 1964 originally represented.

Political scientist Jeremy Rabkin, reviewing works by theorist Ronald Dworkin, sees mirrored in Dworkin's thought the two irreconcilable strains of contemporary liberalism: a belief in radical individualism, coupled with a demanding, communitarian vision of what public policy should be expected to achieve. Economist Walter Williams contends, in his usual brisk manner, that an overbearing public policy goal—racial balancing in every facet of American life—has taken hold in the civil rights community, distorting the very meaning of key terms in the debate.

* * * *

Congress is now considering a bill to award monetary redress to the more than 100,000 persons of Japanese descent who were relocated or interned at the outset of the Second World War. We present a debate on this highly charged subject by two political scientists, Peter Irons and Ken Masugi. Important legal and moral questions surround the events of 40 years ago. Was the removal from the West Coast of the ethnic Japanese—two-thirds of whom were American citizens—a reasonable security measure at the time? Irons and Masugi contest this as well as the issues of prejudice in official ranks, the latitude of government action in time of war, the legal case made by the U.S. government during the 1940s, and finally, the appropriateness of the remedy currently being considered.

Unfortunately, the deprivation of the rights of Japanese Americans and other Asians solely because of their race is still an issue today. The U.S. Commission on Civil Rights recently examined incidents of violence, harassment, intimidation, and vandalism perpetrated against members of the ethnic Japanese, Chinese, Filipino, Korean, and Vietnamese communities. Its findings will be presented in a report expected to be ready for release in the fall. ⌘

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Japanese Americans During WWII

Justice Long OVERDUE

by Peter Irons

The case for awarding monetary redress to the Japanese American survivors of America's wartime internment camps is clear and compelling. Stripped of rhetoric and emotion, the case for redress is rooted in a fundamental American principle: the victims of injury and injustice deserve compensation that is meaningful and proportional to their suffering. The fact of injury, and the assessment of responsibility, are enough. However difficult the calculation of adequate damages, this principle of redress is universal in application. Although we look to law and legislation as sources of redress, the ultimate source can be found in American principles of equity and fairness.

Behind every moral and legal principle are real people. Indeed, without an awareness of the people who suffer injury and injustice, our principles are empty and abstract. We know, or should know, that more than 120,000 Americans of Japanese ancestry were forced from their homes in 1942 and herded at gunpoint into barbed-wire compounds that were located in deserts and swamps. They were all either American citizens or resident aliens who had been lawfully admitted but were barred from citizenship by discriminatory laws. Not one had been charged with a crime, given the right to counsel, or provided a chance to establish his or her loyalty to the United States. These victims of wartime hysteria spent an average of 900 days in captivity, held as "retribution" for the Japanese attack on Pearl Harbor.

To all but a few of their fellow citizens, Americans of Japanese ancestry were faceless and nameless. The military official who recommended their internment, General John L. DeWitt, put a common prejudice into blunt words: "A Jap's a Jap." American birth and citizenship could not dilute the "racial strains" that united all members of this "enemy race," DeWitt claimed. He adopted the worst features of the politics of America's wartime adversaries: "There isn't such a thing as a loyal Japanese and it is just impossible to determine their loyalty by investigation." It is easier, of course, to subject people to injustice and indignity when they are robbed of identity and individuality by stereotype, stripped of their names and faces.

Perhaps we can better understand the case for redress by putting a name and face on a survivor of the internment camps and listening to his story. At the time of Pearl Harbor, Norman Mineta was a ten-year-old boy in San Jose, California. His father was an insurance agent who had lived in San Jose for 40 years. "My father was not a traitor," Norman later said. "He came to this country in 1902 and he loved this country. My mother was not a secret agent. She kept house and raised her children to be what she was, a loyal American. Who amongst us was the security risk? Was it my sister Aya, or perhaps Etsu, or Helen? Or was it my brother Al, a sophomore pre-med student at San Jose State, who is now an M.D. in San Jose? Or maybe I was the one, a boy of ten who this powerful Nation felt was so dangerous I needed to be locked up without a trial, kept behind barbed wire, and guarded by troops in high guard towers armed with machine guns."

Norman Mineta was a normal American kid when he and his family were herded into the Santa Anita Race Track, the first stop on a trip that ended in a barren desert camp. Norman's father expressed his despair in a letter to Caucasian friends who saw the Mineta family off at the train station: "My heart almost broke out and suddenly hot tears just pouring out. We whole family cried out and could not stop until we got out of our loved county."

Forty years after his family returned to San Jose to rebuild their shattered lives, Norman Mineta represents his native city in Congress, a tribute to determination, hard work, and an endur-

Continued on page 5

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Japanese Americans During WWII

The Duties of CITIZENSHIP

by Ken Masugi

Because America made human equality its founding principle, it can have an ethnic dilemma. That fact should inform reflection on the World War II relocation from the West Coast of 112,000 ethnic Japanese, two-thirds of whom were American-born, and the rest resident aliens. Today, redress for the relocated ethnic Japanese—through individual payments, pardons, apologies, educational funds, and community grants—has gained national attention, largely through *Personal Justice Denied,* the report and recommendations of the Commission on Wartime Relocation and Internment of Civilians (CWRIC).[1] But the CWRIC's work, and other criticism of the relocation, rests on dubious historical, political, and ethical premises. If adopted, redress legislation would erode our ability to practice democratic self-government at home and to defend it from tyrannical forces abroad, for it distorts our understanding of the military and civil conditions for successful struggle against tyranny.

The flaw in relocation criticism and redress advocacy brings us far beyond a squabble over spoils for an ethnic group, to our contemporary inability to comprehend politics in terms of regimes and citizenship. The concepts of regime and citizenship are omitted from contemporary political discussions. Regimes constitute political ways of life, with distinctive answers to the question of human purpose. And citizenship involves, as any child knows, both rights and duties. It is not only that today rights have been prized above duties. Civil rights—previously held to be the rights of all citizens—have come to mean the rights of racial, ethnic, and other minorities. Sophisticates regard citizenship as the exercise of the rights of a claimant, the demand for perfect or "total justice." But when justice is forced to be perfect, and when citizens are reduced to claimants, we have perfect despotism. The recent lower Federal court overrulings of cases such as *Korematsu* v. *U.S.* (the 1944 exclusion case) and *Hirabayashi* v. *U.S.* (the 1943 curfew case), and the reinstatement of a $24 billion lawsuit by former evacuees, should give us pause. Military, political, and judicial decisions, treated out of historical context, are made to conform to present-day standards of fairness.

I will argue that citizenship in a regime honoring the founding principle of equality should be the principal focus of discussions of civil rights. And this means exercise of duties, especially the ultimate duty of military service in time of war. But redress, as with many other affirmative action proposals, would balkanize America and divide Americans against each other. It would undermine the feeble notion of citizenship that still exists and distract from the true focus of civil rights policies: the development of mature citizens.

Common sense and experience affirm that immigrants have a politically significant affection for the land of their ancestors. Moreover, in the case of the ethnic Japanese born in America, this conflict of loyalty was heightened by dual citizenship imposed on them by the government of Japan. Many renounced their Japanese citizenship, but some did not. For all Asians not born in America (except the Chinese, our allies in the war), American citizenship would be unattainable until the McCarren-Walter Act of 1952. Discriminatory state legislation (such as alien land laws and anti-miscegenation laws) resulted in a separation of ethnic Japanese from the mainstream of American life, which was racially segregated in many other respects. Segregation and discrimination no doubt increased ethnic Japanese isolation, as well as attachment to Japan and its institutions.

The issue is not "racism" but rather what statesmen might reasonably have concluded was necessary in order for a war against tyrannical, racist powers to be won. Let us turn to what Army Chief Historian David Trask said he was "unable to certify . . . as a credible piece of history," that is, the CWRIC report. The CWRIC maintains that the best evidence available to the Roose-

Continued on page 9

Dr. Masugi, a member of the California Advisory Committee of the U.S. Commission on Civil Rights, is director of the Bicentennial Project of the Claremont Institute and editor of the Claremont Review.

Justice Long Overdue

Continued from page 2

ing belief in American principles. Like many Japanese Americans, he has prospered and gained the respect of his fellow citizens. One might think that Congressman Mineta would be content with his achievements, his boyhood wounds healed. But he has become an articulate and influential sponsor of the redress legislation currently before the Congress. Speaking to a congressional panel in 1984, Mineta supported redress as "liquidating damages resulting from the profound abridgement of basic constitutional rights."

The legal case for redress is substantial, and will be discussed at length below. But the redress principle is rooted in the concept of restoring the dignity and health—both mental and physical—of the victims of injury. Congressman Mineta put this aspect of the redress argument into these words: "When we were first released from camp, Americans of Japanese ancestry did not think primarily of our legal rights. We were shamed and held up to public humiliation by the internment. Frankly, we just did not want to think or speak about it. All our energies went into rebuilding. And then we began to think about what had happened to us. Our children began to ask questions about the missing years, the silent years that were never discussed at home."

"Daddy, are we related to the Korematsu in the Supreme Court case?" Fred Korematsu paused before he answered: "Well, that was me."

One of those children asked a question that speaks volumes about the trauma of internment and the case for redress. Karen Korematsu was a teenager in the 1960s, living in the San Francisco Bay Area town of San Leandro, California. One of her high school classmates gave a history class report on the wartime internment, and mentioned the *Korematsu* Supreme Court decision, which upheld General DeWitt's exclusion orders. Karen went home and asked her father this question: "Daddy, are we related to the Korematsu in the Supreme Court case?" Fred Korematsu paused before he answered: "Well, that was me." Even his children had remained unaware of his wartime challenge; years passed before the shame of a criminal record turned to pride at his lonely stand against military power.

The experience of Fred Korematsu is hardly typical of the victims and survivors of internment, but it provides the legal foundation of the redress argument. Korematsu was one of only three young men who challenged the military curfew and exclusion orders that preceded the internment program. Along with Gordon Hirabayashi and Minoru Yasui, Korematsu was convicted of a criminal offense and pressed his case to the Supreme Court, which upheld his conviction in 1944. The year before, in affirming the convictions of Hirabayashi and Yasui, the Court adopted the government's thesis of racial disloyalty. The Court also accepted without inquiry the government's claim that "military necessity" required the challenged orders to protect the West Coast against sabotage and espionage.

The Supreme Court opinions in the wartime internment cases came under immediate and continuing criticism. As early as 1945, Eugene Rostow of the Yale Law School blasted the opinions as a judicial disaster on two grounds: the Court had yielded to racial stereotypes, and had shown such deference to military judgment that the justices had abdicated their responsibilities. Rostow urged that "the basic issues should be presented to the Supreme Court again, in an effort to obtain a reversal of these war-time cases."

Four decades passed before the internment cases were granted the judicial review that Rostow had urged. During these tumultuous years, the Supreme Court struck down racial segregation in public schools, the civil rights movement took its quest for equality and justice to the streets, and Congress responded with legislation to protect rights of public accommodation, voting, and employment. During the 1970s, Americans of Japanese ancestry finally ended their "silent years" with a drive for redress, which first took shape in congressional establishment of a Commission on Wartime Relocation and Internment of Civilians (CWRIC). This blue-ribbon panel included members and former members of Congress, the Cabinet, and the Supreme Court.

In public sessions across the country, the Commission held hearings at which some 750 witnesses appeared, including survivors of the internment camps and their former wardens. Perhaps the most dramatic and revealing testimony came from John J. McCloy, who directed the internment program as Assistant Secretary of War. Pressed by Judge William Marutani, the only Commissioner of Japanese ancestry and himself a camp survivor, McCloy blurted out that he considered the internment a justified "retribution" for the Pearl Harbor attack.

Perhaps more important to the CWRIC's work than public testimony was the exhaustive sifting and review of thousands of government documents, many of them never before examined, including records of the War Department, FBI, Naval Intelli-

Illustrations by James Yang

gence, and other agencies. Out of this mass of records and testimony came the 467-page *Personal Justice Denied* of the CWRIC. The Commissioners agreed without dissent in their report that Japanese Americans had been victims of a grave injustice that was caused by "race prejudice, war hysteria and a failure of political leadership." Indicted by this report were not only officials such as McCloy, Secretary of War Henry L. Stimson, and President Franklin D. Roosevelt, but the system of civilian control of the military.

The CWRIC report added prestige and authority to the redress campaign in Congress. At the same time, redress supporters looked to the Federal courts for the judicial review of internment they had long sought. What gave this effort new life, and a way around the judicial principle of "finality" that had blocked Rostow's suggestion, was the discovery in 1981 of Justice Department records that revealed the repeated deception of the Supreme Court in 1943 and 1944. Justice Department lawyers who were assigned to prepare the government's briefs in the internment cases accused their superiors of "suppression of evidence" and of presenting "lies" and "intentional falsehoods" to the Court.

These shocking accusations of legal misconduct by the government's own lawyers made it possible for the original defendants—Fred Korematsu, Min Yasui, and Gordon Hirabayashi—to revive their cases and ask for judicial vacation of their 1942 criminal convictions. Aided by a team of volunteer lawyers, most of them the children and grandchildren of internment victims, the three defendants filed legal petitions in 1983 in the courts where they were tried in 1942, in San Francisco, Portland, and Seattle. The petitions rested entirely on government records that contained the charges of legal misconduct, and that refuted the Army's claim that "military necessity" required the mass evacuation and internment of Japanese Americans.

The first petition to reach judicial decision came before District Judge Marilyn Hall Patel in San Francisco in 1983. Fred Korematsu had charged that government lawyers withheld crucial evidence from the Supreme Court in 1944. The evidence in question went to the heart of the internment issue. It was based on claims pressed by General DeWitt, and presented as a fact to the court, that acts of espionage by Japanese Americans had prompted their exclusion from the West Coast. Reports of the FBI and Federal Communications Commission that conclusively rebutted the Army claims were kept from the Court over the protests of two Justice Department lawyers, Edward Ennis and John Burling, who argued that Army "lies" about the loyalty of Japanese Americans should be exposed. Their appeal was futile, and Solicitor General Charles Fahy assured the justices he vouched for every "line, word, and syllable" in the Army report.

The hearing before Judge Patel in October 1983 was dramatic and emotional. More than 300 hundred spectators, many of them elderly survivors of internment camps, watched as the government lawyer, Victor Stone, conceded that the internment had been an "unfortunate episode" in American history but refused to admit any legal misconduct. Fred Korematsu, in a brief statement to the judge, recalled his family's removal to the Santa Anita race track and his revulsion at their living conditions: "Horse stalls are for horses, not for people." When Judge Patel ruled from the bench that she was vacating Korematsu's conviction, many in the courtroom burst into long-suppressed tears of relief.

Judge Patel issued a forceful written opinion in April, 1984. She found "substantial support in the record that the government deliberately omitted relevant information and provided misleading information" to the Supreme Court on the crucial "military necessity" issue. "The judicial process is seriously impaired when the government's law enforcement officers violate their ethical obligations to the court," she wrote in an obvious rebuke to Solicitor General Fahy. Although she could not wipe the Supreme Court opinion from the books, Judge Patel wrote that "it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees" and protecting "all citizens from the petty fears and prejudices that are so easily aroused."

Min Yasui won the vacation of his criminal conviction in 1984, although the judge in Portland declined to hold a full-scale hearing on the petition. Gordon Hirabayashi, however, did secure a full review of his misconduct charges from Judge Donald Voorhees in Seattle. In contrast to the earlier proceedings, the two-week hearing in June, 1985 was marked by the government's vigorous defense of the wartime "military necessity" claims. The government's chief lawyer, Victor Stone, called a parade of witnesses who evoked the specter of Japanese Americans as "the most likely friends of the enemy" and as potential spies and saboteurs. Stone's star witness, retired National Security Agency official David Lowman, inferred a "vast espionage net" on the West Coast from a handful of cables code-named MAGIC, which were culled from Japanese diplomatic messages. Under vigorous cross-examination, none of the witnesses could identify a single Japanese American as an espionage source, and Judge Voorhees

did not conceal his skepticism about the MAGIC cables as the asserted basis for the wartime evacuation and internment decisions.

The internment of an entire ethnic minority on the basis of such deceit, disregard, and fraud requires more than apology.

In his opinion, issued in February, 1986, Judge Voorhees ruled that government lawyers had withheld a key military report from the Supreme Court in 1943. This report, submitted by General DeWitt to his War Department superiors, justified the mass evacuation program with claims of racial disloyalty and assertions that it was "impossible to establish the identity of the loyal and the disloyal" no matter how much time was available. These claims were in flat contradiction to Justice Department assurances to the Supreme Court that only the lack of time to conduct loyalty hearings had required the evacuation of Japanese Americans. Voorhees noted that the withheld evidence went "to the very heart of the issue before the Supreme Court, that is, the military necessity for the exclusion order" that Hirabayashi had challenged. The government's conduct in 1943 "very seriously prejudiced" Hirabayashi's appeal to the Supreme Court and constituted "an error of the most fundamental character," Judge Voorhees concluded.

The government's "military necessity" claims, first made in 1942 and still defended by the Justice Department, have also received judicial rejection in a pending civil suit that seeks monetary damages on behalf of all internment camp survivors. Ruling in January, 1986, a panel of Federal appellate judges reversed an earlier dismissal of the suit and held that "the Justice Department misled the Supreme Court when it argued [in 1943 and 1944] that 'military necessity' justified a mass evacuation of Japanese American citizens."

In considering the redress issue, we must keep in mind that these recent judicial decisions are not simply expressions of present-day sympathy for Japanese Americans, nor do they apply the standards of current jurisprudence to the past. Judge Patel and Judge Voorhees both made clear in their detailed opinions that the actions of government lawyers they subjected to judicial scrutiny and condemnation were as wrong in 1943 and 1944 as they are now. Although the complaints of Edward Ennis and John Burling about the "suppression of evidence" were ignored, the witheld evidence constituted a powerful refutation of the government's "military necessity" defense of the wartime internment. That the records of this deplorable episode were not uncovered until 1981 does not rob them of relevance to the redress issue.

These recent judicial decisions have also strengthened the compelling moral case for redress. They have revealed a shameful record of misconduct and deceit by those wartime officials who ordered and defended the internment program. They have exposed a shocking disregard for the constitutional protections that stand between American citizens and military fiat. No amount of deference to authority, civil or military, can excuse the fraud of "military necessity" that rested on nothing more substantial than the phantom fears and prejudices of General DeWitt. The internment of an entire ethnic minority on the basis of such deceit, disregard, and fraud requires more than apology. What is required is adequate redress to those who lost their liberty.

Why should redress be awarded as monetary compensation? Why should not a sincere national apology, offered by the Congress and the President, suffice to salve the wounds of internment? Why should the present generation of Americans, most of whom bear no personal responsibility for the internment, pay for injuries that were inflicted by an earlier generation? Why should Japanese Americans, who exceed the average in education and income, seek a "windfall" at the expense of the public? Why should we risk the aggravation of public hostility toward Japanese Americans by creating an atmosphere of "Japan-bashing"? Those who reject the case for redress, and others who are not yet convinced, have raised such questions and deserve answers.

The case for monetary compensation rests on the legal and moral principle that we "make whole" the victims of injury in a meaningful way, and at the cost of those who inflicted the injury or bear its responsibility. Let me turn the question on the reader: how much would you feel entitled to for the loss of three years of your freedom, if you were held unlawfully? Simply an apology? Should the Soviet government pay redress to Anatoly Shcharansky, or simply offer him an apology? If the principle of redress is not universal, it is empty. If compensation is due, how much is enough? The figure of $20,000 for each internment survivor, proposed in the pending bills, is hardly excessive as compensation for three years of unlawful detention. In 1971, some 1,200 peaceful demonstrators gathered on the U.S. Capitol steps to listen to members of Congress who opposed the Vietnam War.

The demonstrators were unlawfully arrested and held without charges for one or two days; in 1975, each person received a $10,000 award for violation of constitutional rights and unlawful detention. An award of roughly $20 per day to Japanese Americans is modest indeed.

Why should the present generation pay this overdue bill? The people of Germany continue to pay compensation to the Holocaust survivors, who suffered at the hands of an earlier generation. Should present-day Germans shirk their responsibility? Japanese Americans suffered through almost 40 silent years before Congress and the courts recognized the injustice inflicted on them. To blame the victims of this trauma for their long silence would ignore the painful time they needed to find their collective voice.

The case for redress is a case for national fairness and repentance. The evidence is clear that Americans inflicted a grave injustice on an entire group of fellow Americans, whose only "crime" was their ancestry. Gordon Hirabayashi, when his criminal record was erased after 40 years, offered the most compelling argument for redress: "Ancestry is not a crime."

Because this article is intended as part of a dialogue on the redress issue, I think it is important to respond to Ken Masugi's objections to redress. His article reflects the position of thoughtful redress opponents, who must, however, endure the unwanted embrace of those who still blame Japanese Americans for the Pearl Harbor attack.

Ken Masugi's opposition to redress, as I read it, rests on a political ideology that stresses "regime" loyalty and a conception of citizenship that places "duties" over "rights" in the constitutional balance. Aristotelian in genesis, this ideology—attractive to today's neo-conservatives—is grounded in excessive deference to authority and blind reverence for the "statesmen" who guide the obedient polis. Masugi's ideology, as applied to the redress issue, strikes me as profoundly subversive of individual rights. Any philosophy that demands, as a "duty" of citizens, that they endure detention without charge or trial is utterly antithetical to American principles. Masugi's suggestion that these basic principles are expendable in wartime—in effect, that we have two Constitutions, one for peace and one for war—was properly rejected by the Supreme Court a century ago as a pernicious doctrine. The Constitution, the Court declared in *Ex Parte Milligan*, "is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

Masugi's ideological fervor is evident in his demand for "proof of active loyalty" by all Americans. "Passive loyalty" will not suffice; those who will not publicly wave the flag do not deserve its protection. This comes perilously close to goose-stepping as a patriotic duty. Masugi applies his loyalty test to Japanese Americans and concludes that enough of them failed to justify the internment of the entire group. But his proof of widespread disloyalty is based on insubstantial evidence: the actions of one Japanese American in Hawaii; speculations in intelligence reports; a handful of MAGIC cables; and the angry reactions of frustrated people to their incarceration. In fact, the evidence of widespread loyalty—in the face of hostility and racism—is not only clear but offers a heartening example of belief in American principles.

Masugi has loaded his argument with rhetorical bullets for his opponents. He accuses redress supporters of grasping for "spoils" and practicing "sweet-and-sour pork-barrel politics." He charges them with "America-bashing" and calls their goal a "cynical cashing-in" of past injuries. He predicts that success for redress would "balkanize America" and fuel a further round of ethnic hostility. These are not the phrases of dialogue but of diatribe. By denigrating his opponents, Masugi evades the substance of their arguments.

Behind his rhetorical fusillade, Masugi has shielded an ideological defense of the wartime internment. He defends the mass relocation as a "necessity" that was forced on the United States by Imperial Japan. He apotheosizes the "statesmen" who ordered and defended the internment. He paints a Norman Rockwell picture of the barren, dusty camps as "small towns" with happy, smiling inmates who were free to wander in and out. But the men who Masugi praises as "statesmen" were contemptuous of the Constitution. Those Japanese Americans who were cleared after establishing their loyalty and allowed to leave the camps could not return to the West Coast but were forced into exile. Those who remained were fenced in by barbed wire and armed guards, who shot and killed eight persons, from a boy who chased his puppy to an old man looking for flowers.

The debate over redress, it seems to me, comes down to competing visions of the Constitution. Ken Masugi lauds the "color-blind" conception of John Harlan, but he defends the exclusion of Japanese Americans on the sole criterion of ethnicity. The vision of those who support redress is of a truly color-blind Constitution that will "protect all citizens from the petty fears and prejudices that are so easily aroused" in wartime, to repeat the words of Judge Patel. Redress will allow Americans to end our national silence with words of affirmation: "Equal Justice Under Law." ¤

The Duties of Citizenship

Continued from page 3

velt administration—the testimonies of Lieutenant Commander K.D. Ringle of Naval Intelligence and civilian investigator Curtis B. Munson—showed that ethnic Japanese were loyal for the most part, and that relocation was unnecessary. Government suppression of such evidence from its briefs in the *Korematsu* and *Hirabayashi* cases forms the basis for the *coram nobis* petitions. But in fact the Ringle and Munson reports, only two out of many, contain cautionary as well as exonerating testimony. Consider the following statement by Ringle:

> Of the Japanese-born alien residents, the large majority are at least passively loyal to the United States. That is, they would knowingly do nothing to the injury of the United States, but at the same time would not do anything to the injury of Japan. Most of the remainder would not engage in active sabotage or insurrection, but might well do surreptitious observation work for Japanese interests if given a convenient opportunity.[2]

Ringle's remarks about the first-generation Japanese (Issei) take on a greater significance when it is recalled that they were the community leaders. The testimony of Munson is also mixed:

> The Japanese are loyal on the whole, but we are wide open to sabotage on this Coast and as far inland as the mountains, and while this one fact goes unrectified I cannot unqualifiedly state that there is no danger from the Japanese living in the United States which otherwise I would be willing to state.[3]

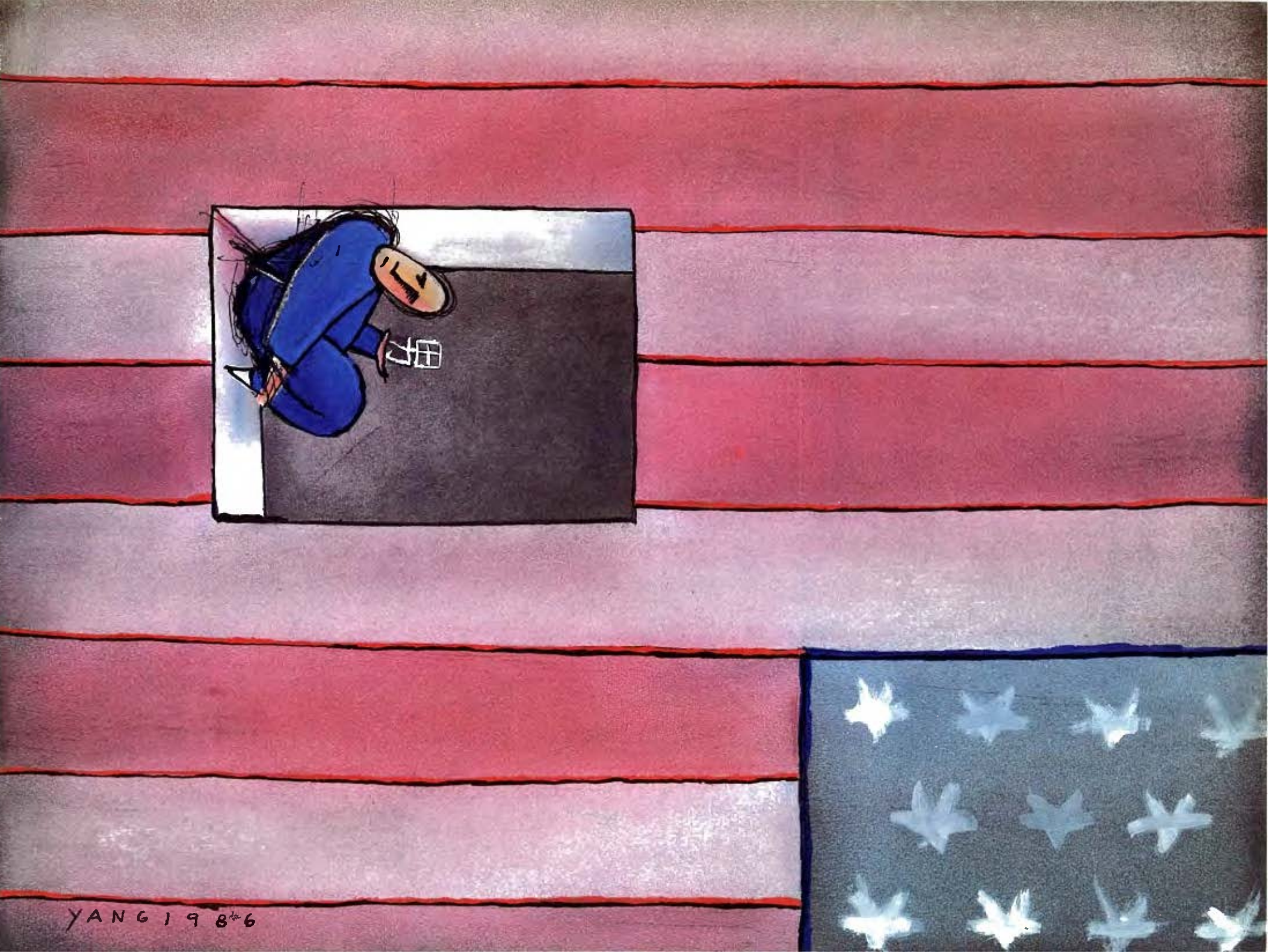
The CWRIC report goes on to maintain, in circumspect language, that "There was no evidence that any individual American citizen [of Japanese ancestry] was actively disloyal to his country." First of all, there are numerous examples of Japanese Americans, in Japan, who aided the Axis cause during World War II. Consider as well the freakish yet instructive Niihau episode in which a downed Zero pilot occupied a tiny, isolated Hawaiian island for a week after the Pearl Harbor attack. The downed Japanese pilot acted with the aid of a Japanese American, who later committed suicide when a Hawaiian killed the pilot. Hawaii, unlike the mainland, was put under martial rule for the duration of the war. To this we can add the evidence of the top-secret cable traffic code-named MAGIC, which took place between Japanese consulates in the U.S. and Tokyo and referred to ethnic Japanese contacts. The Anti-Defamation League of B'nai B'rith supported relocation after discovering that, while the English sections of ethnic Japanese newspapers here took a strong pro-American stand, the Japanese sections favored Japan's aggression in Asia. Would the strong ethnic Japanese support for Japanese aggression in China extend to Japanese aggression on the United States? A perfectly legitimate question, considering the times.

Advocates of redress frequently use internment and relocation synonymously, in an effort to prejudice the issue.

Certainly many relocated ethnic Japanese showed strong signs of disloyalty which cannot be explained away by frustration at relocation. Some ethnic Japanese rioted. The most notable case was at the Tule Lake relocation site holding 18,000 persons. Tule Lake was primarily a segregation center for many of those expressing strongly pro-Japanese feelings. Others openly indulged in pro-Japanese activities; 4,724 individuals returned to Japan. About 3,000 resident aliens were interned, which was more drastic than being relocated. These individuals were so strongly suspected of being pro-Japanese that they were imprisoned under Justice Department direction. Advocates of redress frequently use internment and relocation synonymously, in an effort to prejudice the issue.

Though deemphasized in the CWRIC report, there were pro-Japan factions in the relocation centers as well who denounced American sympathizers as *inu* or "dogs," and in many cases intimidated or beat them. It is no exaggeration to say that the greatest danger to patriotic Japanese Americans in the relocation centers came not from army guards or local citizenry but rather from their fellow evacuees loyal to Japan.

Who today has both the resources (such as the $1.5 million the CWRIC had at its disposal), and the interest in exposing ethnic Japanese who harbored disloyal thoughts and may even have acted on them? Clearly what we lack is a history of the West Coast ethnic Japanese relocation by an objective, professional historian who understands the actors in the events as they understood themselves. We need a work on the order of University of Hawaii history professor John J. Stephan's *Hawaii Under the Rising Sun: Japan's Plans for Conquest After Pearl Harbor,* which concluded of the Hawaiian Japanese that their loyalty to Imperial Japan was far stronger than current conventional wisdom supposes.[4] It may be, after all, that many ethnic Japanese in this country would have found the pressure to support Japan overwhelming following a successful Japanese invasion. Finally, we must not excuse those who offer only passive loyalty or are passively disloyal in time of


YANG 1986

war. War—and even more so, war against a tyrannical power—justly demands proof of active loyalty. America is no different from any other regime in this regard. The detachment of many ethnic Japanese from Japan would ordinarily be remarkable, but in the situation of war it became merely what was expected: a citizen's duty. If such reasonable doubt exists today, then consider the reactions of policymakers in 1941, faced with Pearl Harbor and the need to deal effectively with a ruthless enemy.

A word at least should be said about the "camps." While one should not be indifferent to the suffering caused by relocation, any property lost, and the proper indignation felt by the American citizens whose loyalty was questioned, one should never forget that this relocation of 90 percent of all ethnic Japanese in the U.S. took place in time of war which involved drastic upheavals throughout society. A glance at the smiling faces in photos of the semi-pro baseball team, scout troops, and dance band in *The Minidoka Interlude,* the yearbook of the Hunt, Idaho, relocation center (where my parents spent part of the war years) persuades one that "concentration camp" is at the very least a misnomer. For the evacuees, movement in and out of the centers was casual. Private car ownership was permitted. Jobs were made available. Provision was made for property to be moved from home to the centers. Ted Morgan's summary is apt: The centers were "like small towns, with churches, hospitals, post offices, stores, schools, gambling, and prostitution."[5] The War Relocation Authority early on (July 20, 1942) adopted a leave policy, following loyalty clearance, which permitted departures for work or college. As early as May 21, 1942, assembly centers (to which evacuees reported before being taken to relocation centers inland) had been releasing evacuees so they could go to agricultural jobs. Taking seasonal leaves, thousands periodically went out to work and then returned. Many of those relocated were reluctant to leave the security of the centers, and not enough evacuees would take advantage of the government's program to fill the vast demand for labor inland. In light of this, it would be chutzpah to dwell, as one redress bill does, on the "enormous damages and losses . . . and . . . incalculable losses in education and job training" during World War II. To say that America had its own concentration camps, differing only in degree from those of the Nazis (the allies of the Japanese) not only grotesquely distorts history but invites trivialization of the Holocaust.

Finally, the Evacuation Claims Act of 1948, with subsequent revisions, provided for financial compensation for property damaged or lost as "a reasonable and natural consequence of the evacuation or exclusion" from the West Coast. Under the Act approximately $37 million was paid out to approximately 25,000 claimants.

Let us now turn to the recommendations section of the CWRIC's *Personal Justice Denied.* Eschewing the notion of citizen responsibility, the report's recommendations make various demands for acts of contrition and individual monetary compensation.

In evaluating the court cases one must keep in mind that the same day *Korematsu* was decided, so was *Ex parte Endo*, which declared that a person acknowledged to be loyal could not be excluded from the West Coast. Together the two opinions provide a rational basis for defending civil liberties at home and defending the nation from foreign dangers. Safety from hostile foreign powers and protection of fundamental freedoms (including economic ones) cannot be undermined for the sake of protecting or redressing the rights of "minorities"—at least not without placing those minorities themselves in peril, as factions adversely affecting the rights of others or the public good. As Lincoln observed, "the constitution is not in its application in all respects the same, in cases of Rebellion or invasion, involving the public safety, as it is in times of profound peace and public security."

The most publicized feature of the redress bills, the call for individual monetary payments,[6] is the one most readily discredited. CWRIC disclaimers notwithstanding, this does put a price on freedom. Of course such a cynical cashing-in on the injuries of 40 years past is not likely to sit well with other Americans, virtually all of whom can point to past discrimination, in many cases truly debilitating, on the grounds of ethnic origins. Whether $20,000 or an equally symbolic payment of $1.00 is awarded, the same unrealistic notion is involved: that the efforts of the present can somehow atone for the ravages of the past, without having unforeseen and doubtless undesirable consequences for the future. As Thomas Sowell has argued, coherent public policy must aim at bringing about a future of a particular sort, not at undoing the past.

The symbolic monetary compensation issue brings into focus the problems evident in the demands for contrition. The current legislation seeks acknowledgement and prevention of injustice, an apology, and a "public education" fund. But as we have seen, it is preposterous to compare the relocation with truly fundamental injustices such as slavery and the Holocaust—without in some way trivializing the latter experiences. After all, those responsible for the evacuation knew that the situation would be

temporary. Redress proposals even urge the President to pardon ethnic Japanese for the commission of crimes relating to the relocation. It hardly seems that the rioters, those who openly proclaimed their loyalty to Japan, those thousands who renounced their American citizenship, and those who violated the nation's laws in time of war deserve pardons or monetary payments. Demands for apologies are thus mistaken, since the event itself was a necessity, however regrettable, and numerous officials, including President Gerald Ford, have made apologies. One might apologize even for necessary, justifiable acts. The proper party to deliver an apology is, however, the one who inflicted the injury. One would think the leading culprit was Imperial Japan. But if one wishes to blame fellow Americans, the current Congress and the President are clearly not the appropriate whipping boys.

Redress reveals itself for the combination of America-bashing and sweet-and-sour pork barrel it is.

In the same vein, one should note that the CWRIC report's sections on the Japanese American reaction to the relocation are, to put it politely, egregious pop psychologizing. If, as the report maintains, Japanese Americans wanted to bury their memories of relocation "in a shallow grave," then why have Japanese American communities held so many joyous "camp reunions"? Even an emphasis on educational achievement is ascribed by the CWRIC to "the scars of wartime incarceration." By comparison, Kenneth Clark's doll tests cited in *Brown* v. *Board of Education* are the model of scholarly integrity.

One redress bill maintains that it would "make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations." Of course this completely ignores the purposive or regime dimension of politics and reflects perfectly the notion of "moral equivalence" regnant in some political and academic circles today. The United States need not apologize before the world (especially one which consists mostly of barbarous regimes) before it asserts the superiority of its principles.

But we have yet to consider the worst element of the CWRIC recommendations and redress legislation: the proposal for a "Civil Liberties Trust Fund"—in reality a Ministry of Contrition—which would not only distribute the report but fund "research" and "public educational events" so that "this and similar events may be illuminated and understood." Funding would also be provided for "the general welfare of the ethnic Japanese community in the United States." Finally, *Personal Justice Denied* and some of the redress bills call for a majority of the Fund's administrative board to be Japanese American—an explicit ethnic quota, far more clearly unconstitutional than the classifications in *Hirabayashi* or *Korematsu*. Here redress reveals itself for the combination of America-bashing and sweet-and-sour pork-barrel it is: on the one hand, ideologues can use the Trust Fund for the sake of fulminations against the U.S. government; on the other, Japanese Americans (many if not most of whom never knew "camp") and their businesses would receive grants to put any number of redistributionist programs, such as minority set-asides, to shame. Unless one reduces civil rights to flashing an ethnic badge to extort privileges, this has nothing to do with that noble ideal. From its biased origins (13 of the 35 CWRIC staff members are of Japanese ancestry, which is relevant because they stand to benefit financially if the legislation passes) to its goals, the CWRIC report works to emphasize the ethnic origins of individual American citizens. Far from encouraging citizenship, it would encourage both the claimant mentality and tribalism.

So we are led back to the "color-blind Constitution" as a standard. But hadn't Justice John M. Harlan himself, in his famous *Plessy* v. *Ferguson* dissent, regarded Asians as inferior? In his words:

> There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, *risked their lives for the preservation of the Union* . . . are yet declared to be criminals . . . if they ride in a public coach occupied by citizens of the white race.[7] [Emphasis mine]

Doesn't this statement show the "color-blind Constitution" to be a mere rhetorical device? No—because Harlan here affirms the relationship between a color-blind Constitution and citizen duties in a regime of constitutional liberty. He teaches us how even "a race so different from our own" can have the same rights as those he described as "the dominant race in this country." American citizenship is very cheap, in that it can be acquired

through mere birth on our soil. But achieving the trust that must exist among citizens who will be James Madison's "mutual guardians of their mutual liberty" is a far more difficult task, especially since America is a nation of many nations and hence of cultural and religious diversity. And surely before World War II the ethnic Japanese were among the most foreign of all the nationalities to exist within America. By showing their willingness to fight for their freedom, Japanese Americans affirmed before a skeptical public that the first defense of American freedom is a strong national defense: the regime is a basically good one, possibly the best, and the condition for future good is the defense of it. Whatever the economic achievements of prewar ethnic Japanese, citizenship calls for more than mere integration into the economy. Full rights, which followed for the Japanese after the war, were granted with duties—the pattern that should exist for all citizens.

In the public mind, the ethnic Japanese became Japanese Americans through the efforts of a tiny minority of them, those evacuees who fought in the 442nd regimental combat team. The soldiers of the 442nd demonstrated that citizenship inheres primarily in duties and obligations, and that the highest duty, and the source of rights, is obligation in time of war. We misunderstand their achievement as individual American citizens if we use it to encourage a more race-conscious society.[8] America is a mixture of many cultures, many intellectual and political influences, but it is a regime—a political way of life—in which the questions of political life are as heavily debated as they have been since the beginning of Western civilization. It is to those original sources that serious reflection on "redress" as a regime question draws us. ⌑

End Notes

1. Redress legislation typically calls for the implementation of the findings of the CWRIC report (published in December, 1982) and its recommendations (published in June, 1983). The CWRIC was established late in the Carter administration. Its members were: Joan Z. Bernstein, Chair; Daniel E. Lungren, Vice-Chair; Edward W. Brooke; Robert F. Drinan; Arthur S. Flemming; Arthur J. Goldberg; Ishmael V. Gromhoff; William M. Marutani, and Hugh B. Mitchell.

2. Quoted in Dillon S. Myer, *Uprooted Americans* (Tucson: University of Arizona Press, 1971), p. 68.

3. Curtis B. Munson, "Japanese on the West Coast," typescript, 1942, p. 17.

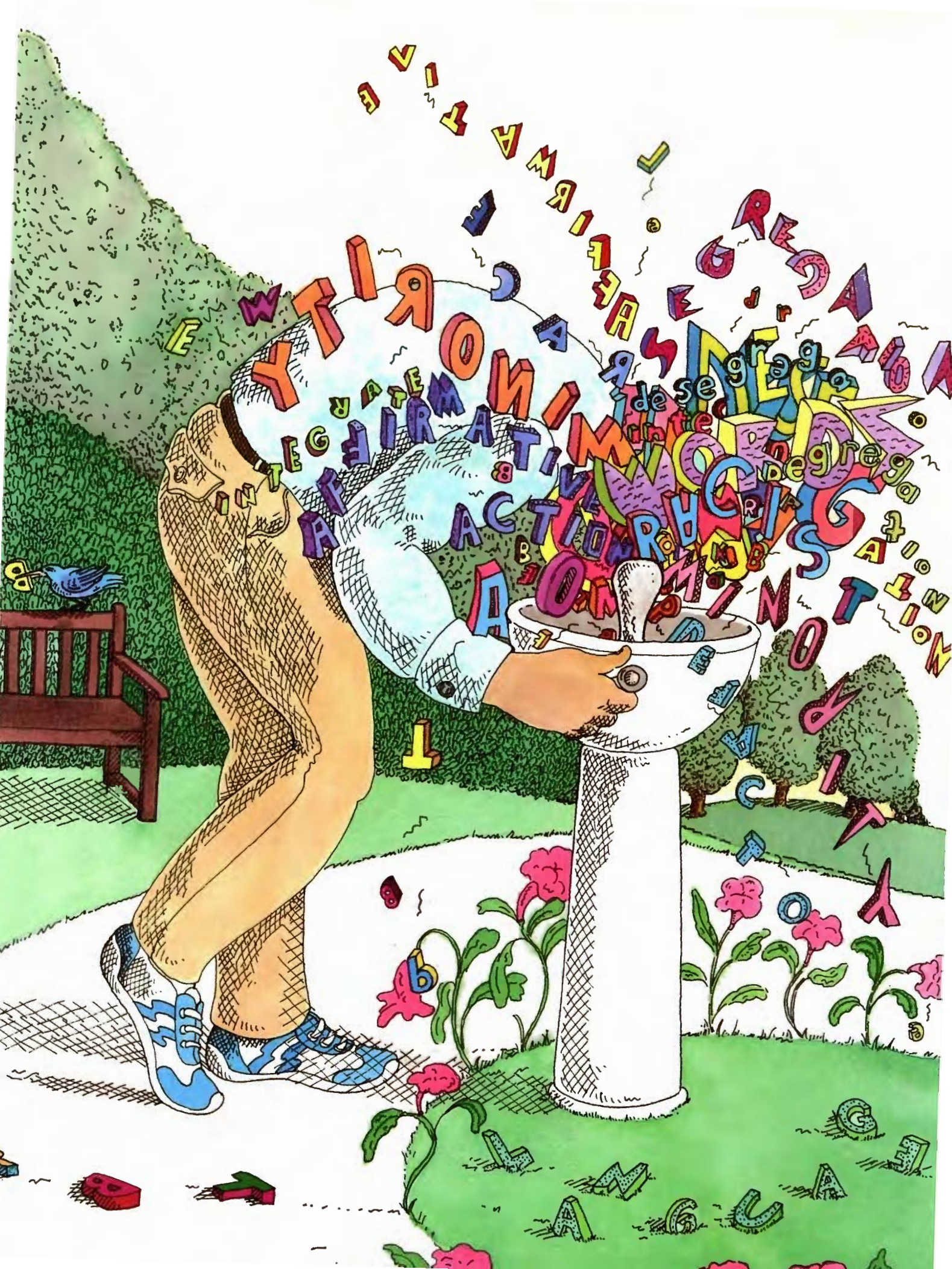
4. On the loyalty question see the testimony of Frederick Bernays Wiener, *Japanese American and Aleutian Wartime Relocation*, Hearings before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, Ninety-Eighth Congress on H.R. 3387, H.R. 4110, and H.R. 4322, serial No. 90, pp. 699–762, especially pp. 709 and 722–723. On the MAGIC codes, see David Lowman's testimony in the same hearings, pp. 430–549 and 868–881. *Japanese American and Aleutian Wartime Relocation* is the best single source of arguments for and against redress.

5. Ted Morgan, *FDR* (New York: Simon and Schuster, 1985), p. 629.

6. The CWRIC recommendations and legislation propose a budget of $1.5 billion. Many Japanese Americans would return the $20,000 individual payment, but the proposals would require that that money—plus other contributed money—be used for other projects mandated by the bills.

7. *Plessy* v. *Ferguson*, 163 U.S. 537, at 501.

8. The latest redress bill, H.R. 442, exploits the great achievements of the 442nd Japanese American regimental combat team: when the call for volunteers was first made at the relocation centers only about 1,200 (a disappointing 6 percent of those eligible) came forward. Later, the draft was extended to the relocation centers, but resistance to it was vocal—and effective.


SEGREGATION
INTEGRATION
AFFIRMATIVE ACTION
DISCRIMINATION
DOMINATION
EQUALITY

Civil RIGHTSSPEAK

by Walter E. Williams

Today's civil rights debate is a contest of dubious values, clouded by ambiguities of language. These ambiguities must first be clarified if we are to address the issues properly. Words can and do have more than one meaning, but for analytical purposes, precise and operationally useful word definitions and distinctions must be made. Dereliction of this duty not only conceals hidden agendas but leads to muddled policymaking.

Segregation and desegregation are widely misused terms. Consider the question: Are water fountains at the Washington National Airport segregated or desegregated? Most people would first establish whether blacks had unimpeded access to any fountain. If so, the fountains would be deemed desegregated. Consider next the question: Are the nation's public schools segregated or desegregated? Given court orders, debate, investigations, and pending litigation, little consensus could be reached on that question. Some people would fiercely contend that public schools are segregated. Others would argue just the opposite.

The confusion is caused by the shifting definition of desegregation. The test people used to determine whether water fountains were desegregated was whether a black was *able* to use the facility. But the test for desegregated public schools has become whether blacks *are* using the facility in proportion to their numbers in society. No one would employ a numbers-based criterion to determine whether water fountains were segregated. Moreover, having found statistical disparities, such as blacks being 75 percent of the District of Columbia's population but, let us say, 15 percent of the airport's fountain users, no one would propose to remedy the situation by a busing plan.

There are no longer legal barriers to keep blacks who reside in a school district from attending its schools. Today's advocates of school desegregation must mean something else by the word

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Illustration by Reneé Gettier-Street

desegregation. Their argument rests on the fact that black attendance in some schools is not representative of the numbers of blacks in the population. They contend the school is *de facto* segregated, and what they mean is it lacks a pleasing racial mix. The proper expression for bringing about such a mix is more active than desegregation—it is mandatory integration. In using the law to fix the racial composition of schools, mandatory integration has more in common with segregation than it does with desegregation.

Many of what are alleged to be civil rights are wishes.

Does it logically follow that an activity which is not integrated is therefore segregated? Most schools are not integrated in the sense of having a representative mix of America's ethnic mosaic. This makes schools no different than other institutions or activities that are not integrated, such as black universities, ice hockey games, churches, professional bowling, sororities and fraternities, classical music concerts, and a host of others. Why minorities are underrepresented or overrepresented in these activities can reflect personal preferences, cultural influences, occupational and income differences, and discrimination.

The very term "minority group" should not pass without inspection. The mere reference to blacks as a minority group is an analytical error if one considers that the term minority implies there is a majority. In America there is no majority; we are a nation of minorities. The largest identifiable ethnic group is Americans of British ancestry—15 percent of the population. They slightly outnumber those of German ancestry who are 13 percent and blacks who are 12 percent of the population. The black population widely exceeds the single-digit ethnics, like the Polish, Italian, Jewish, Chinese, Japanese, and others who make up America's ethnic mosaic.

Once we recognize that the American population consists of many ethnicities instead of simply whites, blacks, Hispanics, and Asians, we can look critically at the assertion that this or that problem is caused by "minority group" status. The fact that an Anglo-Saxon majority is a myth can give us an appreciation for significant socioeconomic and historical differences among the white ethnics. Moreover, ethnic distinctions permit a more useful evaluation of the role racial discrimination plays. Most of the civil rights debate involves attributing the problems that blacks face to private and public discrimination.

The Jews, Armenians, Poles, Chinese, Japanese, Italians, and Irish faced varying degrees of discrimination. For Jews in Germany and Armenians in the Post-Ottoman Empire, it included attempts at extermination. The Oriental Exclusion Act of 1882 proscribed American citizenship for Japanese and Chinese; by 1915 the Western states enacted laws prohibiting Japanese land ownership; and during the Second World War Japanese were interned and relocated. The fact that members of these groups are now part of the solid mainstream of American society should give us pause to ask: how much can racial discrimination alone explain?

Now for the most basic term of all, "civil rights." Many of what are alleged to be civil rights are wishes. Alleged rights to housing, food, and jobs fit the category of wishes. In the U. S. Constitution, a right is an entitlement that all Americans hold simultaneously without contradiction. Freedom of speech and religion are entitlements simultaneously held which do not infringe on any other American's rights. Alleged civil rights to housing, food, and employment are entirely different. If one person has a *right* to basic housing, whether he can afford it or not, it means some other person has an *obligation* to provide the housing. Therefore, both persons do not have equal rights. The "right" of one diminishes the right of another. In other words, the "right" to housing requires government, through taxation, to reduce another's right to his earnings.

In the constitutional sense, individuals have rights to make offers to engage in voluntary exchange with others to buy, sell, receive, or give housing. A legitimate role for government is ensuring that rights to voluntary exchanges are not infringed upon by third parties. It is a true civil rights issue to ensure that when one person makes an offer to buy and another to sell, no third parties, through harassment, violence, or the use of state and local laws, can prevent that transaction. Indeed, it has been precisely that duty which government has historically failed to fulfill for black Americans. Slavery is the greatest example of failing to protect rights. There are other examples: the Black Codes, antimiscegenation laws, racially restrictive neighborhoods, judicial inequities, and violence.

The past failure of government to afford constitutional protections leads civil rights advocates to call for compensatory treatment for blacks. In the words of a National Urban League report, "Affirmative action seeks merely to redress over 300 years of discrimination, entrenched in over 200 years of legal bondage and perpetuated by another century of legally-sanctioned racial prejudice." These indisputable grievances are, in their view, the moral basis for goals and timetables, euphemistic terms for racial quotas.

We must recognize that government cannot create an advantage for one American without creating a disadvantage for another American. Government cannot mandate an increase in the number of potential college seats for black students without simultaneously reducing the number of potential seats for non-black students. By the same token, when government was creating special privileges for whites, they came at the expense of blacks. Whether government mandates racial quotas in college admissions, hiring, or housing, it cannot avoid helping individual A (a black) by punishing individual B (a white) for what individual

C (a white of yesterday) did to individual D (a black of yesterday).

A question to ask when special advantages are created to redress past injustices should be: Is a white of today to be held individually responsible for the behavior of a white of yesterday? If individual accountability is held as a norm, then individuals must be held accountable for their own doings, not those of others. To compound the moral dilemma of quotas, blacks who are better off than some whites are eligible for preferential treatment. The son of a black dentist is more eligible for a "compensatory" program than the son of an Appalachian white coal miner.

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Racial quotas stem from the observation that blacks are not represented in a particular activity in proportion to their numbers in the population; there are "statistical disparities." When courts, government officials, and civil rights activists assert that statistical disparities constitute evidence of racial inequality, they never reveal (and few ask) the theory underlying their assertion. The civil rights view assumes random or proportional distribution of outcomes in the absence of racial discrimination.

However, most human activity exhibits no trend toward randomness or proportionality. America's diverse ethnic mosaic exhibits a wide range of outcome differences. Jews dominate American Nobel Laureates while blacks dominate basketball and boxing. Mexican Americans marry in their late teens while Japanese Americans wait until age 30; Hispanic women in general have 2.3 children on average, Asian women about 1.5 children. The full range of ethnic "disparities" covers everything from entertainment preferences and child-rearing practices to illnesses such as sickle-cell anemia, Tay Sachs, and other degenerative diseases.

The more emotional part of the civil rights debate levels charges that this person or that act is "racist." Unlike years past, when racists were clearly identified as those who wore sheets and actively sought to limit the rights of blacks, today one can be charged with racism if he simply supports Proposition 13 or reductions in Federal spending, or advocates competency testing for teachers and students.

It is fairly difficult to derive a consistent, operationally useful definition of racism. Suppose a racist is defined as one who prefers not to have associations with those of another race. He may wish to avoid working associations with blacks, avoid restaurants and hotels which have black clientele, or avoid living in the midst of blacks. We might all agree that such a person is a racist. Suppose instead a person prefers not to marry a black, not to invite blacks to his party, to join an all white fraternity, or have all white friends. Would we call that person a racist? After all, he exhibits racial preferences. How useful is a term that has meaning when used to describe a behavior in one context, but no meaning when describing that same behavior in another context? If a racist is defined as a person who prefers not to *live* with blacks, why is he not also a racist if he prefers not to *marry* blacks?

Linguistic sleights of hand in this area are not inconsequential—they often have implications on many levels. If schools are no longer legally segregated, then the issue is not segregation versus desegregation, but rather, mere desegregation versus integration—positive racial balancing. Is there a moral or constitutional mandate that education and other human activities be racially integrated? If we affirm that one activity should be forcefully integrated, what criteria do we use to exempt other activities from that requirement? If underrepresentation is deemed to be "probative" of racial discrimination in an activity, what do we do about those overrepresented in that activity? Blacks are underrepresented in learned professions but Jews are overrepresented. By the same token blacks are overrepresented in professional basketball, baseball, and football but Mexicans, Jews, and Japanese are underrepresented. Twenty-five percent of Asians are professional workers while only 15 percent of whites in general are. Do these statistical disparities call for remedial social policy?

This essay makes no pretense of adequately redefining all the words and concepts of the civil rights debate. Its intention is to raise the questions that must be squarely faced before the debate can be conducted with clarity, because, as Jeremy Bentham said, "Error is never so difficult to be destroyed as when it has its roots in language." ⌑

The Latest Apologias for Preferential Treatment

by Fred Baumann

In the early 1970s a new kind of affirmative action, with the mark of group preference fixed on its infant brow, was born the proud child of well-intentioned Republican administrators. These administrators thought they could set equal employment "goals" just as their former colleagues in the business world set profit goals. Preferential affirmative action quickly inspired vehement debate, and the issues it raised turned out to involve in particularly acute form the perennial question about the meaning of the American project. What did equality of right mean? Did it mean equality of opportunity and therefore, inevitably, inequality of result? Were rights fundamentally meaningless unless their abstract existence was fleshed out by some practical assurance that their exercise would lead to some solid gain?

Ultimately (and ultimately came pretty soon), one was arguing about the competing claims of social equality and individual liberty, and hence about the basic purpose of the country. On the one side, philosophers and constitutional lawyers like Sidney Hook and Walter Berns provided ever clearer explications of the principles inherent in the Founding, principles which guided the civil rights movement well into the 1960s. On the other side, philosophers and constitutional lawyers like Ronald Dworkin and Archibald Cox performed prodigies in the art of dialectic to demonstrate that racial and gender preference were compatible with principles of equal justice under law.

But while the controversy wore on, two things happened. First, even the most enthusiastic partisans tended to get tired of saying their lines. Second, and far more important, affirmative action understood as group preference became a reality increasingly separate from the concept that was being so vigorously debated. As one might expect, mere existence over time makes a difference. No longer a new idea which we may choose to institute, affirmative action has become—like the 55 mile-per-hour speed limit, oil depletion allowances, or busing to achieve integration—one of those measures which, while highly controversial and even largely unpopular, has won at least the grudging tolerance of the general population if only by mere fact of duration.

Along with reality comes constituency. For some groups, like feminist and civil rights organizations, the preservation of preferential affirmative action is a matter of great symbolic significance. For others, affirmative action has meant direct benefits, either in hand or in bush. Probably more important than these is the constituency for whom EEO enforcement means jobs, whether in government or in opposite-number private sector positions. Finally, and most important of all, is the constituency composed of all those institutions, such as corporations, universities, and unions, which simply adjusted to the new order of things. However initially reluctant they might have been, they are now used to it, have arranged things accordingly, in some cases have learned to appreciate its benefits in terms of community standing, have learned to pass on its costs to others, and in general do not want the cart overturned once more. A recent piece in *Fortune* magazine showed support for preferential affirmative action programs among American corporations, even if these programs were no longer mandatory.

Of course, the routinization of whatever charisma preferential affirmative action once had did not exactly come as a surprise. Opponents of preferential affirmative action predicted just this routinization when optimists used to assure them that group preference was wrong in principle but could be used safely for a time and then discarded.

The assurance that preferential treatment would be short-lived turned out to be hollow. On the other hand the reality of affirmative action has not fulfilled opponents' worst nightmares, either. A favorite pastime used to be disputing whether goals were different from quotas. As far as discriminatory intent goes, there is no theoretical difference worth defending. At most a goal is a quota which, if unmet, makes punishment likely, while a quota is a goal which, if unmet, makes punishment certain. But in practice, the very need to euphemize with the notion of "goals," and with the showing of "good faith efforts" to meet those goals—while in no way affecting the preferential aims of the program—created a permanent haze wherein it became very difficult for proponents and opponents alike to tell exactly how

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institutions would be affected by this preferential affirmative action.

Some years ago, then-Undersecretary of HEW Mary Francis Berry compared the American EEO enforcement scene with the evidently less troubled picture she had found on a trip to the People's Republic of China. She noted that Chinese policies of preference by class origin could be carried out free of the "near-hysteria and confusion" that preferential policies had aroused here. I think part of her point must have been the correct observation that, however intimidating the threat of government contract cancellation here, it hardly compared to the means of enforcement available to the administrators of the Maoist quotas she cited. Berry made an accurate distinction between China and the U.S. Nonetheless, in so murky an American atmosphere it was genuinely difficult to assess how much discrimination, either old-fashioned or reverse, was going on.

The crucial step of identifying certain groups for preferential advantage had to be taken in an arbitrary way.

In another area too, skeptics' worst fears have not, at least yet, been realized. It was obvious to them that the crucial step of identifying certain groups for preferential advantage had to be taken in arbitrary, undemocratic, and irrational ways. Bureaucratic language moved craftily from the claim that there might be groups so affected by discrimination that special measures might be necessary, to the bald listing of those groups. This craftiness indicated to me that the authors understood the impossibility of giving a rational account of just why these groups and no others were to be favored. It seemed at the time that what could be well-concealed in a bureaucratic text would surely come to light in the calculation of interest group politics. If women and Hispanics were to benefit, how could the leaders of Italian American or Japanese American groups ask for anything less for their own? Yet for reasons worth reflecting on, affirmative action has benefited from a general consent to allow the first-comers to remain in unchallenged possession. Thus one of its logical contradictions has yet to become a major practical problem.

The argument in support of preferential treatment is showing signs of appreciating the enduring reality of affirmative action. A new tone has appeared in some of the most recent, serious, and interesting discussions of the topic in the weekly opinion journal *The New Republic*. In its excellent series of articles, both pro and con, that new tone can be heard—intelligent and matter-of-fact, sometimes a little complacent and yet irritable.

Charles Krauthammer, astute as ever, argues that while affirmative action is patently unjust in its preferential treatment of race and gender, it is still justifiable because of the social good it does. Just as government-induced recessions unjustly harm the poor more than the rich but still may be justified under some circumstances for the sake of the common good, so too may affirmative action.

Similarly, Michael Kinsley, writing as TRB, makes mock of opponents of preference. They pretend to stand on principle, Kinsley says, yet even they accept affirmative action in recruitment and are thus willing to give preference to minorities and women when it comes to looking at whom to look at. Kinsley sets out to debunk the idea that "getting ahead in America is a mechanistic process" where the "opportunity stage"—where special efforts to attract minority and women candidates are permissible—precedes the "selection stage" in which all preference is taboo. He asserts that all selection is merely recruitment and training for the next "rung on life's ladder," hence "[a] moral distinction between 'recruitment' and 'hiring' is nonsense." Kinsley is calling not for a return to teetotal nondiscrimination but rather for a new pragmatism; he concludes grandly that those who oppose preference on principle will find that "anything society does to help the victims of racial injustice will violate their alleged scruples. If they want to start a badly needed practical debate about when affirmative action works and when it does more harm than good, they had better get off their moral high horse."

On the other side of the question is Jeremy Rabkin (described with some partisan heat as "the anti-affirmative action battalion's favorite polemicist" by the redoubtable Joseph Rauh), who ends

his own *New Republic* essay with the glum acknowledgment that, since affirmative action does not actually do much harm to the interests of white males, we cannot expect any "enraged grass-roots demand for eliminating such programs." Rabkin stands firmly against the principles of preferential affirmative action and its result of a "public policy [which] encourages demeaning, stereotypical thinking about blacks or Hispanics or women." Perhaps like Nathan Glazer, another staunch foe of the principles behind preferential affirmative action, Rabkin seems prepared to recognize, though not to accept cheerfully, its reality.

By and large, this sort of response to a vexed social issue ought to be seen as a sign of health. When rage begins to turn to grumpiness and triumph to a routine quibbling about shares, it is usually because wounds are beginning to heal.

Even supposing they are, there are some holes in the straightforward pragmatism now employed to justify preferential treatment which deserve to be examined. The new pragmatism imputes to opponents of preferential treatment the charge of thereby opposing anything that might conceivably be done to help victims of discrimination. It is hard to take this one too seriously. There are in fact plenty of things which can and should be done for victims of discrimination which do not cause opponents of discriminatory affirmative action any problems at all. Indeed, if the term "victims of discrimination" is meant precisely, to identify particular people whose rights have been violated, compensatory preference in hiring or wages or seniority is wholly unobjectionable. And social programs—whether liberal government spending ones or conservative tax break ones—which tend to benefit groups of people who have in the past suffered discrimination, are not ruled out as long as they are not as such conscious of race, gender, or ethnos. All that is ruled out is just such race-, gender-, or ethnically-conscious hiring, firing, or promotion.

Furthermore, the attempt to blur the difference between selection and recruitment is not particularly persuasive. It may be true that in many cases selection amounts to recruitment for the next rung, but the question is whether recruitment as such amounts to selection. It plainly does not, and if it does not it still makes sense to distinguish between looking everywhere for possibly qualified applicants and making sure that the one you ultimately hire is of the right race or gender. Nor is the invitation to come down from our moral high horse so we can enter a "badly needed practical debate" about when affirmative action does and does not "work" very enticing. For (though it is sometimes hard to remember this in the current debate) affirmative action claims its basic justification as a way of fighting discrimination, not of perpetuating it, and thus must answer on its own terms to the standard of non-discrimination—which is found up on that moral high horse.

There are some holes in the straightforward pragmatism now employed to justify preferential treatment.

In contrast with the kind of easy pragmatism found in Kinsley, Charles Krauthammer's pragmatism includes a concern to preserve fundamental principles of justice. Still, Krauthammer errs in underestimating what government-instituted race and gender preference does to those principles. The civil rights movement transcended mere interest group status and found its moral power because it spoke to all and for all about the meaning of American citizenship. In saying that under no circumstances should blacks be kept from voting, competing for jobs, or freely using public accommodations, it also said explicitly and implicitly, and over and over, that this should not happen to blacks because it should not happen to any one of us. It said, in short, that being one of "us," an American citizen, meant being absolutely protected against relegation to second-class status because of skin color or other mere happenstance of birth. It said that no policy goal, however plausible, could supersede this fundamental equality of right. For example, we might be able to meet the policy goal of full employment by compelling the unemployed at gunpoint to work for the state. But we do not and may not do that because a nation of fully employed slaves is not what we are or want to be about. Social engineering, the use of available means to attain desired policy goals, has its legitimate place. But this place is defined and limited by those basic rights the social engineering is supposed to protect and serve.

Nor would the sort of argument offered in yet another *New Republic* piece by Harvard President Derek Bok be very comforting. In asserting that "the vital question is not whether preferential admission is a success after 15 years, but whether it has made more progress toward overcoming the legacy of discrimination than other strategies," Bok is merely offering in partial retrospect what Justice Blackmun offered prospectively in his opinion in the *Bakke* case. In upholding the State of California's medical school quota, Justice Blackmun opined, "I yield to no one in my earnest hope that the time will come when an 'affirmative action' program is unnecessary." The appeal to forget principles of color-blindness because we like the results of color-consciousness is not so much an argument as a request that the argument be given up..

Senators said with great conviction that numerical standards and preference would never follow from the Act.

Still, if the realists at *The New Republic* and elsewhere are right, perhaps we had better give it up rather than indulge, as I might appear to be doing now, in mean-spirited fighting after the bell. If we really have to live henceforth with governmentally established programs of racial and gender preference, why not put on it the best face we can? And that reasoning, I think, is behind Charles Krauthammer's teeth-gritting approval of preference. Krauthammer, in freely admitting the injustice of preferential programs, is surely far more praiseworthy, both intellectually and practically, than is a Ronald Dworkin, who seeks to explain away any lingering moral stigma attached to them.* For surely the attempt to inure the American people to discrimination in order to justify affirmative action is more pernicious than the actual harm done to the rights of particular individuals unfairly affected by it.

Nonetheless, something is odd here about the timing. For this happens to be the very moment when an administration is actually looking at the possibility of striking at the new affirmative action. True, not much may come of this. There really does not seem to be much "enraged grass-roots demand," in Rabkin's phrase. Moreover, the ability of those opposing any change, like Labor Secretary Brock, to win the prized title of "moderates" seems telling. It is likely enough that but for the conviction and gameness of Attorney General Meese and William Bradford Reynolds this administration would not have touched such a contentious issue. This is the first time that racial and gender preference faces a serious challenge since it was instituted by the Nixon administration. It hardly seems the time for social commentators to argue from historical inevitability.†

There is another reason besides the Meese/Reynolds "counterrevolution" why the discussion of affirmative action should be continued at the level of principle. For I fear that the new pragmatists' unperturbed certitude of tone covers something unsettling. Behind their argument I sense another and genuinely divisive argument lurking. Hints of it can be found in Kinsley's approach. It is an argument that has been around for quite a while and, interestingly enough, both supporters and opponents of current programs and of the civil rights legislation of the 1960s have on occasion adopted parts of it. This argument, which I will call the "No Nonsense" argument, begins quite legitimately:

The Civil Rights Act of 1964 did more than just forbid local governments to discriminate on grounds of race and sex. It entered the private sector and forbade discrimination in employment there. A number of senators, such as Hubert Humphrey, said with great conviction that though with this legislation the government entered the private sector, numerical standards and preference would never follow from it, and the majority even went so far as to insert the famous paragraph 703(j) to allay suspicion further. Nonetheless, serious professionals dealing with the problem of determining what discrimination was and how it could be proved, and faced with the great jungle of the private sector, itself composed of a myriad of arcane subjungles, soon arrived at the idea that numerical measures alone could turn nondiscrimination from an ideal into effective policy.

Here the No Nonsense argument begins to draw its conclusions. It was folly, so it contends, to wish to regulate the private sector and not to expect to grant great discretion to bureaucracies in ordering compliance. And if one did not allow numerical measures and group preference, the only alternative would have been a host of ill-considered individual decisions made by fiat, decisions hard to justify and hence hard to uphold.

Thus for the No Nonsense argument, the real issue is not affirmative action, but the Civil Rights Act of 1964. If one is for the Civil Rights Act of 1964, one is necessarily for numerical measures and preferences; if one opposes those, one must necessarily oppose the Act. By contrast, all those (myself among them) who think one can oppose numerical preference on the grounds of the Act itself are deeply inconsistent and, ultimately, irrelevant to the real conflict.

This conclusion fits well into the new pragmatism's impatience with the old theoretical debate. Kinsley claims that the principled opponents of preference are not, on their own grounds, principled enough. At a minimum the "moderate" new pragmatism of Kinsley and others clears the ground for the No Nonsense argument—which, in reality, threatens any true middle ground. For if it holds, we are faced with a choice between allowing invidious discrimination in the private sector to continue, or requiring a different but no less invidious discrimination by the public sector. In practice, this might well mean a choice between doing almost nothing about discrimination or

*Editor's note: For a critical review of Dworkin's work see Jeremy Rabkin, "Law's Umpire," page 24 of this issue.

†Author's note: Nor, for reasons that cannot be developed here, do the most recent Supreme Court decisions fundamentally change the outlook.

granting to the state enormous and arbitrary powers over the basic rights of citizens, powers which it has now, furthermore, pledged to abuse. This would not seem a particularly attractive set of choices.

Yet I do not think that we really are condemned to face these two extremes. For what it is worth (and I think it is worth a lot), this was not the choice that the American people or its elected representatives wanted to make back in 1964. Quotas (or even "goals") for the hiring of certain ethnic groups or even for women and blacks were surely not on the agenda then. It is not just that 703(j) was necessary to assure the passage of the bill; the tone of indignation expressed by the bill's sponsors about the very thought that the Act could lead to measures of racial preference tells us what the bill represented in the general public mind. We thought we were institutionalizing the end of racial discrimination, not a whole new set of bureaucratically calibrated discriminations. Conceivably this was naive of us, but a very heavy burden rests on anyone who wants to demonstrate that the longed-for goal we set ourselves in 1964 must be abandoned out of sheer impossibility.

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The contention that any attempt to enforce the provisions of the private sector parts of the Act *necessarily* involves preference seems to me unproved and very likely unprovable. Had there been sufficient concern for fighting discrimination by nondiscriminatory means, other possibilities should have been tried. In some areas, case by case adjudication of complaints could have been expedited by the use of industry councils and independent experts. In others, random testing of a company or institution linked to very heavy punishments might have been tried. What human ingenuity might have found, had it been seriously consulted, one cannot know, nor what measures would have worked. But we can say that the bureaucracy turned to numerical preference with an unseemly alacrity and possibly even with relief, as an easy remedy—a first alternative and not a last.

Ultimately the No Nonsense argument asks us to decide about affirmative action by accepting or rejecting a radically libertarian position. This position claims that the liberty to discriminate in the private sector is ultimately identical with the right to be free of discrimination from the state. If the state is understood as it is in liberal theory (the natural rights theory of Locke), it is essentially the guarantor of the rights and liberties of the individuals who compose it. If one wants to sacrifice a calf in a pagan ritual, John Locke only wants to know whether it is your calf or not. Consequently, so this purist argument holds, the move into the private sector by the Civil Rights Act involved a self-contradiction. Either it should have remained content merely to prevent all legally commanded discrimination, or it should have made clear that its real goal was not the preservation of rights but the licensing of the state to create equality of condition as universally as possible.

But to call up the radical separation between public and private in liberal theory, as the purist would, is to call to mind what is in both senses "peculiar" about liberal theory and the regimes it gives rise to. Putting liberal theory into practice involves deliberate ignorance and deliberate forgetting. The American Founders asked Americans to become Americans by forgetting, for all public purposes, that they were descendants of one group or another, belonged to this or that sect, or shared a particular class allegiance.

Yet the purist defenders of liberal theory and its critics of both left and right seem sometimes to forget something about the character of liberal forgetfulness, namely that it is deliberate, strategic, and has a particular end in view, i.e. that it is a very mindful forgetfulness. It was Ronald Dworkin, in fact, who summed it up very well when he interpreted the doctrine of the so-called color-blindness of the Constitution as really meaning that "the Constitution is so sensitive to color that it makes an institutional racial classification invalid as a matter of law." For that is the real strategy of our kind of regime. That strategy recognizes full well that human beings are not simply the abstract bearers of the rights of natural right theory, that they are also lovers of their own, prejudiced against strangers, averse to nothing so much as risking their chances on a fair test of ability, and therefore likely to rig things in their own favor if they can.

In insisting that this is all a matter of indifference, never to inform the inviolable precincts of the public realm, liberal regimes are actually engaged in a process of education. By asserting that human beings are capable of fairness in establishing the rules by which they live, they seek to make human beings capable of fairness. By making American citizenship mean having respect for the rights of others, our laws and traditions make an American people whose characteristic is respect for the rights of others. The *Federalist* demonstrates repeatedly that the Founders knew that much more than mere liberal theory would be needed to make a liberal nation a reality. Our generation too, which sees

the old conflicts of tribe, race, religion, and class breaking out all over the world, ought to know just how difficult it is to internalize, to assimilate into a second nature, those highly artificial constraints that liberal democracy requires.

It is one thing to enter the private sector to command indifference to race; it is quite another to command the public sector to pay attention to it.

The struggle in America between our liberal democratic second nature and our primitive, pre-liberal first, is best exemplified in the history of the treatment of American blacks. This is not to belittle in any way the great difficulties faced by many immigrant groups, by Native Americans or by women. But it was no accident that a movement that called itself by the universal name of "civil rights" was in the first instance a movement to secure the rights of black Americans. The proud and tragic history of American blacks—moving from slavery to Jim Crow, from exclusion from the nation's fighting forces to segregation within the military, from "separate but equal" schools to fancy redistricting designed to avoid the consequences of *Brown* v. *Board of Education*—again and again reveals black Americans insisting on equal treatment and American majorities, sometimes only regional but often national, refusing to grant it. *De jure* discrimination rested on a firm bed of popular prejudice. Thus, in this critical case, the process of education and initiation into the norms of liberalism seemed to have failed.

But, as the civil rights movement showed, it had not ultimately failed. In moving into the private sector, the Civil Rights Act, like the civil rights movement which had preceded it with freedom rides and sit-ins, was seeking to complete the task of creating the American people—that is, a people which really would, in the decisive case, think skin color to be a matter of fundamental indifference. In focusing on public accommodations such as buses and restaurants, the movement and the Act both showed a primary concern with erasing the stigma of color-conscious exclusion. It wasn't that one necessarily wanted to eat Lester Maddox's chicken or felt one would gain much by it; it was that the legitimacy of color-conscious exclusion had to be challenged and destroyed. Yet the Act, in moving beyond this to employment, did so with some justification. Not to forbid discrimination in employment would probably have meant that blacks would have continued to suffer widespread exclusion from whole sectors of society. The fundamental illegitimacy of racism and prejudice would not have been established once and for all because it could have gone on, unchecked and unreprehended, in so much of society.

Admittedly, in attacking private sector discrimination the Civil Rights Act adopted a different tactic than the classic one of teaching by example. Instead of steadfastly ignoring private conduct as a matter of public indifference, the Act took just so much notice of those who refused to be indifferent about race as to command them to be so, or at least to act accordingly.

Yet to what did this difference of tactics amount? It was a disagreement about how to allow liberal theory to become liberal reality. It in no way sought to scrap the liberal model where the state remains largely indifferent to private choices. Rather, so that the state's indifference to race might be firmly grounded (and so that its indifference might not be said to mask, or even connive with, society's partiality), it sought to create true indifference to race in the private sector as well.

Of course, the defenders of state-directed programs of preference often say that they are only doing the same thing, only much more effectively. But it is one thing to enter the private sector to command indifference to race; it is another to command the public sector to pay attention to it. It is one thing to require us to live as our ideals say we ought to, as a way of getting us to love them; it is another to require us to live as our ideals say we ought not to. The former may do a great deal to overcome prejudice; the latter surely does a great deal to reinspire prejudice. The former enters the private sector in order to guarantee rights but does so cautiously, hedging itself with promises not to introduce quotas and state-sponsored racial preference. The latter not only establishes these programs but supports them with a vast structure of judicial interpretation and philosophical argument which necessarily turns a right into an entitlement to governmental "concern and respect." The former opens a door a crack to relieve pressure within; the latter blows away the whole wall from without.

The new pragmatism seems to want to put aside the tradition of 1964, to condemn it on one level as boring and irrelevant and on another as insufficiently rigorous. But if the new pragmatism succeeds, the extreme choices outlined above will necessarily present themselves. They are not attractive in practice nor are they theoretically persuasive. Nor is the prospect of the struggle between them at all enticing. The middle ground, namely the original meaning and intention of the Civil Rights Act of 1964, as it sought to create true color-blindness in society and state, is still defensible. All it requires is that its defenders, who in the 1960s weathered the indignation of segregationists, now be able to stand up to a little ridicule and impatience from pragmatists. ⌑

Books

Law's Umpire

by Jeremy Rabkin

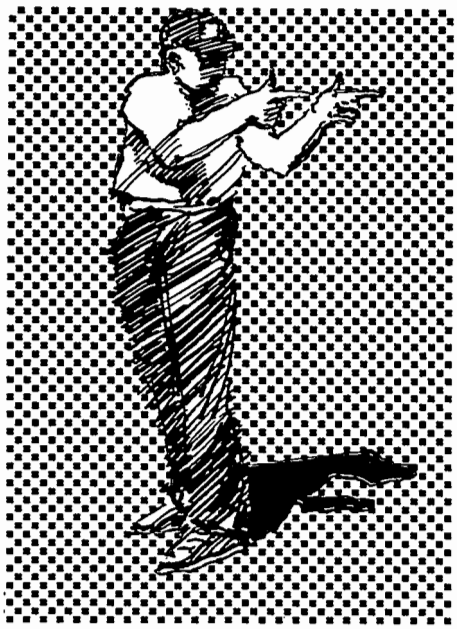
Law's Empire
Ronald Dworkin
Cambridge: Harvard University Press, 1986.
452 pp. $20.

A Matter of Principle
Ronald Dworkin
Cambridge: Harvard University Press, 1985.
425 pp. $25.

According to George Orwell, each great novelist, at some point in his career, offers a title for one of his books that encapsulates that author's entire outlook on the world. If the observation holds true for non-fiction writers as well, Ronald Dworkin's time has come. Critics may complain about the "imperial judiciary." But Dworkin, one of the most adamant and uncompromising defenders of contemporary judicial activism, unabashedly calls his new book *Law's Empire*.

If there is one thing that Dworkin admires almost as much as "law" it is "principle." And principle, of course, is the theme of a collection of Dworkin essays published last year as *A Matter of Principle*. In Dworkin's jurisprudence, however, law and principle are very hard to distinguish. And principle itself, in his usage, is very hard to distinguish from Dworkin's own political agenda. This leaves him with a vision of law and of principle which demands that he sacrifice nothing more than his humility—a sacrifice which, on the evidence of his latest writings, he is all too willing to make.

Still, Dworkin claims that his principles



are the principles of "liberalism," and the popularity of his work among self-described liberals suggests that the claim has much merit. Dworkin also claims that his legal theories provide a sound description of how most judges actually do try to make their decisions. And, indeed, courts in recent decades have become quite adept at finding their own policy preferences hidden in the depths of statutory or constitutional provisions, legal niches where such policies had never before been suspected. Dworkin's writings therefore have a claim to be taken seriously as systematic statements of powerful currents in contemporary thought. Taken together, these two books offer an interesting study in the inner compulsions of a major contemporary outlook on politics, morality, and law.

Dworkin's theories may be of particular interest to readers of *New Perspectives*, for civil rights issues loom very large in his outlook. Five of the 19 essays in *A Matter of Principle* deal directly with discrimination claims, as do two of the five court cases analyzed at length in *Law's Empire*. Similar themes and arguments appear throughout Dworkin's writings. Partly this emphasis seems to be an acknowledgment of the special moral aura of civil rights claims in contemporary political life. Those claims are particularly well suited to Dworkin's demand for "taking rights seriously" (a rather less apt one-phrase summary of Dworkin's outlook, but one which he used, in fact, as the title of his first book, published in 1976). Almost everyone concedes that civil rights are serious, of course, but there is room for uncertainty these days about what belongs in the "civil rights" category, properly conceived. And it is just this category's capacity to encompass rather contradictory impulses in contemporary liberalism that engages Dworkin's interest as a legal theorist. Dworkin's political theory, as exemplified by the essays in *A Matter of Principle*, eagerly embraces these contradictory impulses—indeed, exacerbates the strains among them—by raising them to the level of "principle." And his legal theory, now most systematically expounded in *Law's Empire*, is best understood as an effort to reconcile the tensions in his political theory.

Things were simpler in the jurisprudence that prevailed before the 1930s, because the political theory it drew upon was less ambitious. At the time of the American Founding and throughout the 19th century, civil rights were associated almost entirely with what would now be called "property rights"—the rights to buy and sell property, to make and enforce contracts, to conduct one's private affairs under the same legal protections enjoyed by everyone else. This was the outlook that informed the Federal civil rights legislation enacted after the Civil War, which was almost entirely concerned with protecting freed blacks from invidious constraints or impositions by state governments in the South, rather than with protecting them from private bigotry or social or economic inequality.

It is easy to say that this classical per-

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Illustrations by Amy Salganik

spective on rights did nothing to assure people all that they wanted or needed to be happy. For those who cannot find jobs or decent housing there is not much satisfaction in abstract rights to make contracts or hold property. Thus long before the contemporary era of judicial activism, President Franklin Roosevelt—thinking about the plight of the Depression poor in general, and not about the problems of racial minorities in particular—urged a "second bill of rights" recognizing the "right" of every American to a "meaningful and remunerative job," to "decent housing," to a fair return for farm produce, and so on.

But speaking of rights in this way was a rhetorical or metaphorical flourish. No one in the 1930s thought that courts could or should direct redistributive or regulatory measures in the name of such expanded welfare "rights." The New Dealers were content to have the courts abandon (or at least relax) the constitutional barriers once raised against such measures in the name of property rights. If anything, they exaggerated the extent to which older judicial doctrines had really blocked welfare programs in the past. The old jurisprudence was certainly prepared to tolerate a good deal of taxing and spending in the name of a vaguely defined "common good" and it was receptive to a wide range of regulatory measures in the name of "public health," "public safety," and "public morals."

Dworkin's liberalism is no less scornful of traditional constitutional protections for property or the freedom of the marketplace than were the liberals of the New Deal. In *Taking Rights Seriously*, Dworkin argued—in defiance of a half-dozen specific textual provisions—that the Constitution provides no guarantees at all for property or for the free conduct of business. But Dworkin rejects the traditional political theory of the Constitution as much for what it allowed as for what it sought to restrict. In an essay on "liberalism" in *A Matter of Principle*, Dworkin argues that the true liberal favors "reducing inequalities of wealth" through government "redistribution" programs but simultaneously opposes "regulation of sexual literature and conduct." The true liberal also supports "procedural constraints and devices . . . that make it more difficult to secure criminal convictions" because he is properly "suspicious of the criminal law." But he favors "government intervention" to advance "racial equality." The last position perfectly mirrors the moral tensions among the others.

Dworkin tries to hold his diverse political commitments together with a new, highly abstract theory of rights.

Dworkin insists that laws prohibiting private racial discrimination are grounded in high principle, but that this principle does not prohibit racial preference on behalf of minorities. There can be no principled or constitutional objection, he insists, to government measures designed to secure some fixed allocation of resources or opportunities among groups, so long as such measures help minorities. But why is it proper for government to restrain private discrimination against minorities, if government itself may practice racial favoritism on behalf of selected minorities? Why, for that matter, is it acceptable for government to deploy its coercive force against discrimination, if it may not suppress pornography, prostitution, and other vices?

Dworkin does not want to invoke the plausible (if disputable) argument that discrimination against minorities has harmful social consequences, which "benign" preferences do not. He does not want to invoke this argument because it would make the validity or strength of "rights" contingent upon assessments of social advantage. And Dworkin is quite insistent that "rights" must be grounded in "principle" and sharply distinguished from mere "policy" arguments that look to "social advantage." (Without this sharp distinction, Dworkin insists, rights would be at the mercy of the majority's view of social advantage and so not really rights at all.) Yet neither does Dworkin want to invoke the plausible alternative argument that "benign" preference schemes are animated by good intentions where racial bigotry is vicious and cruel. He does not want to make this sort of argument because doing so would open the door to judgments about the moral character of pornographers and prostitutes.

Instead, Dworkin tries to hold his diverse political commitments together with a new, highly abstract theory of rights. All rights, he argues, derive from the primal right of each person to be treated with "equal concern and respect." This means that "political decisions must be, so far as possible, independent of any particular conception of the good life or of what gives value to life." Dworkin argues that this principle lends "principled coherence" to all the diverse commitments of contemporary liberalism. Old-fashioned discrimination is wrong, according to Dworkin's theory, because it expresses "contempt" for minorities, but "benign" preference cannot be faulted because it is not inspired by an insulting view of whites. Sexual regulation is wrong because it expresses "contempt" for the "way of life" of sexual deviants, but even the most thoroughgoing redistribution scheme cannot be faulted because it expresses no moral judgment against the rich.

But why doesn't a law against racial discrimination express a negative moral judgment about the "way of life" of the racial bigot? Why doesn't systematic redistribution of wealth express disdain for the person who devotes his talent and

energy to making more money than other people? Dworkin presents an elaborate series of technical distinctions to explain why such measures do not violate his principle of "equal concern and respect." Essentially, his argument boils down to the claim that such measures are inspired by abstract social ideals or visions of a just society, rather than moral judgments about particular "conceptions of the good life." To put it crudely, Dworkin argues that government may impose almost any degree of harm or constraint so long as it can assure the victims that this is being done to further a stringently abstract social ideal and is thus "nothing personal."

The technical distinctions Dworkin invokes to sustain these conclusions (as for example, between "personal preferences"—what a person is free to choose or demand for himself, and "external preferences"—what a person may wish to see imposed on another, which government may not properly consider) are most unlikely to persuade anyone not already committed to Dworkin's political program. And as Dworkin himself does not even try to argue that these technical distinctions (or the underlying principle of "equal concern and respect") were actually embraced by any earlier constitutional authority, it is rather pointless to question their historical bona fides. Still, Dworkin's political theory is worth attention in its own terms. If his political principles do capture the spirit of contemporary liberalism, they throw into sharp relief its effort to unite a radical individualism in moral terms with a very demanding vision of community in other respects. Dworkin's writings show why this impossibly strained political vision is constantly driven to seek support in the judiciary—where abstract reasoning is most at home and the social and psychological strains faced by such theories in real life are most readily ignored.

Take Dworkin's extreme libertarian approach to "sexual conduct," for example. In his essay on pornography in *A Matter of Principle*, he restates the basic principle this way: "People have the right not to suffer disadvantage . . . just on the ground that their . . . fellow citizens think that their opinions about the right way for them to live their lives are ignoble or wrong." Advocates of gay rights measures argue very much in this spirit when they claim that such laws imply no reproach to those who disapprove of homosexuality. Indeed, Dworkin's formulation implies that legislators and judges have a duty to establish new anti-discimination requirements, whether the majority of citizens approves or not.

Dworkin's writings show why this impossibly strained political vision is constantly driven to seek support in the judiciary.

Dworkin is not disturbed by this implication. He insists that it is "distinctive to the conservative position to regard regulation as condemnation and hence as punishment." He even goes so far as to claim that the liberal's suspicion of the criminal law is rooted in the fear that it "will be corrupted by the impact of external preferences"—which seems to mean that even laws against rape and robbery must be grounded in the self-regarding preference of the majority to be protected against such assaults, but never influenced by the "external preference" that others lead minimally civilized lives.

Dworkin's liberalism is so preoccupied with the menace of holier-than-thou attitudes in a smug majority that it entirely overlooks the extent to which moral regulation is actually rooted in self-regarding concerns. People who oppose the legalization of gambling or lottery games are often motivated by a half-conscious foreboding that they would squander their own earnings if gambling outlets were too readily available. Many Southerners who resisted desegregation in the 1960s later declared that they were glad it had been imposed by Federal law; forced desegregation put a stop to the kind of racist demagoguery that had made it hard for most whites to follow their own better instincts in dealings with blacks. In other words, it is harder to resist bad tendencies in the presence of bad examples. And it is often next to impossible to isolate "external preferences," because for most people, self-regarding preferences—what they want for themselves—are inextricably entangled with their notions about the kind of society they want to live in.

Few people can be comfortable with the Dworkinian ethos. The equality principle, he maintains, requires that government "impose no sacrifice or constraint on any citizen in virtue of an argument that the citizen could not accept without abandoning his sense of equal worth." But why not? People no doubt do resent being made to feel inferior or deficient. Still, most of us seem more attached to moral standards than to our "sense of equal worth." And that is perfectly understandable. If every way of life were equally worthy, there would be no reason for people to struggle against their bad impulses or to try to improve themselves—and no basis for satisfaction when they succeeded. Some may think, on a variety of practical grounds, that the law should not try to enforce marital fidelity. But it is doubtful that many adulterers, themselves, would claim that they are as worthy in their adultery as are faithful spouses in their fidelity. There are probably few people with a taste for pornography who would claim it to be as worthy as a taste for good literature.

Most moral judgments, to be sure, do not command such a broad consensus. People notoriously disagree about moral standards, particularly as they move from large abstractions to concrete rules, like

proper grounds for divorce or precise definitions of obscenity. And our high regard for personal freedom and social tolerance makes most Americans reluctant to support the enforcement of too many moral standards by law. But Dworkin's claim that the law must be morally neutral is rather removed from any traditional regard for personal liberty or concern for the spirit of compromise and accommodation. His moral neutrality principle is not even compelled by his enthusiasm for equality. It seems to derive instead from his eagerness to sidestep all the inescapable complexities of the relation between law and morality. Dworkin is eager to disclaim any intention of imposing moral values—while insisting upon his own view of proper policy with moralistic intensity.

Dworkin's vision involves some very strange notions, not only about law and morals, but about human beings. Many moral and religious traditions teach that people are intrinsically equal in their moral dignity by virtue of their equal potential for moral conduct. Dworkin's version of equality insists on the contrary, that each person's *actual conduct* is of equal moral worth. It holds, in effect, that condemning the sin is inseparable from condemning the sinner. It reduces each person's moral capacity to his actual behavior and demands that the law treat a person's displays of weakness or moral failing as the expression of his true self.

Yet at the same time, Dworkin's equality principle requires us to view a person's talents or his genius as a mere accident, as not properly or fairly his own, so that he has no just claim to the fruits of his special talents. An individual's greater reward for his talents may be regarded as an unjust appropriation of the shared wealth of the community. It is not necessary for everyone to hold a precisely equal portion of the community's wealth, he says, nor for all wealth to be held in common. Permitting something short of systematic redistribution, he argues, serves the principle

of equal choice by allowing people to choose for themselves whether to do more work or retain more leisure, whether to enter more productive or less productive work, without facing an accusation that their choices are robbing the community of potential wealth. To this extent, Dworkin favors a market economy with its inevitable differentials in economic rewards.

But he insists that government has an obligation to regulate earnings so as to ensure that differentials in financial reward correspond solely to the differential utility value of various career choices—not to the "accidental" differentials in the distribution of individual talents and capacities. A person who labors to invent a new product that is highly valued by others, then, may be rewarded for his work but not for his inventive genius. A person who spends long hours improving a talent that people will pay to admire—whether it is playing piano or basketball—can be rewarded for his practice but not for his native talent. Why should a person with special talent put up with this? Many flee from other countries to freer economies precisely to avoid such a burden, and resulting "brain drains" leave those left behind appreciably less well off. But Dworkin insists that economic efficiency is no excuse for evading the obligations of justice; several essays in *A Matter of Principle* are devoted to the argument that productivity can never be a just basis for legal decisions. Still—why is it just to deny people the financial rewards of their talent?

We can certainly imagine communities in which members feel it is just for all to share fully and directly in the fruits of each individual's effort. We can even visit such communities—for example, an Israeli kibbutz. There is no existing community, however, that demands the systematic sharing of individual earnings while simultaneously eschewing all moral judgment about the way individual members spend their earnings or conduct their lives. And it is very hard to conceive that any significant number of human beings would be psychologically capable of participating in such a community. Charity and compassion are one thing. It is quite another to feel a moral obligation (or accept the justice of a legal obligation) to a systematic sharing of earnings with people one regards as morally objectionable. This is the chasm that Dworkin's political theory opens and his legal theory struggles to bridge.

There is nothing particularly startling or original in Dworkin's claim that judges must look behind the actual words of statutes or constitutional provisions and try to discern the "background understandings" that give meaning to authoritative texts. Few students of law would deny that judges must often exercise a good deal of creativity and imagination in construing ambiguous provisions. By the same token, few students of law would deny that judges are often invoking a metaphor when they claim to be guided by "legislative intent" or the "intent of the Framers"; the members of any legislative body

might have had conflicting intentions when they agreed to particular language, and with the passage of time their language might need to be applied in situations they could not anticipate.

What is distinctive in Dworkin's jurisprudence is his claim that a judge can always—by finding the most appropriate political theory in the light of which to construe statutory or constitutional language in dispute—determine the one right answer to every question of interpretation. All authoritative pronouncements—other constitutional provisions, statutes, and court decisions, from the earliest to the most recent—should be surveyed, and a determination made about which theory offers the most coherent ground for justifying the largest portion of them. Since new court decisions and new statutes are always being added to the existing corpus of law, successive judges may have to adopt new political theories—even though construing older and formally unamended statutes or constitutional provisions.

The purpose of this staggering intellectual construct is not merely to avoid contradictory requirements in the law at the enforcement level. Judges have always striven to eliminate direct contradictions—requiring citizens to do A and not-A at the same time—by, for example, construing later statutes as repealling, by implication, the directly conflicting provisions of earlier ones. Dworkin's scheme demands something more: overall consistency and coherence at the level of principle, so that a common political (or moral) perspective can be attributed, retroactively, to different generations of framers, legislators, and judges, with their varied partisan and philosophical allegiances. In a sense, this is what judges have always tried to do when interpreting a line of seemingly diverse precedents bearing on the same disputed question. But this sort of attributed continuity in common law decision-making could be interrupted and

neatly recast by statutory enactments and, as a practical matter, judges have usually simplified their interpretive burden by segregating precedents into distinct fields. Dworkin's jurisprudence not only expands the interpretive responsibilities of judges many times over, but in so doing reduces the authority of legislators to issue authoritative pronouncements.

As a practical matter, no human judge has the scholarly resources and theoretical gifts—let alone the necessary time—to fulfill the demands of Dworkinian decision-making. Dworkin himself tacitly acknowledges as much by calling his model judge "Hercules" and locating his home address on "Olympus." Whether or not Dworkin's method would always yield a single "right" answer in principle, in practice it is bound to encourage more uncertainty and variation in legal deliberation; different judges will offer different "theories" to account for all the background sources to be harmonized. But *Law's Empire* wastes little space trying to demonstrate that its author's system of decision-making is at all practical. In its 450 pages of abstract argument and analysis, the book discusses only five actual court cases in any detail.

Law's Empire is instead devoted to showing that Dworkin's system is politically or morally attractive. And the attractions turn out to be closely parallel to the abstractions of Dworkin's political theory. To begin with, there are tactical advantages, provided judges view the language of statutes and constitutional provisions from a suitably Dworkinian perspective. Near the end of *Law's Empire*, for example, Dworkin offers an extended defense of preferential treatment programs for minorities on the basis of a theory he claims to be more consistent with the underlying principle of anti-discrimination measures than is a literal reading of the 1964 Civil Rights Act. Three of the 19 chapters in *A Matter of Principle* offer variations of this defense of "reverse discrimination," and one may assume that the potential for escape from inconvenient law is a more than incidental reason why Dworkin is attached to his peculiar strategy for preserving the "integrity of law."

Most of *Laws's Empire*, however, is devoted to the argument that Dworkin's curious notion of "integrity" is an intrinsically appealing view of law, quite apart from the results it secures. Enforcing the established rules one by one, says Dworkin, is appropriate only to a system of self-striving individuals, held together by nothing more than a common agreement to abide by those rules. Even if it could determine what the established rules actually required in particularly ambiguous cases, he claims, this positivist approach to law could not explain why people should agree to obey those rules in the first place—especially if they viewed them as wrong or unjust.

This is precisely the virtue of his alternative search for "legal integrity," Dworkin maintains—it explains both what the law must be in particular cases *and* why it should be obeyed. Though it might seem

to be a purely formal principle, akin to consistency, "legal integrity" turns out to be a theory of jurisprudence that corresponds rather closely to the political vision defended in Dworkin's previous work—and one which reintroduces all the strains in that vision at a higher level of abstraction.

To begin with, it is a highly communitarian vision of law. and legal authority. Dworkin expressly presents the demand for integrity in law as a direct analogue to the obligation of moral integrity in individuals, that individuals act "according to convictions that inform and shape their lives as a whole." Integrity "becomes a political ideal when we make the same demand of the state or community taken to be a moral agent, when we insist that the state act on a single, coherent set of principles even when its citizens are divided about what the right principles of justice and fairness really are." This "personification" of collective authority "assumes," as Dworkin notes, "that the community can adopt and express and be faithful or unfaithful to principles of its own, distinct from those of any of its officials or citizens as individuals."

Moreover, Dworkin insists that the principle of "integrity" imposes an obligation on all of us—legislators, citizens, and judges—to strive toward such a community in practice. We cannot view "formal legislation as only a matter of negotiated solutions to discrete problems." Rather, "Integrity . . . insists that each citizen must accept demands on him and may make demands on others, that share and extend the moral dimension of any explicit political decisions. Integrity therefore fuses citizens' moral and political lives," calling on the "good citizen" and "his neighbor . . . to interpret the common scheme of justice to which they are both committed just in virtue of citizenship."

According to Dworkin, this community of principle provides a convincing ground for legal obligation—legitimating governmental coercion—because it presupposes a community of mutual concern as the traditional contractarian theories of political authority do not. But the point of social contract theories—like those of John Locke echoed in our Declaration of Independence—is to emphasize the political independence of individuals. The idea of a social contract is to trace obligations to the consent of individuals—if not consent to specific provisions of law, then at least consent to a majoritarian system for establishing laws. Dworkin says a social contract cannot obligate citizens who—like most of us—are born into a system without voluntarily choosing it. But just as with his version of political justice, Dworkin's theory of legal legitimacy seeks to have it both ways.

Surely no wife is "estopped" from demanding that her husband not work late because she has accepted the "principle" of overtime work in the past.

Dworkin cites the family as the prime example of a community imposing reciprocal moral obligations that are legitimately binding even though not freely chosen. Happy families may indeed present attractive examples of mutual concern and devotion. But they are not an apt metaphor for political communities—certainly not for the sort of liberal, law-bound community envisaged by Dworkin. Good parents, after all, do not show the same tolerance toward their children's life choices as they might toward the choices of their neighbors. Parents usually go to considerable lengths to impress on their children their own views about religion, about personal morals and good manners, about education, work, and even about suitable marriage partners. Far from sustaining absolute individual moral autonomy or the official moral neutrality preached in *A Matter of Principle*, the family metaphor suggests a community of suffocating constraint.

At the same time the family metaphor seems misconceived as a ground for the view of law as principled consistency. Precisely because mutual devotion is taken for granted in happy families, family members rarely theorize about their obligations or demand strict consistency in decisions about their respective "rights." Surely no wife is "estopped" from demanding that her husband not work late simply because she has accepted the "principle" of overtime work in the past. Brothers and sisters may sometimes help each other with schoolwork, after-school jobs, or individual household chores; it would be a strange family, nevertheless, where the terms of such assistance had always to be regulated by rules and principles. Only when people distrust each other do rules and rights become important.

If it seems a dubious comfort to the dissident individual, however, Dworkin's vision of "integrity" is no more likely to nourish genuine communal feelings. Genuine communities are always particular communities. Not abstract notions of community, but particular symbols, particular practices, and particular traditions inspire loyalty and fellow feeling within a community. These may not always seem entirely consistent to an outsider. But the authority of law itself derives less from its abstract consistency than from its conformity to the larger patterns of communal life. In the ancient world, where community was most intense, both the Talmud and the Roman jurists acknowledged that local custom should normally override the letter of the law, lest the law be seen as an alien intrusion. Dworkin, by contrast, wants the law always open to challenge and change. His doctrine of integrity would place law beyond the experience

and comprehension of the majority of people in any community. Dworkin's community of integrity seems to be defined, then, less by shared practices and beliefs than by common submission to the arcane wisdom of judges.

Dworkin's work tries to unite two contemporary ideals which do not fit very well together—personal independence and communal solidarity. Both were very powerful ideals for the civil rights movement of the 1960s, which sought expanded opportunity for individuals while simultaneously appealing to the claims of "brotherhood." Feminists in the 1970s celebrated the bonds of "sisterhood" but were equally emphatic about the right of each woman to "make her own choices." These tensions are by no means unique to the left side of the political spectrum. Contemporary conservatives champion private property, free enterprise, and self-reliance but are often equally supportive of efforts to impose moral standards and to demand sacrifices in the name of patriotism. To say that people want somewhat contradictory things, after all, is not much of a reproach. Only fanatics believe that all good things in life—or in politics—can be reduced to a single aim or a single formula.

But Dworkin comes close to the spirit of fanaticism by advocating a particularly extreme vision of individual autonomy and an equally extreme notion of communal solidarity—and then insisting that, with enough intellectual wheel spinning, judges can always come up with a right answer and an unyielding principle to hold the extremes together. His argument presupposes a judicial capacity for higher philosophy that will seem altogether incredible to anyone who has struggled through the muddled texts of actual contemporary court decisions. But that is really the least of Dworkin's faults. More troublesome is his eagerness to exalt a view of "the community" and its "unity of principle" at odds with our actual history

He insists that, with enough intellectual wheel spinning, judges can always come up with a right answer and an unyielding principle.

and politics—and his willingness blithely to shrug off those American principles that had once attained a *real* community consensus.

Nothing better illustrates these tendencies in Dworkin's writing than the issue that first engaged his penchant for higher theorizing—the issue of reverse discrimination. There was once—immediately following passage of the Civil Rights Act of 1964—a broad consensus that people should not be treated differently merely because of their ancestry. Like any principle, the principle that people should not be classified by race may require exceptions in special circumstances, circumstances about which reasonable people may differ. But Dworkin—who does not want to concede that "principle" need ever be tempered by policy—has intellectualized away the underlying principle altogether, in order to avoid any conflict with his larger equalizing ambitions. In place of a clear, resonant principle, which almost all Americans had come to grasp and accept by the late 1960s—a principle that even most advocates of preferential treatment programs today endorse as the ultimate ideal—Dworkin has offered a highly arcane set of technical distinctions which very few people would be able to repeat, let alone grasp. This is what comes of preferring the imagined community of intellectual speculation to the limited but real community of living Americans.

In his earlier work, Dworkin sought to resolve the competing and opposite strains of his thinking by insisting that individual "rights" must always "trump" the claims of collective well-being and that courts must always uphold the "principle" in personal "rights" against the "policy preferences" of the majority. This is asking rather a lot where rights are given such an expansive and ambitious reach. It is not altogether surprising, then, that *Law's Empire* would offer a sweeping new escape from the resulting burden. Dworkin's new prescription comes down to this: reinvent "the community" so that conflict may be dissolved. Dworkin's new jurisprudence is indeed a quite explicit plea for judges to reinterpret our common past, to reinterpret our present convictions, to reinterpret our hopes for the future.

It is all too reminiscent of Bertolt Brecht's bitter quip about the Communist government of East Germany, after its suppression of the workers revolt in 1953. Having lost confidence in the people, Brecht taunted, the government had resolved to dissolve the existing people and elect a new one. But that is a metaphysical feat that requires a great many bayonets to put over. It is characteristic of Dworkin's brand of liberalism to imagine it can be done by legal arguments and judicial rulings alone.

The Great Self-Emancipator

by Diana Schaub

Young Frederick Douglass: The Maryland Years
Dickson J. Preston
Baltimore: Johns Hopkins University Press, 1985.
242 pp. $8.95 paperback.

The Mind of Frederick Douglass
Waldo E. Martin, Jr.
Chapel Hill: University of North Carolina Press, 1985.
333 pp. $27.50 hardcover; $9.95 paperback.

Earlier this year, Americans commemorated Dr. Martin Luther King's birthday; that we did so officially and as a nation is a mark of America's progress in racial equality and racial accord. The fight to secure the civil rights of black Americans in the 1950s and 1960s was the long-delayed sequel to the fight, a century earlier, to secure the fundamental natural right of blacks in America: liberty. Both struggles attempted to bring American practice into conformity with American principles. Both met with considerable, though not complete, success. And both were, if not led, then in some measure decisively influenced by an outstanding black spokesman. In the struggle for the abolition of slavery, that figure was Frederick Douglass. Douglass has no birthday of his own on which to be commemorated. Like many others born into slavery, he had no certain knowledge of either the day or the year of his birth. Thus when we celebrate the birthday of

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Books

Dr. King, it is fitting that we remember his predecessor, who likewise inflamed the conscience of his country.

Two recent books chronicle the life of Frederick Douglass in very different though complementary ways. In *Young Frederick Douglass: The Maryland Years*, Dickson J. Preston covers Douglass's boyhood and early manhood on Maryland's eastern shore, culminating in his flight north to freedom. A brief coda in *Young Frederick Douglass* relates his triumphal postwar return to Baltimore, his reunions with his surviving family, and his eventual visit to his dying former master. Waldo E. Martin's *The Mind of Frederick Douglass* is, as its title indicates, an intellectual biography. It traces the development of Douglass's thought as he sought, in Martin's words, "to resolve the dynamic tension between his identities as a Negro and as an American."

The youth of a great man is always a satisfying subject. To see potential that we know will be actualized confirms our sense of the fitness of things—character is destiny, or so it may seem from the life of an extraordinary individual. While Preston resists the biographer's temptation to write about a legend rather than a life, thankfully he does so without adopting a too severe, anti-heroic tone. Preston gives due weight to the external factors in Douglass's rise. In particular, he emphasizes Douglass's relatively privileged treatment as a slave and, at crucial moments, his sheer good luck. Never, though, does Preston's acknowledgement of such helps lessen Douglass's achievement. Douglass emerges as a self-made man, self-educated and self-emancipated.

A life always has its illustrative episodes. The way in which the young Frederick learned to read is one of these. At the age of eight, he was removed by his owner from the brutalizing conditions of plantation life and sent to the home of a Baltimore shipwright, Hugh Auld. The Aulds had never had a slave in their household before and so hadn't the habit of tyranny, with its supercilious contempt for the rights of others, its petulance, its loosed and odious passions, and its violence. Mrs. Sophia Auld in particular, a woman of tender sympathies and strict Methodist morals, lacked the character of a slaveholder. Instinctively she treated Frederick as a child, and a loved child, not as property. Attracted by Mrs. Auld's reading aloud from the book of Job, Frederick requested that she teach him to read. The alphabet and a few small words were soon under his command. Pleased with her student's quick apprehension, Mrs. Auld told her husband of her efforts. Auld reacted with rage, forbidding any further instruction and haranguing his wife on the dangers of Bible-reading slaves: "Learning will spoil the best nigger in the world. If he learns to read the Bible it will forever unfit him to be a slave. He should know nothing but the will of his master, and learn to obey it. As to himself, learning would do him no good, but probably, a great deal of harm—making him disconsolate and unhappy."

"My long-cowed spirit was roused to an attitude of independence."

Hugh Auld's speech, Douglass later said, was "the first decidedly anti-slavery lecture to which it had been my lot to listen. . . . [F]rom that moment I understood the direct pathway from slavery to freedom." Frederick set out with surreptitious zeal to make himself fully literate. He challenged his white playmates in letter-drawing and spelling games; whenever he was left alone to tend the house, he retraced the letters in some used copy books; and he built up a small cache of books, a Methodist hymnal, a Webster's spelling book, and his prize volume *The Columbian Orator*. This was a collection of mighty speeches by the likes of Sheridan, Washington, and Cato extolling liberty and its blessings. Most significant for Frederick was the "Dialogue Between a Master and Slave" (the contribution of the editor, Caleb Bingham) in which the slave's eloquent condemnation of slavery wins him his freedom. In addition to being a sampler of the rhetoric of liberty, *The Columbian Orator* was a manual of public speaking, with lessons in the use of gestures, facial expressions, the dramatic pause, and other stock techniques. This book always held a distinguished place in the library of the mature Douglass, not just for sentimental reasons, but because it had much to do with the making of "Old Man Eloquent."

Hugh Auld was right: in the train of knowledge came dissatisfaction. Frederick brooded over his wretched condition, and the usual sullenness of adolescence was aggravated by having a rightful and ever-present cause of complaint. He became increasingly estranged from Sophia Auld. She too had been altered by her husband's words. For Frederick, they dictated rebellion; for her, obedience. But that obedience did violence to her benevolent nature. Douglass described her plight in *My Bondage and My Freedom* (one of his three autobiographies): "In ceasing to instruct me, she must begin to justify herself *to* herself; and, once consenting to take sides in such a debate, she was riveted to her position. One needs very little knowledge of moral philosophy, to see *where* my mistress now landed. She finally became even more violent in her opposition to my learning to read, than was her husband himself." Douglass realized, later if not at the time, that Sophia Auld was a victim of slavery also. As a result, he spared her harsh censure, reserving his imprecations for the institution which could divest his mistress of her excellent qualities.

The other episode of Douglass's early years that stands out is his confrontation

Books

with Edward Covey, "the Negro-breaker." Covey's savageries impressed upon Douglass, always a believer in the efficacy of moral suasion, the knowledge that physical resistance is more convincing in some cases. He had been hired out for a year to Covey, whom he described as "a wretch whose character for revolting cruelty beggars all opprobrious speech." Frederick was for the first time a field hand, subject to the full rigors of slavery: back-breaking labor and the lash. Together they reduced him within six months. Then an especially horrible beating recalled him to himself, and he determined to resist the next assault. It soon came. He fended off Covey's attacks in a two hour, hand to hand fight which Covey was unable to win. Covey never whipped him again, and apparently the "Negro-breaker's" need to preserve his own reputation kept him from turning Frederick over to the authorities. Of this incident, Douglass said: "my long-cowed spirit was roused to an attitude of independence. I had reached the point at which I was not afraid to die. This spirit made me a freeman in *fact*, though I still remained a slave in *form*." It would be four more years before the form too was shaken off, but the hereditary bondsman had struck the first blow.

Although a leader of his race, Douglass was not a "race" man. Waldo E. Martin's study *The Mind of Frederick Douglass* centers on the radically assimilationist character of Douglass's vision. As an abolitionist orator, newspaper editor, and Republican office-holder, Douglass strove to make the American state, and American society, neutral to the difference between black skin and white. Douglass understood that the logical outcome of such neutrality would be racial amalgamation, the slow commingling of the races following the dictates of affection freed from the prejudice of color. Douglass held that a truly color-blind society would eventually become colorless; the original races would be absorbed in a third race, a mixed race, what he called a "composite American nationality."

Douglass himself was a paragon of compositeness. His father was white (and usually assumed to be his first master, Aaron Anthony). While the brutal and shameful miscegenation that occurred during slavery is not to be condoned, much less celebrated, the consequence of the sexual exploitation of slave women was to further the intermixture of the races. Douglass hinted at a Native American heritage also, and there is considerable evidence that his maternal grandmother was part Indian. In the case of Frederick Douglass, the blending of America's three races—the aboriginal Indian, the immigrant European, and the stolen African—was productive of greatness. As if in final testimony to his assimilationist faith, Douglass late in life, after the death of his first wife, married a white woman, braving public scorn and a painful and never repaired breech with his grown children.

The late 19th century was a time of much talk about the "Negro Problem." Though there assuredly was a problem, Douglass thought that to call it the "Negro Problem" was unfair, and maliciously so, in that it implied that the Negro himself was the problem. He held that the place of blacks in the polity—the extension or denial of full citizenship—was the "Nation's Problem." The presence of this despised minority was a severe test of the American republic's founding creed. Of course, each new wave of immigrants was also a concrete test of American liberalism and individualism. But despite initial prejudice, the successive huddled masses were relatively easily incorporated into the body politic. By contrast, blacks seemed to be indigestible. The black man thus bears a unique relation to America; in Douglass's words, "We shall neither die out nor be driven out, but shall go with this people, either as a testimony against them, or as evidence in their favor throughout their generations."

Douglass was generally confident that America would acquit herself well. Others have been less optimistic. After touring the United States in the 1830s, Alexis de Tocqueville, with his customary prescience, concluded that: "The most formidable of all the ills that threaten the future of the Union arises from the presence of a black population upon its territory." According to Tocqueville, the abolition of slavery would not remedy the evil, for "the prejudice which repels the Negroes seems to increase in proportion as they are emancipated [witness the often greater virulence of Northern racism], and inequality is sanctioned by the manners while it is effaced from the laws of the country." Tocqueville points here to the limitations of classic liberalism. Liberalism depends on the distinction between the state and society, between the public and private sphere; as a result, many instances of prejudice and discrimination are beyond the reach of government to punish or alter. When the society is illiberal, a liberal state offers at most legal equality, not social equality. To invade the private sphere in order to prohibit all

discrimination would be to renounce liberalism. Such renunciation might be desirable. There are, however, less radical responses to the liberal state's inability to address directly the persistance of prejudice. Strictly speaking, public opinion may be ungovernable; but it is not impervious to influence. Social reform movements (not surprisingly, an American specialty) can be tremendously powerful re-makers of opinion. Tocqueville may have overstated the difficulty. The nation need not "rise, as it were, above itself," as Tocqueville thought; rather, as Douglass put it, it need only "rise to the dignity of its professions"—a different and more attainable goal. Douglass's confidence in bettered race relations did not make him complacent. Knowing that relentless agitation was necessary to bring America to her best self, he never relented: his days of exhortation and protest extended to his late seventies, when death snatched him up between speaking engagements.

White racism and black debasement were the twofold legacy of slavery. These two mutually produced and reinforced one another. The conviction of natural black inferiority (whether cultural, biological, or both) sustained and aggravated actual black inferiority (the intellectual and moral deficiencies of those so recently released from a dehumanizing bondage), in turn intensifying the conviction of inferiority, not only among whites but, perhaps most distressingly, among blacks as well. This perverse logic of oppression had to be upset. While Douglass did not believe that anti-Negro prejudice was either innate or ineradicable, he was often dismayed by its tenacity, especially by its continuing hold upon his fellow social reformers—individuals who should have long since extirpated its traces. Comments like "Mr. Douglass, I will walk to meeting with you; I am not afraid of a black man," revealed the clumsy color-consciousness of his associates. Reflecting on this brand of eager, self-righteous self-congratulation (still the hallmark of today's do-gooders), Douglass observed that "a man may stand up so straight as to lean backward."

Such episodes were nettling, but generally harmless, and even humorous for a man of Douglass's large spirit. However, there were more serious affronts from presumably progressive New Englanders; these contributed to Douglass's split with the wing of the abolitionists led by William Lloyd Garrison. In a time when Americans had a great and—measured against current capacities—even gluttonous appetite for oratory, the favorite was Frederick Douglass, the fugitive slave. As their "prize exhibit," the Garrisonians kept him on a short leash. They wanted him to recount the horrors of slavery and, they instructed, "better to have a little of the plantation speech than not; it is not best that you seem too learned." As Douglass's powers grew, he chafed at this restriction and at the paternalism behind it. He wanted not only to retell his story, but to assess and explain it, to speak to the larger meaning of slavery, and the proper course and tactics of the fight against it. Douglass's exclusion from a full role within the anti-slavery organizations prompted him to launch his own newspaper, an act which was accounted apostasy by his Garrisonian mentors.

Independence of action soon produced independence of mind. Douglass began to rethink, and then to reject, the essentials of Garrisonianism. The Garrisonians read the United States Constitution as a pro-slavery document, "a covenant with death." Because of their fanatical insistence on the purity of practice ("the Christian does rightly and leaves the results to the Lord"), they accordingly held it illegitimate to vote, to hold office, indeed, to engage in any political action under the iniquitous national compact. Moral redemption—not political reform, and surely not violent revolt—was the only means they allowed to abolish slavery. Douglass had never been able to embrace Garrison's doctrine of nonresistance (a doctrine different from Martin Luther King's non-violent direct action or passive resistance). As an ex-slave he knew first-hand the right of revolution. At this new juncture, he began to re-evaluate the efficacy of political action and, most importantly, the nature of the Constitution. Douglass saw that the Constitution, while it did include specific accommodations to the existing evil of slavery (the three-fifths clause, the importation clause, and the "fugitive slave" clause), nonetheless did not countenance slavery. Nowhere does the word "slave" or "slavery" appear. Indeed, a reader with no knowledge of America's "peculiar institution" would not gather any hint of its existence from the founding text. By careful draftsmanship, the Founders undercut the legitimacy of slavery. Because it preserved the principle of human equality unsullied, the Constitution could serve as an anti-slavery instrument. Douglass declared:

"Abolish slavery tomorrow, and not a syllable of the Constitution need be altered."

> I hold that the Federal Government was never, in its essence, anything but an anti-slavery government. Abolish slavery tomorrow, and not a sentence or syllable of the Constitution need be altered. It was purposely so framed as to give no claim, no sanction to the claim, of property in man. If in its origin slavery had any relation to the government, it was only as the scaffolding to the magnificent structure, to be removed as soon as the building was completed.

Douglass's reinterpretation of the Consti-

tution transformed him from an enemy of the American regime into a friend—fiercely critical, but a friend.

With his conversion from Garrisonianism to political abolitionism, Douglass began to conceive a larger role for government action. Clearly, the Southern "slaveocracy" was not yielding to the sermonizing of the North; if anything, it was made more stiff-necked by such attacks. Emancipation might be accomplished more swiftly by Federal decree. The pen stroke did not come easily or willingly; instead, it followed the sword stroke as John Quincy Adams had prophesied 40 years earlier. Lincoln's Emancipation Proclamation, welcome though it was, did not fully discharge the government's duty. The freedmen must next become citizens. If they were to survive among their ruined and embittered former masters, they needed to be enfranchised and elevated. The 15th Amendment, the removal of legal obstacles to equality, the relief and reconstruction work of the Freedmen's Bureau—all were necessary to give the Negro a fair field. But Douglass was wary of special governmental assistance. He did not want his people to exchange one overseer for another. Philanthropy, whether public or private, he judged in large part by its effect on individual self-reliance.

Using the unsympathetic language of the social sciences, Martin says Douglass "espoused a representative Afro-American version of the dominant middle-class uplift ideology." Douglass's own words giver a truer picture:

> What we, the colored people, want, is *character*, and this nobody can give us. It is a thing we must get for ourselves. . . . Neither the sympathy nor the generosity of our friends can give it to us. . . . Industry, sobriety, honesty, combined with intelligence and a due self-respect, find them where you will, among black or white, must be *looked up to*—can never be *looked down upon*. In their presence, prejudice is abashed, confused, and mortified. . . . We have the power of making our enemies slanderers, and this we must do by showing ourselves worthy and respectable men.

All-black institutions were for Douglass temporary expedients only.

Because the obstacles to black improvement were internal as well as external, Douglass believed blacks themselves must bear major responsibility for their removal. Overzealous aid could obscure the duty the black man owed himself: the duty to overcome his ignorance and his slave-bred antipathy to labor and to the law. Moreover, only through self-help could the Negro recover his dignity. Douglass saw a desperate need for blacks to feel pride in their race. He insisted, though, that this pride be founded upon achievement—"the only excuse for pride in individuals or races"—and not upon the mere fact of color (the catch-phrase of the Black Power movement, "black is beautiful," would not have met with his approval.) Douglass cautioned that an excessive and false race pride actually works to the advantage of white supremacists (something Louis Farrakhan, in his alliance with the neo-Nazis, ought to remember). Racial separatism of any stripe was anathema to Douglass; it was thus with some reluctance that he admitted the need for complexional institutions—black churches, trade unions, schools, fraternal societies, and other voluntary associations. He did not doubt that uniting for common purposes could further black betterment, at least initially; but at some point, Douglass believed, blacks must make their way in the broader community. All-black institutions were for him temporary expedients only, to be disbanded once blacks were no longer excluded from the corresponding white institutions.

Most black leaders and thinkers since Douglass have been firmer in their support of race solidarity. Booker T. Washington's acceptance of a separate but equal status for blacks signaled his disagreement with Douglass's homogeneous vision. Washington's famed "Atlanta Compromise"—"In all things that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress"—was not an ignominious accommodation to Southern segregationists, but a principled assertion, from the founder of Tuskegee Institute, of the value of racial distinctness within a larger context of racial accord. W.E.B. DuBois also, although he was Booker T. Washington's most serious critic, was searching for a middle way between assimilationism and separatism. In his essay "The Conservation of Races" DuBois asks: "Have we in America a distinct mission as a race—a distinct sphere of action and an opportunity for race development, or is self-obliteration the highest end to which Negro blood dare aspire?" The sarcasm of the final clause makes clear DuBois's answer. In place of Douglass's radical individualism, what DuBois envisioned was integration without the loss of group integrity, equality without the production of sameness. America, DuBois thought, might be both heterogeneous and whole.

"What Country Have I?" This question, posed by Frederick Douglass, is the starting point of black political thought. It is a question that does not occur to most men; for most men, in most times and places, patriotism is a natural sentiment. Not so for America's black inhabitants. Slavery destroyed the *amor patriae* not only of the slaves, but of the slaves' descendants. It is DuBois who expresses the contradiction most affectingly: "One ever feels his twoness,—an American, a Negro; two souls, two thoughts, two unreconciled

strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder." *The Mind of Frederick Douglass* is an account of one man's resolution of his self-division and an attempt to judge of its success and suitability. As to the latter, Martin is highly critical of Douglass's solution to the problem of the black man's deracination. He accuses Douglass of denying his Negroness in favor of his Americanness. This is the standard charge which those who favor either separatism or pluralism make against those who favor assimilation. Time has not deprived Douglass's rejoinder of its force: "I do now and always have attached more importance to manhood than to mere kinship or identity with one variety of the human family. Race, in the popular sense, is narrow; humanity is broad. The one is special, the other is universal. The one is transient, the other permanent." Douglass's words and example are still apposite, for the choice between these three alternatives—assimilation, separation, or some judicious mixture of the two—is still one which blacks, individually and collectively, must make.

Martin's other objurgations seem less creditable. He claims to discern in Douglass biases of various, unsavory sorts: "class bias: the notion of the superiority of the 'better sort' to the 'baser sort'"; "procapitalist bias," which is the result of Douglass's failure to see that capitalism is "an economic system inherently exploitative and racist"; and finally "male bias" to the extent of "a telling suggestion of male antifeminist fantasy."

To believe in the distinction between the better and the baser, and in the superiority of the one to the other, is evidence not of bias, but of an intact moral sense, and of perspicacity if one knows who deserves which appellation, as Douglass emphatically did. Egalitarianism and elitism are not at ideological loggerheads, as Martin supposes. There is no inconsistency in working to secure the natural rights of all and, at the same time, working to promote the ascendancy of a natural aristocracy. That, after all, is the double intention of the American plan of government. While critical of the injustices which deprived blacks of a decent livelihood, Douglass was disposed to see the free market and private enterprise as mechanisms for black advancement. In this he was not alone, then or now. Black economists like Thomas Sowell, Glenn Loury, and Walter Williams are among today's most powerful vindicators of capitalism.

Douglass thought the feminist opposition ungenerous.

The last count, male bias, is altogether unfair. It stems from a disagreement between Douglass and the suffragettes, notably Elizabeth Cady Stanton and Susan B. Anthony, over the 15th Amendment. The Stanton faction opposed ratification of the 15th Amendment because it did not include women. Their disgruntlement took the form of slurs upon black men, questioning their fitness to vote. An example from Stanton: "So long as he [the Negro] was lowest in the scale of being we were willing to press his claims; but now, as the celestial gate to civil rights is slowly moving on its hinges, it becomes a serious question whether we had better stand aside and see 'Sambo' walk into the Kingdom first." Douglass thought the feminist opposition ungenerous. Douglass was a lifelong campaigner for women's rights. The slogan "Right is of no sex" appeared in the first issue of Douglass's paper *The North Star*. (Martin, in a bit of unpersuasive psychologizing, explains Douglass's involvement in the women's cause as a compensatory response to his "stunted maternal tie.") Douglass did not assert that the black male had a better right to the vote, only that he had a more urgent need for it. He further argued that racism and sexism were not strictly analogous, for whereas the natural bonds of affection between men and women considerably mitigated male supremacy, there was no similar mitigation of racial supremacy. For the black man, the ballot was a matter of life or death. Black feminists, like Sojourner Truth and Francis Watkins Harper, shared Douglass's view that the battle against racism must take precedence, as did many of the more moderate white feminists. Nonetheless Martin, following the truculent radicals, espies "the ineluctable male bias limiting his feminism."

There is a story of an Englishman who, when told of a black conservative, thought such a being must be a chimera—given the situation of blacks in America, what's to conserve? Of course, American conservatism, understood as the conservation of a revolutionary founding, is quite a different creature from Old World conservatism. Nonetheless, there is an element of truth in the Englishman's surprise. For a very long time in America, the conventional political arrangements could not meet with black acceptance. Dissatisfaction can be a spur to anger, violence, despair; but it can also be a spur to thought. The outcast Negro is, in DuBois's phrase, "gifted with second sight in this American world." He sees, and challenges, what the complacent do not. Douglass, even when he had attained personal wealth and eminence, did not cease to see and challenge. The advent of Black Studies will have been unfortunate if it leads to the notion that the thoughts and deeds of American blacks constitute a separate discipline, rather than an integral part of American Studies. Those who so profoundly challenged America should not now be confined to a corner of the academy. These books on Frederick Douglass, and even more the speeches and writings of Douglass himself, belong in the hands of every student of America.

Books

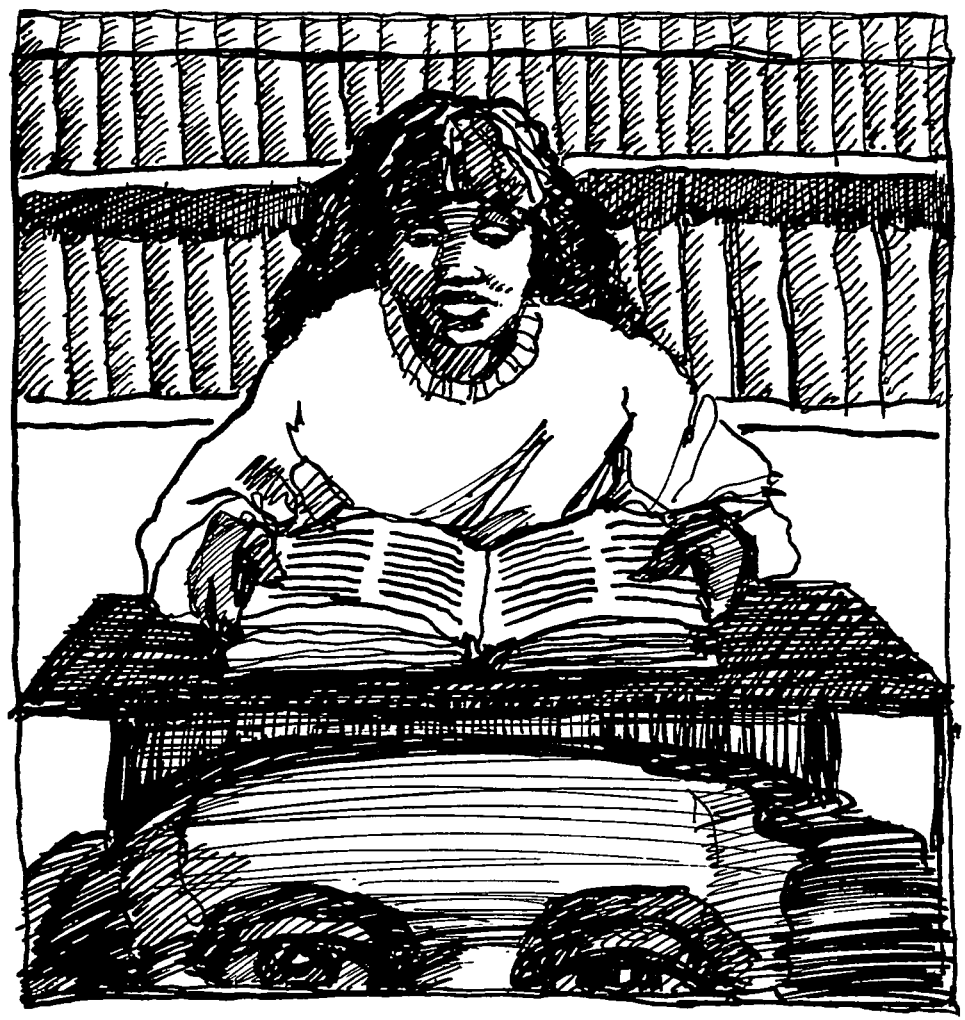
Women at School: A Matter of Degree

by Caroline Niemczyk

Alma Mater: Design and Experience in the Women's Colleges from Their Nineteenth-Century Beginnings to the 1930s
Helen Lefkowitz Horowitz
New York: Alfred A. Knopf, 1984.
420 pp. $25.

Women in College: Shaping New Feminine Identities
Mirra Komarovsky
New York: Basic Books, 1985.
355 pp. $19.95.

In the Company of Educated Women: A History of Women and Higher Education in America
Barbara Miller Solomon
New Haven: Yale University Press, 1985.
298 pp. $25.



As the spring of 1983 arrived on campus a senior English major turned her thoughts to life after graduation and wrote in her journal, "Maybe I'll just go out there, explore, and find something wonderful I want to do." Generally, such blithe spirits fail to satisfy Mirra Komarovsky, professor emeritus of sociology at Barnard College, who uses scores of journals and survey responses to document the self-perceptions of Barnard undergraduates (Class of '83) in *Women In College: Shaping New Feminine Identities*. Rather than endorse an easy enthusiasm for the future, in fact, Komarovsky gives plaudits to those students who plan a career, establish the requisite credentials, and reconcile dreamy hopes with the inevitable limitations of adulthood, especially as women who may be responsible for raising children.

Most probably, the "something wonderful" attitude would also give pause to Barbara Miller Solomon, senior lecturer of history at Harvard and author of *In the Company of Educated Women: A History of Women and Higher Education in America*, a basic overview of institutional and social themes. Solomon's lucid and engaging text describes a tradition of scholars, administrators, and female students who through an uphill effort provided recent graduates with the chance to take their opportunities for granted. Solomon, too, would prefer us to recognize that the modern college woman's privileged position needs to be safeguarded against individual self-centeredness and fluctuations in the status attached to college training for women. In unison these two books caution that educated women need a group identity.

Helen Lefkowitz Horowitz rounds out this most recent appraisal of the world of educated American women. An associate professor of history at Scripps College, Horowitz analyzes the eastern Seven Sisters schools and adds a chapter on

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Books

Scripps, Bennington, and Sarah Lawrence in *Alma Mater: Design and Experience in the Women's Colleges from Their Nineteenth-Century Beginnings to the 1930s*. While Horowitz makes no plea for women to band together, she does show how self-consciously women in all-female schools, where group identity is strongly accentuated, have historically addressed the meaning and purpose of their education.

Since advanced study was not condoned or readily available for intelligent young women until relatively recently, the early history of their education is largely one of rare individuals. M. Carey Thomas aimed for a life of scholarship and won the presidency of Bryn Mawr. Elizabeth Blackwell longed to practice medicine and became the first female professional doctor. It is particular parents, teachers, and ambitious young women who stand out as articulate pioneers of learning. Compelled to explain why the run-of-the-mill was inadequate, women's college advocates proposed a range of special missions for the trained woman. Some sought utopian religious goals, and offered a vaguely threatening vision of "new" women. Others urged instead the creation of "true" women, a more mundane goal which involved training sisters in the same manner as their brothers so that all might fit comfortably into an educated household.

Mary Lyon was one who hoped to train new women dedicated to Christian service, and to that end she established Mount Holyoke in 1837, the first credible attempt at a college-level school for women. For purposes of group solidarity, she built a single building in which female students and female teachers studied, worshipped, slept, ate, and kept house. And from this constricted, hothouse environment, most students, whom Horowitz aptly calls "inmates," dutifully became teachers or missionaries. Few graduates married, a fact which gave pause to many families interested in having their daughters educated. The school's entirely female world had the effect of removing women from their traditional concerns and encouraging what critics saw as an anti-social outlook. There was some truth to the charge: Lyon's students seemed generally uninterested in family life but dedicated to public activity of a particularly emotional and messianic kind.

The early history of women's education is largely one of rare individuals.

If Mount Holyoke produced the anomaly of worldly visionaries, the next women's colleges—Vassar and Wellesley—moved away from Lyon's model (though they still relied on a single building to develop intellectual and religious conformity) and adopted a mixture of male and female influences, especially in the academic and administrative staff. Horowitz suggests that even this slight alteration of Mount Holyoke's seminary formula had unanticipated consequences. Students now under less suffocating control began to form a college life of their own design. "Crushes" and "smashes" between romantic girlfriends and late night "spreads" for hungry ones promoted friendships and loyalties beyond the reach of college authorities. The student body's close quarters now doomed the architectural device of a main hall.

Smith's founders responded with decentralized dormitory "cottages" each with a resident matron versed in the proper social graces. Much like homes, the cottages were thought to remind students of their subordinate position in a social hierarchy and to spare young women the experience of eating in large dining halls, an ordeal suspected of triggering nervous exhaustion. Other, smaller structures with discrete functions were grouped around a campus common. This cluster of buildings, modelled on the New England men's colleges, was meant to establish the feel of an authentic village in which community spirit developed under the watchful eye of ever-present adult officials.

By the end of the 19th century, M. Carey Thomas had brought the buildings and lifestyles on Bryn Mawr's campus to a level of development roughly equal to that of today's smaller campuses, male or female. She chose architects who would build in the same English Gothic style used by men's colleges and who were willing to create edifices and open spaces without reference to the gender of the students. Grand proportion, dignity, and style were sought. Especially significant was the intended center of scholarly life, the library, whose main reading room copied the dining hall of Wadham College, Oxford. At Bryn Mawr the overlay of domesticity imposed by earlier women's schools was banished and in its place were erected monuments devoid of gestures to perceived differences between women and men. Thomas's vision would be duplicated by the other women's colleges as their resources allowed.

But for Radcliffe and Barnard, as Horowitz points out, resources did not at first permit much building of any sort. The early Radcliffe, originally known as "the Annex," kept a low profile in a hostile environment, trained only "true" women, and built nothing for years after its founding, instead transforming a modest neighborhood house for the use of a handful of students. Barnard moved with Columbia to Morningside Heights in the 1890s, but a small endowment limited construction and faculty hiring. As an adjunct college for women offering courses taught by Columbia's faculty it was entirely fitting that Barnard's first separate buildings should mirror Columbia's own McKim, Mead, and White structures. Abjuring a separate axis, Barnard's oblong campus developed

in the shape of a U, its opening perpetually facing across Broadway to Columbia.

In addition to her helpful discussion of campus architecture as a key to educational and social issues, Horowitz develops a clear picture of female undergraduates and their concerns. Solomon, too, draws a picture of college women, including those at co-educational state universities and the smaller coed colleges like Oberlin. Surveying this large population, Solomon delineates some generational differences in the student body. Between Mary Lyon's day and about 1880, female students were exceptionally pious and serious and came from middle-class families. But in the 30 years surrounding the turn of the century, a more vigorous and sophisticated woman entered college. Many in this group, often the children of professionals, championed progressive legislation and women suffrage. From it were drawn the early 20th century's academic leaders, among them M. Carey Thomas and Virginia C. Gildersleeve of Barnard. Following these decorous women came a diverse interwar group of flappers, pre-professionals, drifters, and cosmopolitan socialites. Solomon notes that this last batch was a puzzle to its teachers.

Calvin Coolidge asserted that women's colleges harbored subversives.

In fact, the 1920s and 1930s, frequently portrayed as a period of conformity among the elite, emerge from these new studies as decades of surprising diversity in the female college population. Solomon, investigating a broader field of schools than does Horowitz, is better able to describe the new youth culture that emerged between the world wars. But in significant ways that culture is still a puzzle to the educators who now study it. Who these students were and what they studied suggest a wide variety of experiences.

At first glance, for example, the curriculum seemed bound to encourage lockstep conformity. Requirements at the better colleges were generally devised to admit women with a well-rounded liberal education, often attained only in expensive private preparatory schools. At college, required courses in the classics gave way slowly and only in select schools to the newer offerings of music, dance, psychology, sociology, and home economics. Yet the aim of classical education, highlighting as it can the individual's search for meaning and duty, seems at the same time to have buttressed campus tolerance. Socialist clubs and reform politics took hold in several schools. An atmosphere of individual achievement and honesty permitted black and Jewish students to speak up, as they had not in the past, about the unequal treatment they received. Everywhere students experimented with breaking down the Victorian barriers separating them from college men, with automobiles providing the freedom to bring men to women's campuses or women to men's.

And under competitive pressures, women's schools began to recruit students from regions other than the Northeast, adding a more immediate path to change. It may have been, as Horowitz suggests, that national recruitment was only a device to avoid admitting Jewish or black women from populations closer at hand. Apparently, Barnard was the only Seven Sisters school not to set a quota for the admission of Jews and Wellesley the only one not to discriminate against blacks in housing. On the other hand, this was the era which saw the founding of Bennington and Sarah Lawrence, both of which developed innovative curricula and sought out and nurtured some avant-garde students and teachers. Such campus changes did not go unnoticed. Calvin Coolidge's assertion that women's colleges harbored subversives gives an indication of the general public's feeling that college women were not conventional.

Graduates married later, less frequently, and produced fewer offspring than other women.

Perhaps the most serious clash between the public's values and the behavior of college women centered on the question of life after the academy. Several surveys showed that graduates married later, less frequently, and produced fewer offspring than other women. As in Mary Lyon's period, critics charged that college ruined women's natural inclination for heterosexuality and mothering. The argument took hold that whatever schooling might do to young women it should not turn their hearts away from keeping families. Critics implied that it might be impossible to expect educated women to be good mothers.

Some women's schools responded between the wars by promoting course offerings in subjects considered the building blocks of womanly virtue. Vassar and Scripps, for instance, developed elaborate home economics courses. Child psychology was taught in many schools. The fine arts were promoted for their utility in a mother's hands as she tried to make her home a more beautiful and culturally enriched environment for her children and husband. But however much public pressure and curricular emphasis may have encouraged young women to remain at home after graduation, the financial hardship of the Depression and later the increased demands of a war economy propelled many women into the labor force. And as critics of women's education noted, the arrangement of marriage plus career, including fewer offspring, would remain the norm for educated women

Books

from the 1920s to the end of the war, as it has been for educated women ever since.

Solomon shows that for a brief period in the late 1940s and 1950s, an increased proportion of white middle-class college women dropped off some career paths even as actual numbers of college graduates taking jobs increased. "Male" careers like medicine, the law, the ministry, and academia made demands on women's time which were strict enough to leave many mothers feeling guilty or otherwise emotionally distressed about their families. Not since the Progressive era at the turn of the century had such a sizeable number of women seen their alternatives as family or profession. In the earlier period many university women chose to marry their work. But amid Eisenhower-era affluence, as the country recast its social forces following the war, university women idealized a life of nuclear families and backyard barbeques, all in the service of the baby boom.

Whether these graduates made their choices in complete freedom or under what some feminists see as American culture's coercive influence is a question that will continue to be debated. But while Solomon and Komarovsky think that the post-war generation's abandonment of its most challenging career opportunities was a myopic choice, it was, as Solomon's comparison between the experiences of black and white college women makes clear, a choice of privilege. Among blacks, more women than men attended college because daughters traditionally claimed family resources before their brothers. Since educated black women could teach while educated black men had few good job prospects, spending money on daughters was a wise investment. Added to this reversal of white experiences, in which sons received comparatively more encouragement to stay in school, were higher divorce rates for the total black population (including the educated) and the higher proportion of educated black

women who remained unmarried than did their white colleagues. On the whole, then, black graduates had to fend for themselves without the support of a nuclear family and the income of a working husband. Life's choices were more circumscribed and difficult for the black college woman than for the white one. These black women tended to continue working after the war economy had relaxed.

Life's choices were more circumscribed for the black college woman than for the white one.

So far as the ongoing debate about the choices exercised by all female graduates is concerned, these three new studies should help to define its terms more clearly. Of particular significance is the story they tell of post-war questions whose origins predated the war. The matter of women's competence, for instance, seems to have been settled by the end of the 1940s. During wartime, women added architecture, engineering, and several fields of scientific work to their already established experience in the humanities, medicine, and journalism. But by the 1950s, people's doubts had shifted from whether or not women were able to work with the same intellectual and psychological vigor as men to whether or not women should work with the same vigor. Ironically, then, according to Solomon, women's occupational horizons grew narrower just as their ability was acknowledged to be equivalent to men's.

At the same time, the absolute number of women attending college has risen without pause in the 20th century. This trend has diluted the scholarly and pre-professional character of the original women's college student bodies. As early as the 1920s, Smith's president bemoaned the passing of the "handful of eager souls" and their replacement by "2,000 students gathered—one must confess—largely in obedience to a social convention." That social convention has persisted to the present day: since the end of World War II, increasing proportions of women in every social and economic class have attended college. These women, cultural values notwithstanding, have worked after graduation in always larger numbers; three-fifths of the post-war graduates held jobs by the early 1960s.

Choices about adult life, these books make clear, are no easier for having been made more numerous. Solomon marshals the eloquent testimony of many working women who wish they did not have to work to supplement their husbands' incomes. Other women, the sort for whom Betty Friedan wrote *The Feminine Mystique*, seem no happier for staying home and not working. Balancing motherhood, public life, and a stimulating job have proved to be conflicting activities and a difficult juggle.

The dilemmas are perennial. At Barnard in 1983 the great majority of seniors were convinced they could satisfy all their demands and live a rich, full life. Quite a number of them devised a plan by which they could work for a few years, then get married, take ten years off to raise their

children, and return to work around the age of 40. They were willing to shift careers as opportunities or time constraints presented themselves. One student admitted that she would rather not become a stock trader after seeing firsthand how frantic their lives can be. For her, elementary school teaching took on a new appeal.

Students who plan departures from the work world are labeled "defectors" in Komarovsky's study.

This sort of flexible attitude reminds Komarovsky of the 1950s and she does not like it. Students who plan departures from the work world are labeled "defectors" in her study. On the other hand, women who began their freshman years hoping to graduate into the arms of a husband are labeled "converts" if by their senior years they have decided to pursue full-time careers. Those who are confident they can manage both children and professions are urged to lobby for "social inventions," chiefly those in force in Sweden. Until day-care arrives in America, Komarovsky concludes, these working women will risk grave disappointment and familial havoc.

Komarovsky seems to understand that her message will go unheeded. The subjects of her study are too satisfied and too preoccupied with dating and social pleasures to march on Washington. Shocked out of high school identities by New York City and college life, Barnard women become fully engrossed in their new peer groups. So engrossed, in fact, that they anticipate extending unchanged into postgraduate life their new college friendships and casual relationships with men. They seek male partners with traits they value in themselves—sensitivity and ambition, especially. Even the most "career-salient," as Komarovsky calls her "steadfast" subjects, have found that they can mix academic performance with social approval. Unlike the women of the 1950s, the students with the best grades and driving ambitions are not gawky loners but popular members of social circles.

All of Komarovsky's data suggest there has been a significant social adjustment of the most pleasant kind. Perhaps as a consequence, young women now in college are individualists when it comes to planning their futures. They feel that they have achieved quite a bit and that they deserve the responsibility of managing their lives with a free hand. They do not respond well to the women's movement's exhortations to group unity. And because they now number more than six million and account for 52 percent of the total student body, they are in a majority position no earlier generation of female students enjoyed.

Perhaps the young graduates will coalesce as a political group and demand Komarovsky's agenda of child-care and flexible working hours for even the most competitive professions. But these newest portraits of women living on campuses their predecessors made androgynous, and generally studying the same courses as men, suggest that they perceive themselves as the mainstream. Special arrangements—like separate "women's" political platforms—that would set them apart from their male companions are evidently in disfavor.

While the class of 1983 would agree with M. Carey Thomas that "our failures only marry," they are no longer either "new" women or "true" women but are of some different order altogether. The women's movement and the politicians who court its favor may have to discover strategies which avoid defining group identities if they are to win friends among the new crop of educated women.

Books

Empty Epic

by Kenneth M. Jensen

Common Ground: A Turbulent Decade in the Lives of Three American Families
J. Anthony Lukas
New York: Alfred A. Knopf, 1985.
659 pp. $19.95

By now the readers of *New Perspectives* have no doubt heard about *Common Ground*, Anthony Lukas's lengthy testament on racial conflict and school desegregation in Boston, 1968–1978. Undoubtedly they have also heard that it follows in intimate detail the lives of three ordinary families (Black, Irish, and Yankee), closely scrutinizes five of the public figures closest to events, and otherwise attempts to exhaust the subject. If they follow what is intellectually fashionable, they probably know, too, that *Common Ground* is a big hit in elite circles.

Common Ground has been called everything from the political book of the decade, to the classic study of race in America, to the ultimate account of the end of the American Dream. It has been dubbed a major contribution to American literature. Thomas Powers has said on behalf of its many admirers: "You may read it for the story—I certainly did—but you'll remember it as if you had lived it."

Despite the heady praise it has received, there are a few people around for whom *Common Ground* is less than a sublime experience. Even its admirers have recognized that it can be an aggravating read. They note the way in which it obscures the sequence of events; its habit of wandering back and forth across topics, across town, across centuries; and its tendency to take the reader deep into the background and leave him stranded there. If the book had an index, these things could probably be tolerated in better humor.

But *Common Ground*'s few real critics find the foregoing the least of its problems, and I am compelled to agree with them. Harvard's James Q. Wilson, an eminent student of law and politics, is most unhappy about the fact that *Common Ground* does not give proper weight to the role of Judge Arthur Garrity, who presided over Boston's school desegregation case and the program designed to carry out its decision. According to Wilson, Lukas "seems to have learned less about the judge and the judge's thinking about the case than about any other aspect of the Boston story." Mandatory busing was surely the force that tore Boston apart in the middle 1970s. Garrity ordered it, set and implemented its master plan and, in effect, ran the schools from top to bottom thereafter. The judge has been hotly discussed in the media. For many legal scholars, he created the ultimate scenario of judicial intervention. Garrity is no more than a shadow in *Common Ground* compared to Mayor Kevin White or anti-busing activist Louise Day Hicks, for example. While Garrity's ongoing involvement with the case (he only recently returned the schools to the control of the School Committee) has precluded his speaking his mind publicly and rendered him less accessible to Lukas than others, it is also true that Lukas does little to compensate for this. The author might, at least, have reported what various legal scholars surmise about Garrity and his actions. Perhaps in wanting to deal with the judge as a man and a Bostonian, Lukas felt he had to avoid the distractions of discussing busing or judicial intervention in general terms. At any rate, *Common Ground* is not the place to go for a thorough understanding of Garrity. If, as Wilson maintains, the judge cannot be less than crucial to events, it is far from the best of all possible books on busing in Boston. *Common Ground* seems, he says, like "Hamlet with only a sketchy, incomplete portrait of the Prince of Denmark."

Lukas deprives his subjects of the key element of human character: choice.

New York journalist Midge Decter feels that Lukas has obscured more than just the character of Judge Garrity in dealing with Bostonians. She argues that while he proceeds very much as a novelist in *Common Ground*, Lukas oddly refuses to create living characters. This criticism, too, rings true. Apparently on the principle that all of the people he treats must be handled sympathetically and protected against caricature, Lukas takes everything they say at face value and makes them all out to be moved by belief and principle only—never by forces outside their notice or control. He thereby doles out a sort of

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dignity to his subjects, meanwhile depriving them of the key element of human character: choice. It is made to seem impossible that anyone portrayed in the book could have done otherwise or better than he did in the face of events, a possibility always open to real individuals. If judges, mayors, and aggrieved parents could not have done otherwise or better than they did in Boston, where they did so poorly, there cannot be much hope for any of us.

Decter is upset by another, more fundamental problem with *Common Ground*. She asserts that there are many things in the book, "many characters . . . mainly the victims of something or other, but there are no ideas. Thus by the end of this enormous effort, nothing is resolved, nothing learned, and nothing affirmed." Lukas's presentation of the Boston crisis as a tragedy tells us nothing we do not already know. Although it might seem so, the absence of ideas is far from an outrageous charge. Even Lukas's admirers have noted that the book avoids analysis. There is little difference, except in tone, between Miss Decter's observation in this regard and that of the more approving Kai Erickson: "[The book] has no introduction or preface or foreword, which means that Mr. Lukas does not intend to instruct us on how to read the text or think about it, does not inform us what literary genus it is meant to belong to."

Surely an exhaustive book ought to provoke conclusive thinking. Not merely the absence of preface and epilogue, but the text itself shows Lukas's intention to avoid thought: one simply cannot draw any immediately useful conclusions from *Common Ground* that would help to shape policy. There is, in fact, no real contribution to the debate on busing, on whether the courts ought to manage school systems, or on whether we can provide both quality education and strict racial equity at the same time. *Common Ground*, then, seems to run away from the

very urge for answers that makes us want to read a book of this sort in the first place.

The concept informing *Common Ground* is that of the new social journalism, i.e., journalism bent to the project of social understanding and reconciliation. The problem of *Common Ground*, in my estimation, lies in Lukas's particular realization of that concept.

The central notion of social journalism is that what makes news—notable events involving notable people—is not the stuff we ought to be interested in if we are to truly comprehend what is going on around us. The "context" or background of such events is, on the other hand, everything. Context is taken to reside in and around the lives of ordinary people as well as in and around the ordinary lives of notable people. It shows where human attitudes, beliefs, and principles come from. These in turn explain actions that make up events. Practicing social journalism is a matter of discovering context. In the case of something like a racial crisis in a major city, the context promises to be enormous. This will not daunt the practitioner—witness Lukas, who gave seven years to the project, conducted more than a thousand interviews, and wrote down for us everything he found out. When what can be discovered has been discovered, the task is to put it all together in some coherent manner without diminishing the relevance of any given part of it, no matter how small. Above all, the facts must be allowed to speak for themselves as much as possible. Pointed explanation from without, however useful it might be, is frowned upon. At this point, social journalism is at great risk of becoming not only confusing but also banal: everything can seem to be the cause of everything else. Fortunately, most of its practitioners sooner or later give in to the attractions of actually telling a story, and end up organizing the facts into some sort of coherent hierarchy.

The practitioner in question here resists all attractions—and coherence—to the bitter end. Lukas's brand of social journalism appears to involve keeping the facts from speaking for themselves, as much as it does keeping the journalist from manipulating them from without. On the matter of how Judge Garrity is treated, it might be said that, on top of deemphasizing the import of his actions, Lukas takes pains to balance the information he does give in such a way as to make it impossible to add up the facts and say whether the judge was more good than bad for Boston. In one breath, he gives circumstantial evidence that Garrity is an apostate Irishman hiding in and protecting the suburbs. In the next, he gives circumstantial evidence that Garrity is a meticulous, honest, and firm enforcer of what is both legally and morally right. Garrity's decision and busing plan are portrayed as being both good for good reasons and bad for good reasons. One can only conclude that the judge—like everyone else in Lukas's Boston—had it tough and did only what circumstances permitted according to his own perfectly understandable beliefs and principles.

Books

Given the way Lukas proceeds, one would think there are no good or bad people in Boston. Everyone exhibits a certain integrity and reasonableness of motivation—or if someone does not, good reasons are given to excuse the lapse. When the actors do good or bad things, they are not so because good or bad people have done them or even because they are good or bad things in and of themselves. Everything, from principles to court cases to violent acts, is presented as inherently neutral. The only judgment Lukas is willing to pass—and only because the course of events forces it on him—is that life was miserable in Boston by 1978. Despite this, however, no one—either individually or collectively—is ultimately responsible, and no act is ultimately faulted.

Because Lukas has succeeded in keeping us from drawing conclusions, it would seem logical to say that *Common Ground* is a book without an ultimate point of view. Yet this is not the case, and it is here that I take issue with the critics of Lukas cited above. The book does not fail to affirm something, to have a particular point of view. It is just that one must go outside the book to be sure he has found what it is that is being affirmed.

In *Common Ground*, Lukas seems to be everywhere at pains to show that racial problems arise for every sort of reason imaginable: ignorance, fear, miscommunication, ethnic exclusivity, family and neighborhood identity and loyalties, the state of the economy, immigration, emigration, the presence of power, the absence of power, the inflexibility of law, the vagaries of politics. Because he spends so much time on all these things, Lukas seems to beg us to conclude that he regards none of them to be primary. One could come to that conclusion if he did not happen to notice a brief passage on the next to the last page of the final chapter. There, Lukas summarizes Yankee liberal Colin Diver's thoughts upon leaving inner city Boston for the white suburbs:

As the decade wore on, Colin came to perceive the "American dilemma" less in purely racial and legal terms, more in class and economic terms. Wherever he looked he saw legal remedies undercut by social and economic realities. Eventually, he believed, the fundamental solution to the problems of a city like Boston lay in economic development. Only by providing jobs and other economic opportunities for the deprived—black and white alike—could the city reduce the deep sense of grievance harbored by both communities, alleviate some of the antisocial behavior grounded in such resentments, and begin to close the terrible gap between the rich and the poor, the suburbs and the city, the hopeful and the hopeless.

While I assume that Colin Diver actually thought this, I have good reason to believe that Anthony Lukas reached the same conclusions well before his research forced him to end his book by placing the departed Divers behind their symbolic white picket fence in suburban Newton. At the time of the publication of *Common Ground*, a public debate on it was held. At the debate, the author remarked, "Class is the dirty little secret of American life," contending that the reformers of the 1960s ignored the issue of class in their zeal to correct problems of race. An equitable judicial solution, he maintained, would have been one that affected not only poor urban blacks and whites, but also the well-to-do and powerful Bostonians who had moved to the suburbs, like Judge Garrity himself.

Given these "outside the text" views, it cannot be doubted that for Lukas the key to Boston's tragedy, its racial conflicts and busing wars, is the inequity of America's class structure. The ultimate remedy to problems of race in his estimation must necessarily be that structure's substantial modification.

Lukas's socioeconomic explanation actually goes a long way in accounting for the puzzling form and substance of the book. If class is the secret to social understanding and reconciliation, why lead the reader to conclude on the wisdom of particular sorts of court decisions and political acts? They can only be irrelevant unless they relate to achieving elemental social change. Why does Lukas play down Garrity's role and refuse to make his characters real? If one feels the cause of everything is class conflict, individual action can only be secondary and the roles of particular real individuals even less important. Class analysis, undertaken in a novelistic manner, doesn't need living characters: it only needs oppressors and victims.

Social journalists pride themselves on dealing with people rather than institutions, laws, and policies. Nonetheless, their concern for the good of the whole leads them to deal ultimately only in the largest social constructs, such as race, sex, class, oppressors, and oppressed. That which mediates between the individual and the whole—law and government—is left out of it. Under these conditions, it is even more difficult for the individual to remain an individual: he disappears from his family, neighborhood, church, or political party, and is gobbled up by his race, sex, and class. This disappearing act is the common ground of *Common Ground*.

Letters

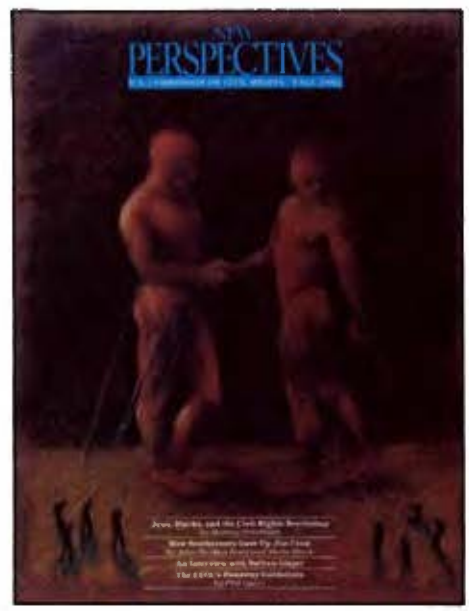
Jim Crow

To the Editor:

Several years ago one of John Shelton Reed's articles introduced me to Samuel Johnson's observation, "How small of all that human hearts endure,/That part that kings or laws can cause or cure." Since that time I have recalled those words many times, usually to rein in my own liberal faith in government's ability to improve the human condition. Now, lo and behold, here come Reed and Merle Black with statistics and analysis clearly documenting the effectiveness of stateways in altering folkways ("How Southerners Gave Up Jim Crow," Fall 1985). To those lately arrived on the scene the changes documented here are hardly overwhelming, but to those who remember the shouts of "No Not One!" and "Segregation Now, Segregation Forever!" these data reveal some sure enough attitude adjustment.

It is ironic, and tragically so, that just as we begin to document the accomplishments of the last 30 years, so many of our political leaders are ready to put what is still our most grievous social problem not just on the back burner but completely off the stove. Black and Reed are by no means suggesting that we now adjourn to an all-night backslapping followed by a lengthy rest on our laurels, but that is precisely the attitude taken by the officials of the Federal agencies chiefly responsible for the laudable statistics cited by the authors. Racism plays a major role in this phenomenon, but in this case it at least shares top billing with the venerable notion that governing least is governing best.

Actually, government's record as an agent of human uplift is a far better one than the prevailing orthodoxy will admit. Data from both the First and Second Reconstructions show that the effectiveness of Federal intervention in race relations has been limited chiefly to the



unwillingness of a majority of wind-sniffing politicians to sustain it in that role.

None of this is to say that there is not a lot of truth in old Doc Johnson's words. Overreliance on Washington has brought us to grief in a number of instances. Yet, both the encouraging evidence presented by Black and Reed and the disquieting news from contemporary South Africa remind us that, where human rights and human dignity are involved, it is far better to look to government and demand redress than it is to simply look away.

James C. Cobb
Professor of History
and Southern Studies
The University of Mississippi
University, Mississippi

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To the Editor:

Reed and Black offer a number of important insights. Southern fatalism and an unwillingness to match the sacrifices made by civil rights protesters are significant to an understanding of why politicians recanted after being elected on promises that "No, not one" black would enter a white school.

In many communities, however, even grudging acceptance came only after it became clear that Federal authorities would brook no further delay. Urbanization and economic development, two factors identified by Reed and Black as attenuating white resistance, were concentrated in metropolitan areas. Most Southern school systems and voting officials were outside the ring of urban moderation. Rarely did officials in these communities voluntarily remove the barriers of segregation. Moreover, in few of these counties did blacks challenge the edifice of white supremacy. Therefore, whites could continue to believe that "their blacks" happily accepted racial separation and that the status quo would persist as long as there was no contamination from "outside agitators."

In our Federal system, threats to local control are not lightly made by the national government and even less often carried out. It took years for the Supreme Court to overturn the separate but equal doctrine and additional years before it defined what was meant by "all deliberate speed." The Department of Health, Education, and Welfare issued three sets of guidelines for school desegregation, gradually ratchetting up the standards. Congress made three attempts at opening the voting booth to blacks before enacting the Voting Rights Act.

In scores of communities neither pronouncements of the Supreme Court nor congressional statutes affected local registration or education policies. It was necessary to bring the full force of Federal authority to bear directly on the community or on one of its near neighbors. Even cutting off Federal education funds was a price many Southern schools willingly paid to maintain segregation. In approximately

Letters

40 percent of Georgia's school districts, the dual school system was dismantled only when the Federal government won an injunction that would have terminated all state aid—a loss that no system could accept and continue to operate.

Significant Federal involvement was also critical to the major breakthrough in voter registration. Only after the Voting Rights Act authorized Federal officials to register voters who had been rebuffed illegally did black registration in rural areas become widespread.

The amount of Federal pressure needed to desegregate schools or register blacks varied across the South, but particularly in the Deep South, some display of force was necessary. The amount of pressure was related to factors such as the size of the black population, socioeconomic conditions, attitudes of local elites, and political factors.

Charles S. Bullock, III
Richard B. Russell Professor
of Political Science
University of Georgia
Athens, Georgia

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To the Editor:

The shift of the attitudes of white Southerners from near unanimous defense of segregation to widespread acceptance of desegregation presents a heartening picture of social change. Even more encouraging is the change in practices in the region—the actual acceptance of blacks in public schools, in the workplace, in public accommodations, and in suburban housing. Together, however, these constitute only a bright facade behind which lie problems which are not only unsolved but also worsening.

That measures of change in the situation of the black middle-class do not reveal the plight of the underclass parallels the failure of attitude and opinion studies to reflect the class dimension of interracial perceptions. When a white interviewee responds to questions about sending children to school with blacks or living near them we can not be sure what kind of black persons he or she has in mind. Are they hypothetical blacks with social class characteristics very much like those of the respondent or are they any blacks? Attempts to relocate low-income black families in already integrated but predominantly white middle-class areas have often met with staunch resistance. White parents who have lived up to the stated attitude of "being willing to have my child attend school with a few black children" have not always been willing to have those children bused to a school located in a poor black neighborhood. A great deal of popular opposition to welfare programs probably stems from an unacknowledged stereotype of the "typical" welfare recipient as a black, unwed mother.

While undeniable progress has brought some black families closer to the center of the mainstream, U.S. society still moves toward being two societies, separated and unequal. The challenge of full employment, income maintenance, adequate and affordable housing, and the salvation of the family demands even more drastic economic and political changes than did the dismantling of *de jure* segregation. Yet it is these critical problems that now seem to be at the bottom of the nation's priorities.

Lewis M. Killian
Professor Emeritus
University of Massachusetts
Amherst, Massachusetts

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To the Editor:

This article demonstrates why Reed and Black deserve to be ranked among America's most influential observers of the contemporary South. Their careful description of changes in the racial attitudes of the South's whites matches conclusions that have recently emerged in scholarly circles. Their arguments deserve very careful attention and analysis. Non-Southern readers especially may reconsider many of their impressions of how residents of Old Dixie thought and think. Such a review might also convince the remaining skeptics that survey researchers do occasionally deserve to be rated as good social historians.

Readers should not miss what is and is not being shared in "How Southerners Gave Up Jim Crow." The article presents a fair and generally accurate overview of the recent racial attitudes of white Southerners. Reed and Black correctly pinpoint how Southern respondents, first slowly, then rapidly, changed their views regarding limited types of contemplated desegregation. The authors correctly capture how Southern whites agonized before *de jure* segregation was ended.

"Attitude and opinion studies fail to reflect the class dimension of interracial perceptions."

The article also subtly alerts readers about why a majority of Southern whites ultimately accepted the demands that the first stages of desegregation placed on the region's social institutions. The goals pursued by the region's blacks were generaly quite limited, and those goals became much more attractive to whites between 1963 and 1966. As the article suggests, those years were critical ones. The first allowed the South's whites to witness and contemplate black kids being water-hosed down Birmingham's streets. The last provided evidence that King's dreamy sermons were rapidly being

Letters

replaced by a searing anger that suffused a Southern-born Black Power movement.

While Reed and Black note that a new Federal thrust was felt during these critical years, it is also obvious that this televised movement spurred decisive shifts in white perceptions. This is a point that warrants more attention. It suggests that the private and quiet affair most Americans have with their television sets has become a fundamental shaper of contemporary Southern culture and racial attitudes.

An article of this length must leave many questions unanswered. For instance: can the measurably "modern" attitudes that characterize the Upper South's whites be safely lumped with the beliefs of Mississippi's Delta whites? The latter are Southerners who still maintain a rigidly segregated private academy system. If not, can we be really sure that "Jim Crow" has indeed been completely given up? But instigating a rethinking of the critical era during which old belief systems were largely set aside is meaningful enough. Reed and Black are overwhelmingly successful in doing this. The continuing debate about the South's color-line problems may now resume.

Steven M. Millner
Associate Professor
of Afro-American Studies
San Jose State University
San Jose, California

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To the Editor:

In the 1960s, what Martin Luther King, Jr. described as the "creative tension" of the black civil rights movement forced the American people and institutions to face the discrepancy between their ideal of individual opportunity and the existence of systematic racial oppression. The national government—president, courts, and Congress—going with the grain of

"As Hodding Carter III wrote, 'I'll tell you who's really free in Mississippi for the first time. By God, the white Mississippian is free.'"

American democratic and religious idealism, forced the opening up of the public life of the nation. This restructuring of behavior produced a remarkable change in attitudes, which Reed and Black so well describe. A new generation ("cohort succession") tends to accept it as a matter of course.

Basically, there was little cost to the acceptance, and what there was was mainly a psychological one. For many Southern whites there was a psychic gain. As Hodding Carter III wrote, "I'll tell you who's really free in Mississippi for the first time. It's not the black man, who still is economically about as much in bondage as he ever was. By God, the white Mississippian is free. . . . That's the hardest thing to remember now—how tiny a thing [whites supportive of blacks] could do ten years ago and be in desperate difficulty."

For the most part, desegregation did not require people to do something, rather to stop doing what was now proscribed. As the revolution in attitudes and relationships began exacting a cost, the shift became more difficult. While still accepting the end goal, attitudinal hesitation focused on the means when it meant busing, affirmative action, and residential integration, particularly in working class neighborhoods.

Much depended on an expanding GNP. The basis of President Johnson's "war on poverty" was the belief that growth would provide a dividend for his poverty program without threatening the free market and consumption. The costs of the Vietnam war and the subsequent and continuing instability of the economy have undercut that hope. The American work and consumption ethics do not offer a beacon for the long term, complex, and costly effort that lies ahead.

David Chalmers
Distinguished Alumni Professor
University of Florida
Gainesville, Florida

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To the Editor:

Students of the South are not agreed on what a "New South" might consist of, or look like. But most note that a "New South" was, or is, not possible until white Southerners threw off the burden of their traditional racial attitudes. Thus, in their very optimistic assessment of the breakdown of Southern segregation during the 1960s, Reed and Black would have us understand that at last this precondition for a "New South" has largely been met. It is not our intention to cast a shadow over sanguine developments. But we wish to advance points which may qualify their interpretation and explanation of changing racial attitudes.

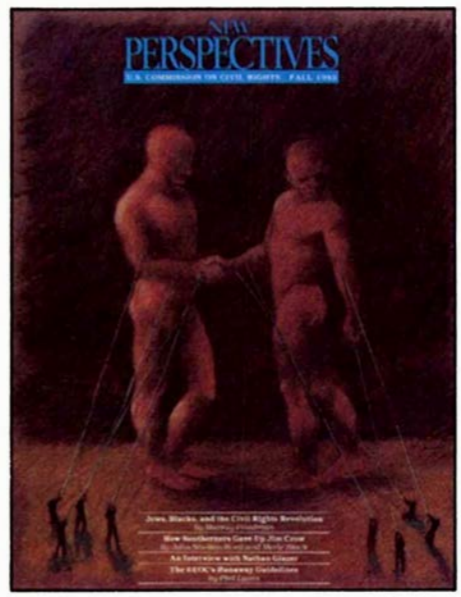
Opinion polls indicate that the *expressed* racial views of white Southerners have changed noticeably over the last several decades, and we agree with this conclusion. However, while most Southern whites have learned that publicly expressing racist opinions is no longer socially acceptable, their actual behaviors toward blacks often belie such suggested improvements in racial orientation. In-depth interviews with Southern whites and blacks in the early 1980s have indicated to us that white racism, albeit more subtle and institutionalized than previously, is still a serious issue. Again, this is particularly true in the private (rather than public) sector. For example, although only rarely

Letters

does racial antagonism bar blacks from such public accommodations as restaurants and motels nowadays, typically whites will still be waited on first, and blacks will often receive poorer service. Thus the behavior of many Southern whites toward blacks frequently fails to coincide with publicly expressed opinions about race. This, of course, has always been a problem with relying too exclusively on opinion surveys as a source of evidence.

Reed and Black are correct in their recognition of Southerners' traditional sense of fatalism, and respect for law and community, in helping to explain the rapid change in racial attitudes. But another crucial political variable also needs to be noted: the emergence of a "moderate" white voice, largely centered in the business and professional classes, in racial politics. As the civil rights movement proceeded, political discussion and vocabulary in the South was frequently preempted by hard-line segregationists to the extent that racial politics became polarized, and there was no room for a "middle" voice. Indeed, it is well known that often in the Deep South it was not even safe for a moderate white voice to appear: reprisals of physical violence, or of emotional or economic intimidation, were not uncommon. Thus, while there was undoubtedly a latent moderate white voice present in many states and communities, it often remained silent, thereby permitting arch-segregationists to dominate the political stage.

Eventually, of course, the business and professional classes began to come out of the closet. One reason needs to be underscored: self-interest. Racial violence and community conflict were bad for business. Equally importantly, to continue to permit crude segregationists to monopolize the political agenda would, ultimately, have meant surrendering the position of political privilege and power



held for so long by these classes in the South. Their re-emergence into politics, then, became a reassertion of their traditional claim to political power; as a happy corollary it also meant the introduction, and eventual acceptance, of a more moderate, non-polarized, voice in racial politics.

James W. Button
Richard K. Scher
Department of Political Science
University of Florida
Gainesville, Florida

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To the Editor:

The Reed-Black article is important because it reminds us of an impressive achievement of American democracy. Broad yet succinct, this pointed analysis neatly summarizes the many factors that coalesced to make possible a New South. Moreover, the authors do not claim too much for their thesis, for they make clear that racial problems—some still distinctively Southern—remain in the region. I have only two points to make by way of extension.

The first point consists of a bit of flag-waving for social science. Critics often accuse this difficult branch of learning of being thoroughly unable to predict major societal phenomena. Racial change in the South provides striking evidence to the contrary. Reed and Black kindly mention my work in 1959 in this regard. But I was only one among many—most of whom, incidentally, were native Southerners like myself.

The most impressive predictions were those made by the dean of Southern race relations specialists, Professor Emeritus Guy Johnson of the University of North Carolina at Chapel Hill. Several weeks before the U.S. Supreme Court handed down its school desegregation ruling in May 1954, Johnson delivered a prophetic presidential address to the Southern Sociological Society. He predicted the High Court would strike down racial segregation in the public schools as unconstitutional. He ventured further and outlined how the process would unfold and how, indeed, Southerners of both races would "give up Jim Crow." Many of the factors discussed now by Reed and Black were shrewdly considered by Guy Johnson 32 years ago!

The second point concerns the lesson of the Reed-Black analysis for the present and future of American race relations. I fully agree with the authors' emphasis upon the crucial importance of the strength and consistency of "Federal commitment" that soon led to the widespread perception among white Southerners that racial change was "inevitable." But what does this suggest will be the effects of recent Federal action? Whatever Federal commitment exists at present works in the opposite direction. When U.S. Department of Justice lawyers appear in court today, it is to argue for turning back the racial clock on desegregation and combatting

Letters

discrimination. Following the astute Reed-Black argument, such "reverse commitment" by the nation's highest authority can only lead to retrogression and a growing sense of the "inevitability" of reestablishing second-class citizenship for black Americans throughout the United States. Hopefully, this reverse test of the Reed-Black thesis will not continue indefinitely.

Thomas F. Pettigrew
Professor of Social Psychology
University of California
Santa Cruz, California

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Reed and Black respond:

That the response to our article is so generally favorable is of course delightful, and we would like very much to believe that it speaks to our analytical power and persuasiveness. But if it means simply that we produced an extraordinarily bland document, then that very blandness attests to the magnitude of the change which has taken place. Who could doubt that had such data been presented as projections 30-odd years ago they would have been very controversial indeed? (Professor Pettigrew quite rightly reminds us that our Chapel Hill colleague Guy Johnson did just that—and he was regarded as an incurable optimist.)

We find very little to argue with in these letters. Several develop aspects of the subject that we believe we either stated or implied, but did not emphasize. We were arguing that white attitudes in the South now resemble those in other parts of the U.S. with significant black populations, not that there aren't any problems left.

The history of desegregation proves that Federal intervention can produce roughly its intended consequences, because in this case it did. It's hard to see how anyone could disagree with that. Obviously the important question is what preconditions must be met for it to do so. Reasonable people *can* disagree about that, and consequently about what lessons that history has for us today. In fact, to a certain extent the two of us disagree with each other about what a constructive role for the Federal government might be now. But we share the hope that a better understanding of this earlier success can help to inform debate on future policy, and providing that understanding was the purpose of our article.

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Blacks and Jews

To the Editor:

It is striking indeed how enduring and persistent is public interest in the tangled web connecting the organized Jewish community and black America. No two other groups in the American mosaic have a "relationship" which generates as intense or as extensive a public commentary. In conferences, symposia, seminars, lecture series, articles, and books, Jewish and black writers, communal leaders, politicians, and intellectuals expand upon the nature of these groups' historic relationship, and ask, "What went wrong?" Hardly a year goes by without some crisis setting in motion, once again, the public discussion: the DeFunis and Bakke cases, the Andrew Young affair, the Jesse Jackson campaign, Farrakhanism.

"Keep in mind that the Jewish-black alliance has no historical precedents. There is nothing with which we can compare it."

Each side assumes its predictable stance. Jews hark back to their selfless role in the civil rights alliance, and assert that *they* have not changed. The issues have shifted, from a crusade for legal equality and civil rights, to one which wants America to recognize group status. Blacks, they claim, have short memories and lack gratitude. Blacks retort that Jews were never allies in any meaningful sense of the word, and that as the nation's most successful ethnic minority group, Jews owe something to black America. Or, they assert, that affluence and power (always far overestimated, to the point of sometimes sounding reminiscent of *The Protocols of the Elders of Zion*) have made American Jews conservative, comfortable, selfish, and racist.

Murray Friedman's article ("Jews, Blacks, and the Civil Rights Revolution," Fall 1985) provides a cogent summary of Jewish involvement in the civil rights movement of the 20th century. I would like to add a few comments. First, it is important to keep in mind that the "Jewish-black alliance" has no historical precedents. That is, there is nothing in American history with which we can compare or evaluate it. We have no other example of a minority group, a group endeavoring to find a home for itself in a hostile world, devoting any of its resources—economic or political—to the struggle of another, more stigmatized people. When revisionist scholars assert that the Jewish involvement in the NAACP, the Urban League, the Brotherhood of Sleeping Car Porters, and the Harlem Labor Council, did not *really* constitute an alliance, we should realize that they have nothing against which to measure it. The revisionists compare the Jewish-black alliance with traditional American political alliances, and not with *inter-ethnic* alliances, of which there are no others.

Secondly, it is certainly true that Jews as new Americans in the early decades of the 20th century (and this label is just as apt a

Letters

description of Louis Marshall and Jacob Schiff as it is of immigrant garment workers fresh from the pogroms of Eastern Europe) saw something in the civil rights movement that could serve their own purposes. This does not, however, detract from the contribution they made to the black political struggle. The significant question is not whether Jews participated in that struggle for "good" reasons or for "bad." Nor is it whether Jews did "as much as they could have." These are unanswerable questions and not subject to analysis.

The most important question that emerges out of the entire historical conundrum is: How can we account for the fact that Jews *did* perceive a group stake in the fate of black America? Why should Jews in the first place have linked their advancement in America with that of black America? Why should Jews have chosen to identify with the powerless oppressed, rather than with the powerful oppressor? How does the answer to that question then lead us to an understanding of the nature of Jewish-black relations today?

Perhaps we might here turn to the Biblical golden rule of not doing unto others. Historians, politicians, and today's policymakers have no right to expect altruistic purity from others, in the past or today, unless they themselves would be willing to measure up to some standard of selfless sacrifice of their own needs and interests.

Hasia Diner
Department of American Studies
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College Park, Maryland

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To the Editor:

Murray Friedman has again made a major contribution to seeing current issues in balanced, historical perspective. His article provides scholarly support for what I have long believed and frequently said to whomever would listen: "Black-Jewish relations were never as good as some people now say they were, and they are not nearly as bad as some now believe."

That has been, and remains, my way of saying that the much-reported story of major deterioration in the relations between the black and Jewish communities is a gross exaggeration. Yes, issues like affirmative action and Palestinian rights have caused friction. But the basic compatibility of societal goals, never totally perfect to begin with, has been essentially sustained. It's to be seen in congressional voting performance, in electoral results, and in public interest advocacy activities.

Recent debates over the quotas/goals issue in affirmative action illustrate this basic point. While American Jews remain quite united in their rejection of preferential quotas, they are most supportive of affirmative action. With few exceptions, major Jewish organizations accept goals and timetables as long as they are not distorted into quotas. In the recent dispute over the Executive Order, it was most gratifying to find many blacks and Jews working together and saying together, "Quotas no, goals yes." The differences, it finally became clear, were not as great as most had thought on the very difficult issue of affirmative action.

Finally, let us never ignore an obvious, but profound, fact. To blacks, Jews are not only Jews, they are whites. To Jews, blacks are not only blacks, they are Christians. At least some portion of any antipathy between the groups must be ascribed to these broader categorizations.

Hyman Bookbinder
The American Jewish Committee
Washington, D.C.

To the Editor:

If what Mr. Friedman describes were the whole story, one would have to conclude that black-Jewish tensions were the figment of someone's imagination. Unfortunately, that is not so. Mr. Friedman's essay is of limited value because of all that he fails to discuss.

What Mr. Friedman has described is the black-Jewish alliance as it existed, and still does to some extent, among mainstream black and Jewish organizations. That such an alliance was and is important cannot be questioned or doubted. Those blacks who now seek to denigrate Jewish involvement in and contributions to the struggle for equality of rights for all Americans debase and distort history.

However, mainstream black and Jewish organizations do not represent the totality of their respective groups. The masses of Jews and blacks have encountered each other not as allies, but as "haves" and "have-nots." The 1930s saw blacks in Harlem and Chicago organize boycotts against Jewish merchants because of the refusal of these merchants to hire blacks as clerks in their stores. Black anti-Semitism was expressed during that time with a virulence almost matching such expressions today.

Mr. Friedman also omits from his description any mention of the enormous impact of perceived Jewish opposition to affirmative action on blacks. Indeed, what is most startling and disturbing in Mr. Friedman's essay is his omission that there is such a thing as Jewish racism.

In point of fact, there is. As long as Jews are unwilling to talk about the racism among them, as long as blacks are unwilling to acknowledge and talk about black anti-Semitism, there is no possibility that the two groups can talk fruitfully together.

Yes, Mr. Friedman is right to present what the historical record says about the enormous contributions of Jews to the civil rights revolution. However, that is

Letters

not the whole story. The complete story is one of painful misunderstandings and misperceptions. If there is truly to be a black-Jewish alliance, it is time each group confronted its misunderstandings and misperceptions of the other.

Julius Lester
Department of Afro-American Studies
University of Massachusetts
Amherst, Massachusetts

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To the Editor:

I have followed your transformation of *New Perspectives* with great interest. As one who had tired of the old "racism is everywhere" approach of previous Commissions, I hoped that you would bring fresh intellectual honesty to the debate about race and equality. I must say that I was extremely disappointed by two articles in your Fall 1985 issue.

Murray Friedman's article on Jews and blacks is itself an example of why there are tensions between two groups of Americans who should have a great deal in common. Mr. Friedman does an excellent job of reviewing the history of black-Jewish relations, but he is less than honest in addressing the current sources of conflict. He attributes the alienation of blacks and Jews to the emergence of militants like Malcolm X, Eldridge Cleaver, and H. Rap Brown. But he omits one reason these men had appeal in the late 1960s. It became apparent from Martin Luther King's failures in Chicago and other Northern cities that "liberal-reformist" strategies could not cope with the deep-seated economic inequalities that continue to plague us today. At the same time, many blacks rejected the Malcolms, Browns, and Kings, yet found white liberals unwilling to sit down and formulate strategies that addressed economic issues. Northern liberals, having dictated to Southern whites on

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race relations, didn't want to make sacrifices in their own back yards and preferred to rail against militants hyped by the media.

Mr. Friedman glosses over the loss of white liberal commitment when he suggests Jews "perhaps overreacted" to crises like the teachers strike and low-income housing in New York. One reason some blacks are so bitter today is their profound disappointment at finding that many Jews, when pressed, acted like other whites. He also passes too lightly over the issue of Israel's relations with South Africa. If Mr. Friedman wants an honest discussion with blacks (and I'm not convinced by his article that he does), he has to begin by respecting the intellect of those who disagree with him. The kinds of arguments he has presented just confirm the suspicions of many blacks that they are being patronized by Jews who say they want to be friends.

Intellectual condescension is the strongest message I get from the interview with Nathan Glazer. Here is a man who has been a leader in formulating the attack on affirmative action, yet has not bothered to determine the extent of racial discrimination. He only concedes that some blacks think it's there. How remarkable! In fact, the great "black hole" in arguments against affirmative action is the unwillingness of conservatives to quantify the dimensions of racial discrimination. If evidence could be brought forward to show that whites in decision-making roles have become truly color-blind, then arguments that affirmative action is no longer necessary could be sold more easily to blacks and others. But minorities have not been presented with any real alternative protection against bias, and their present-day experiences tell them that the color-blind society will not suddenly begin with the end of affirmative action.

Joel Dreyfuss
Tokyo, Japan

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Murray Friedman responds:

I welcome the letter from Hasia Diner, particularly since her own work on black-Jewish relations is one of the prerequisites for study in this field. Her point that there are "no historical precedents" for a small and excluded group like the Jews, operating itself in a hostile environment, to pour so much of its energy and resources into the cause of another excluded minority is especially telling. The only comparable group I can think of in this respect is the Quakers and they became, very quickly, "insiders" in American life as they moved to reform it.

Hyman Bookbinder is also on the mark in pointing out that there is considerable misunderstanding of Jewish "opposition" to racial quotas. It is true—and little noted—that Jews and virtually all their religious and civic bodies are overwhelmingly supporters of affirmative action programs to broaden the involvement of blacks, other minorities, and women in society. Many organizations (the American Jewish Committee, the American Jewish Congress, etc.) also back the use of goals and timetables as part of such programs even as they oppose quotas. There is not much difference between Jewish and black groups here. In all fairness, however, I suspect that the "Jewish man in the street," in contrast with his organizational representatives,

Letters

does not fully understand the nuances of the quotas versus goals and timetables argument and is opposed generally to anything that smacks of quotas.

I am glad to see that Julius Lester joins me in concern at that form of historical revisionism that seeks "to denigrate Jewish involvement in and contributions to the struggle for equality of rights for all Americans." He is right, too, that in the common struggle to eradicate prejudice and discrimination in the 1930s and 1940s, both Jewish and black leaders glided over considerable anti-Jewish feeling especially toward Jewish merchants and landlords in the slums. James Baldwin and Kenneth Clark wrote sensitive articles on this subject in the 1940s.

I suppose I can be faulted for not discussing anti-black feeling among Jews. Of course, it exists and there can be no justification for it. I think the reason I did not touch on it is my sense that it has not been widespread, especially in the period of history that I covered in the article, or deep. Even today, as tensions have risen, Jewish expressions of anti-black feeling that I encounter are often accompanied by a certain furtiveness, suggesting that the speaker feels some guilt in making his sentiments known. It is, of course, not anti-black to express resentment at the open tirades against Jews and Israel of Louis Farrakhan, some of the earlier statements of Jesse Jackson, or identification with the Arab cause and the PLO by some black leaders. Jewish groups are also quick to blast publicly bigots like Rabbi Meier Kahane.

Joel Dreyfuss' criticism of my article as one which will "confirm the suspicions of many blacks that they are being patronized by Jews" seems to me to serve up the tired cliches of the Left without illuminating, as the other letter-writers have done, the important issues underlying black-Jewish relationships. For example, he denounces Israel's connection with South Africa despite the fact that Israel has spoken out vigorously against apartheid and that its trade with that country is minimal in contrast with that of many African, Arab, and Western European countries who go uncriticized. It is not the South African relationship but Israel that he dislikes.

"I suppose I can be faulted for not discussing anti-black feeling among Jews. It exists, and there can be no justification for it."

May I reiterate, finally, that blacks and Jews have a common history and, I firmly believe, a common destiny. My piece was meant to show, revisionist history notwithstanding, how useful it was to blacks to have Jews by their side during the early civil rights struggles and how dysfunctional it is today to attempt to pull these groups apart. "The historian," Eugene Rosenstock-Huessy has written, "is the physician of memory. It is his honor to heal wounds." I would hope that historians can help to overcome some of the conflicts on which so much of the energies of both groups are wasted today.

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The EEOC's Uniform Guidelines

To the Editor:

May I add a couple of historical notes to the background presented by Mr. Lyons ("An Agency with a Mind of Its Own: The EEOC's Guidelines on Employment Testing," Fall 1985)? In 1965, Edward Sylvester headed the Office of Federal Contract Compliance and asked Dr. Richard Shore to draft an order to Federal contractors concerning the use of tests. Essentially, that draft called for evidence of validity where tests were used. Asked for comment, I told Mr. Sylvester that, if such an order were issued and followed, unfair employment discrimination could be virtually eliminated within a generation; my reasoning was that, as minority youth came to understand that whether people were hired depended on their qualifications, not race, they would work to develop qualifications for the kinds of jobs they wanted, and that as employers saw work force improvements stemming from genuinely valid selection procedures, they would find racial discrimination against their self-interest. Mr. Sylvester seemed to see elimination of discrimination in a generation as a useful goal and proceeded with the development of the order, published in 1968 and a direct lineal descendent of the Uniform Guidelines. Others, however, considered the target too far away and moved to the immediate elimination of discrimination. The result was a wholly adversary system, not a developmental one, and a generation later we still choose up sides rather than work toward the elimination of discrimination and the qualifications gaps that feed it.

My second note puts the 1970 EEOC guidelines in context. According to information given the OFCC advisory committee (on which I served), then-President Nixon wanted the OFCC and EEOC regulations to be compatible. A four-person committee (a lawyer and a psychologist from each agency) met to draft such a document; I was the psychologist from the OFCC group. The document that resulted was presented to the advisory committee, which objected to certain wording and sent suggested revisions back to EEOC. After several months, with no further consultation of which I am aware, EEOC published its 1970 guidelines. The OFCC response was quite negative, largely for reasons identified by Mr. Lyons. However, he

Letters

attributes too much credit or blame to Dr. Enneis; the most objectionable provisions appeared to have been inserted by anonymous EEOC lawyers. The OFCC advisory committee (with Dr. Enneis and an EEOC attorney, Philip Slover, attending its meetings) subsequently developed a revised order, published in 1971, which (according to a footnote approved in EEOC) was consistent with the intent of the EEOC guidelines; differences were attributed only to differences in legal authority and to "clarifications" of the EEOC document. We thought the 1971 version would supersede the 1970 version, but it turns out to have been widely unread! Mr. Lyons is by no means the first to overlook it.

Robert M. Guion
University Professor Emeritus
Bowling Green State University
Bowling Green, Ohio

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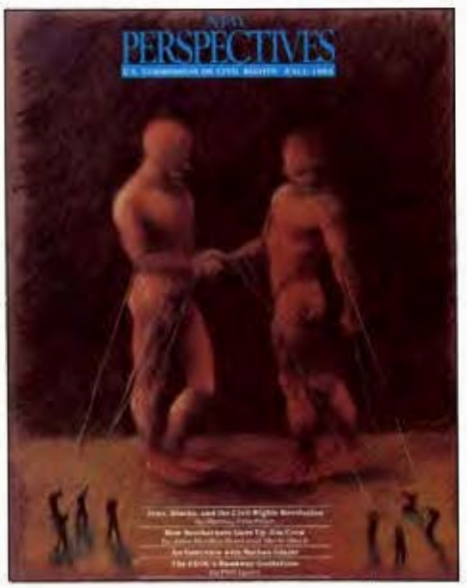
To the Editor:

As one who participated in the drafting of the "Uniform Guidelines on Employee Selection Procedures," I believe the Lyons article accurately describes many of the tensions that existed between egalitarian "equal outcome" expectations and those of us who understood the "equal opportunity" language of Title VII and the unanimous Supreme Court decision in *Griggs* in terms of objective, job-related standards of merit. The paradox still remains, however, of balancing socio-political fairness concerns with the psychometric fact that groups differ on the average both in performance on objective selection procedures and in performance on the job.

This paradox was put in perspective in 1982 by the National Research Council of the National Academy of Sciences in its publication *Ability Testing: Uses,*



Consequences and Controversies, in which it was noted that individuals with higher scores on valid tests tend to perform better on the job regardless of group identity and that there are "no alternatives to testing that are equally informative, equally adequate technically, and also economically and politically viable."

The report also noted that the rigidity of EEOC's interpretation of the Uniform Guidelines has made it unlikely that any employer can successfully defend the use of a valid employment test that adversely affects minorities, and that the policies adopted by the EEOC are those that would be adopted if the desired effect were to force employers to a quota system to achieve a representative work force. Thus almost a decade after the Uniform Guidelines were adopted by the enforcement agencies, the tensions between equality of outcome versus opportunity still remain.

Probably the most encouraging development toward addressing the underlying problem of group performance differences contributing to adverse impact is the "back to basics" movement, with the call for competency testing requirements not only for students but for teachers as well. Significantly, this call for accountability in public education is a genuine, nationwide, grass-roots movement without a special interest advocacy group fanning the flames from here in Washington.

While it may be a generation before group performance differences and attendant adverse impact are substantially reduced, it continues to be my opinion that although testing may not be *the* answer, it certainly is among the right questions to ask in determining individual merit in the pursuit of equal employment opportunity.

James C. Sharf, Ph.D.
Alexandria, Virginia

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To the Editor:

Phil Lyons' article distorts Title VII of the Civil Rights Act of 1964, the legislative history of the 1964 Act, case law (which it all but completely ignores), the principles established by the Uniform Guidelines, and the history of the development of the Guidelines.

Incredibly, the article barely mentions the Equal Employment Opportunity Act of 1972, Pub. L. No. 92–261, 86 Stat. 103. In 1972 Congress amended Title VII by, in part, expanding the Act's coverage to local government and Federal employment. In so doing Congress clearly approved basic principles in *Griggs* v. *Duke Power Co.* and the Guidelines which the article attacks. In 1975 the Supreme Court summarized this history by stating that *"[t]he message of these [EEOC] Guidelines is the same as that of the Griggs case* that discriminatory tests are impermissible unless shown, by professionally acceptable methods, to be 'predictive of or significantly correlated

Letters

with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.'" [Emphasis added. *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 431 (1975).]

The Lyons article is bad historical analysis and worse legal analysis. The article is a piece of "misinformation," and it is not worthy for publication in a serious journal on civil rights.

Barry L. Goldstein
NAACP Legal Defense
and Education Fund, Inc.
Washington, D.C.

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To the Editor:

Since the enactment of Title VII of the 1964 Civil Rights Act, the Federal enforcement agencies have promulgated increasingly complex, technical, and rigid guidelines for the validation of employment tests rather than focus on whether tests are in fact discriminatory. As Phil Lyons' critique of the evolution and development of the "Uniform Guidelines on Employee Selection Procedures" documents, the current guidelines are inconsistent with the intent of the drafters of Title VII to permit employers to use nondiscriminatory ability tests. In addition, the practical difficulties in complying with the Uniform Guidelines have been a matter of growing concern to employers since they were issued in 1978. In particular, employers have been concerned with their lack of conformity with Title VII precedent and their inconsistency with accepted practices of the psychological profession.

These problems are examined in great detail in *Employee Selection: Legal and Practical Alternatives to Compliance and Litigation*, the second edition of which has been recently published by the National Foundation for the Study of Equal Employment Policy, 1015 15th St., N.W., Washington, D.C. 20005. In summary, problems with the Guidelines have caused many employers to move away from using tests as a method for selecting employees. Even the largest employers whose staffs of industrial psychologists can provide "state of the art" assistance in developing and validating selection procedures have found it impossible or too costly to comply fully with the Guidelines. Moreover, researchers have been able to document substantial productivity increases obtained from a work force selected with the aid of validated ability-based selection measures.

Although the EEOC targeted the Uniform Guidelines for revision in 1981, no proposals for revision of the Guidelines' substantive provisions have appeared. Given the intent of Congress in Section 703(h) of Title VII not to preclude "an employer [from giving and acting] upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed to discriminate," the Uniform Guidelines should be revised immediately to permit the use of tests that conform with generally accepted professional practices.

Edward E. Potter
McGuiness & Williams
Washington, D.C.

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To the Editor:

While author Phil Lyons is sometimes in factual error, his theme is in concordance with my six years as OPM technical representative to the Guidelines writing effort. Specifically: the EEOC's 1970 guidelines and its subsequent behavior failed to fulfill the intent of Congress. EEOC's long-time foot dragging in the Equal Employment Opportunity Coordinating Council's (EEOCC) responsibility to construct new guidelines, thwarting the will of the President and Congress, was both naive and arrogant. Naive in the sense that the EEOC believed it was primarily responsible to extra-governmental constituencies; arrogant in the sense that it simply chose to ignore or disdain personnel measurement knowledge in many key areas.

Its shortcomings were not venality, but at best they may be attributed to fledgling organizational competence and the elan that typically fuels new governmental initiatives. The continual national, professional, and organizational opposition it encountered, not to its goals but to its methods, seemed to be justification that it was "right," and consequently its postures were rigidified. The death of the EEOCC resulted; EEOC seemed not unhappy.

You may say what you want to about the 1978 Guidelines—and I will help you. It is primarily a litigating document, not one which reflects the psychometric "state of the science." In the waning days of its construction, OPM withheld active legal involvement, leaving lawyers from the EEOC and Justice to do exactly what they wanted under the blessing and protection of a political leadership committed to numbers, not merit; to intuition, not available knowledge; and to onerous employer burdens in the belief that it would be easier to hire minorities and women than to meet the requirements of the Guidelines. In the end, of course, the Guidelines stand as an insult to the very groups they sought to help, isolated from professional practice and endorsement.

William A. Gorham
Ft. Lauderdale, Florida

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Phil Lyons responds:

My thanks to James Sharf, Edward

Letters

Potter, and William Gorham for their kind and interesting comments.

Barry Goldstein wrongly assumes that what the EEOC has done in forcing standards down to promote its version of affirmative action has been vindicated by the Supreme Court and the Congress. Nothing could be further from the truth.

Take the first case he refers to, *Griggs* v. *Duke Power Co.* [401 U.S. 424 (1971)], brought by black employees challenging a utility's requirement of a high school diploma or passage of intelligence tests as a condition of employment or transfer to jobs at its plant. The Court found that since blacks had long received an "inferior education in segregated schools," and since the company's testing requirement bore no relation to job performance, the testing mechanism functioned as a "built-in head-wind" for minority groups totally "unrelated to measuring job capability." Thus Duke Power Company's fault was not in setting standards too high but in requiring tests that bore no relation whatsoever to the requirements of the job. Far from being an attack on merit, therefore, *Griggs* was an attack on the use of tests that were not job-related. Not unaware of the danger of Goldstein's kind of misinterpretation, the Court added in closing:

"Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant."

Mr. Goldstein is also wrong about what Congress did in 1972 when it passed the Equal Employment Opportunity Act amending Title VII of the 1964 Civil Rights Act. We do not learn from him that his interpretation was offered on the floor of the House but firmly rejected in the course of deliberations over the 1972 Act's final wording. Influenced by the

"The Guidelines stand as an insult to the very groups they sought to help."

EEOC's Dr. William Enneis, the House Education and Labor Committee reported out a bill sponsored by Gus Hawkins (D-CA), H.R. 1746, on June 2, 1971. That bill restricted the freedom of an employer to hire on the basis of merit by striking the language in Title VII known as the testing clause and replacing it with a provision which would have prevented employers from using any test not "directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned."

But H.R. 1746's attempted change of the testing clause was defeated on the House floor the following September when Congressman Erlenborn's (R-IL) amendment in the nature of a substitute was passed, leaving the original language of the clause intact. Nothing has since been heard of Hawkin's assault on the testing clause.

Goldstein's third authority, *Albemarle* v. *Moody Paper Co.* [422 U.S. 405 (1975)], arose over an employment test that had been validated neither correctly nor for all relevant job categories. Of greatest interest for present purposes was the Court's observation that Moody Paper Company had illegally established the test scores of its best employees as the "measure of the minimal qualifications of new workers entering the lower level jobs." Once again, therefore, the Court was requiring only that tests be job-related, not that standards be depressed to accommodate greater numbers of minorities or women.

Mr. Goldstein should get his facts straight before he accuses me of "misinformation."

I am fascinated by Dr. Robert Guion's historical note revealing the original reasons for requiring evidence of the validity of tests—motivating minority youth to gain qualifications they lacked and engaging employer self-interest in rewarding such efforts. His letter makes clear the hard-headed idealism of employment testing's original approach. The impulse to so manage things that employer self-interest would be weighted in the balance against discrimination in the workplace was an important component of the 1964 Civil Rights Act's strategy. It presupposed administrative statesmen at the EEOC's helm who would translate the identity of interest between minority youth and employers into practice by means of testing guidelines. Such guidelines would have had to avoid tipping the scales in favor of the disadvantaged who had not attained necessary qualifications, since doing so would forfeit the cooperation of American business and industry. They would have had as well to avoid indulging the merely selfish short-range prejudice of business and industry against making changes in testing procedures, so as not to undermine the already shaky confidence of minority job seekers in "the system."

Unfortunately, the EEOC's guidelines did not live up to these requirements and we have been struggling with the consequences ever since. Had the guidelines been seen as only one part of an orchestrated effort to help the disadvantaged get ahead, attention could have been turned elsewhere, to real causes. To the schools. To the support systems and the prejudice and neglect that made them inadequate. By assuming burdens that they were never supposed to carry—trying single-handedly to ameliorate high minority unemployment—the EEOC's guidelines let all other responsible institutions off the hook.

Letters

Canarsie

To the Editor:

Elizabeth Marek ("The Politics of Ethnic Fear," Fall 1985), largely satisfied with the sociological portrait of racial *Kulturkampf* painted in *Canarsie: The Jews & Italians of Brooklyn Against Liberalism*, is, nonetheless, skeptical of the political implications Jonathan Rieder draws from his findings. If Rieder has found the basis of realignment, she asks, then how is it that "not a single Canarsie Republican was elected to office in the years covered by Rieder's book?" Moreover, given the peculiar political ecology of Canarsie, she questions the broader applicability of Rieder's arguments about the centrality of race for realignment.

New York City has no Republican Party to speak of. Its candidate for mayor in the last election was a former fashion model with only slightly more standing than the candidate of the New Alliance Party, which mixes psychotherapeutic gibberish and class struggle cliches. For the past quarter-century the primary political struggles in New York have been between the "reform" and "regular" Democrats in all their incarnations. The one Republican mayor, John Lindsay, who later became a Democrat like many other "silk stocking" Republicans, was in many ways a cat's-paw for reform Democrats. What Rieder has described are not the social underpinnings of inter-party realignment but the collapse of the victory Democratic "reformers" achieved over the "regulars" during the Lindsay era. That collapse is so complete that, in the manner of the Democrats running against Hoover's ghost in every election since 1929, and Reagan running against Carter's image in 1984, ever since 1977 Ed Koch has been running against the memory of the Lindsay years. Those were the years of the so-called limousine liberals, the Ocean Hill-Brownsville racial hostilities, and the tensions over high-rise minority housing for Forest Hills in Queens.

In the late 1960s Kevin Phillips argued that the coming realignment would be based in part on an exchange of populations. The conservative Catholics would move into the Republican column while liberal Yankee Republicans would become Democrats. In New York the Conservative Party was generally successful in driving out the remnants of the *Herald-Tribune*/Rockefeller Republicans, but it failed to draw conservative Catholics into the GOP ranks. While Reagan is ascendant nationally, only 13 percent of the city's voters are registered Republicans and the combination of increased minority registration and continuing decline of the Republican ethnic base, white Protestants, will soon sink that into single figures. Like the Dixie of old, New York City, notes Jim Chapin, is a one party province where only six of the 59 Democrats in the State Assembly have to worry about Republican competition.

In the midst of all the discussion of Republican gains in the South, it's important to note that the collapse of the Republican Party is not just a New York City phenomenon, it is true of most of the Northeast. In Vermont the Republicans are in danger of running third in a statewide race behind a Democrat and a Socialist, while in Massachusetts, where the Republicans haven't won statewide since 1972, the party has been reduced to taking out newspaper adds in order to recruit candidates for state legislative seats. In that oldest of American antagonisms, the fight between the Cavalier and the Yankee, the issue is still race, but the characters seem to have reversed roles.

Canarsie is important not as a model of how change took place nationwide (though parallels to Canarsie can be found in virtually every city with a large underclass) but as a particular example of a larger phenomenon, the conservative consequences of racial resentments. Canarsie-like attitudes are rife in liberal Manhattan, though in subtler forms. The affirmative action story and the black crime story are part of everyday white middle- and upper middle-class conversation. Where once it was necessary to enter into such topics on a note of apology, now the tone is mocking and bitter as tales of damage done by an "incompetent colleague" or "street kid" are relayed with an anger born of resignation.

Those who know Mario Cuomo only from his national speeches will be surprised to learn that this eloquent spokesman for compassion, this opponent of the death penalty, has praised the vigilante group the Guardian Angels and recently proposed a bail reform which, back in the bad old Nixon days, would have been called preventive detention. Cuomo's Canarsie-like positions suggest that while small in compass, Rieder's study is rich in political significance.

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and Social Sciences
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Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;

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