

# Globethics Repository

The logo for Globethics, featuring the word "Globethics" in white, sans-serif font centered within a solid blue rectangular background.

## philosophy & Public Policy Quarterly

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see <https://www.globethics.net>. Data and content policy of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Journal
Authors	Institute of Philosophy and Public Policy
Publisher	Institute of Philosophy and Public Policy
Rights	With permission of the license/copyright holder
Download date	2026-06-25 12:05:50
Link to Item	<a href="http://hdl.handle.net/20.500.12424/171680">http://hdl.handle.net/20.500.12424/171680</a>

# PHILOSOPHY & PUBLIC POLICY QUARTERLY

Formerly *Report from the Institute for Philosophy & Public Policy*



The Institute for Philosophy and Public Policy  
School of Public Affairs • University of Maryland



## **A Sketch of Some Arguments for Conscription**

Review and revision of the all-volunteer force can preserve the gains of the past thirty years while enlisting the military more effectively in the cause of civic renewal.

William A. Galston ..... 2

## **Conscription—No**

In addition to its practical difficulties, proposals for universal service such as that of William Galston use conscription to promote a social experiment, insist on submission to a particular pattern of civic service, and base their discussion of the military's class structure on an implicit class bias.

Robert K. Fullinwider ..... 8

## **Finessing Nature**

The prospect of human cloning demands careful consideration of the ethical implications of substituting technology and genetically innovative means to assist human reproduction.

Richard M. Zaner ..... 14

## **The Ethical Implications of Direct-to-Consumer Pharmaceutical Advertising**

Direct-to-consumer marketing of pharmaceuticals increases pressure on physicians to succumb to consumer demand. The strength to withstand this pressure comes in part from acceptance of the role of paternalism in the physician-patient relationship.

Joseph M. Farrell ..... 20

# A Sketch of Some Arguments for Conscription

William A. Galston

In the run up to the war against Iraq, an op-ed by Congressional representative Charles Rangel (D-NY) rekindled a debate about the military draft; unexpectedly, because most scholars and an overwhelming majority of senior military leaders regarded this matter as settled. The Vietnam-era draft was regarded as arbitrary and unfair, and it was held responsible for disension within the military as well as the wider society.

In the immediate wake of its disaster in Vietnam, the United States made an historic decision to end the draft and institute an All-Volunteer Force (AVF). On one level, it is hard to argue with success. The formula of high quality volunteers, combined with intensive training and investment in state of the art equipment has produced by far the most formidable military in history. Evidence suggests that the military's performance, especially since 1990, has bolstered public trust and confidence. For example, a recent Gallup Poll of public opinion trends since the end of the Vietnam war

---

*The military is embedded in larger issues of citizenship and civic life. It is along these dimensions that the decision in favor of the AVF has entailed significant costs.*

---

in 1975 indicates that while the percentage of Americans expressing confidence in religious leaders fell from 68 to 45, and from 40 to 29 for Congress, the percentage expressing confidence in the military rose from under 30 to 78. Among 18 to 29 year olds, the confidence level rose from 20 to 64 percent. (Remarkably, these figures reflect sentiment in late 2002, before the impressive victory in Iraq.)

These gains in institutional performance and public confidence are impressive and significant, but they hardly end the discussion. As every reader of Machiavelli (or the Second Amendment) knows, the organization of the military is embedded in larger issues of citizenship and civic life. It is along these dimensions that the decision in favor of the AVF has entailed significant costs. First, the AVF reflects, and

has contributed to the development of, what I call *optional citizenship*, the belief that being a citizen involves rights without responsibilities and that we need do for our country only what we choose to do. Numerous studies have documented the rise of individual choice as the dominant norm of contemporary American culture, and many young people today believe being a good person—decent, kind, caring, and tolerant—is all it takes to be a good citizen. This duty-free understanding of citizenship is comfortable and undemanding; it is also profoundly mistaken.

Second, the AVF contributes to what I call *spectatorial citizenship*—the premise that good citizens need not be active but can watch others doing the public's work on their behalf. This spectatorial outlook makes it possible to decouple the question of whether *we* as a nation should do X from the question of whether *I* would do or participate in X. In a discussion with his students during the Gulf War, philosophy professor Cheyney Ryan was struck by "how many of them saw no connection between whether the country should go to war and whether they would . . . be willing to fight in it." A similar disconnect exists today. Young adults have been more supportive of the war against Iraq than any other age group (with more than 70 percent in favor), but recent surveys have found an equal percentage would refuse to participate themselves.

As a counterweight to this decoupling, Ryan proposes what he calls the Principle of Personal Integrity: You should only endorse those military actions of your country in which you yourself would be willing to give your life. The difficulty is that integrity does not seem to require this kind of personal involvement in other public issues. For example, a citizen of integrity can favor a costly reform of the welfare system without being required to serve as a welfare caseworker. Presumably it is enough if citizens are willing to contribute their fair share of the program's expenses. So one might ask: why is it not enough for citizens to contribute their fair share to maintain our expensive military establishment? Why should integrity require direct participation in the case of the military but not in other situations? This raises the question, to which I shall return, of when monetary contributions are

morally acceptable substitutes for direct participation, and why.

Finally, the AVF has contributed to a widening gap between the orientation and experience of military personnel and that of the citizenry as a whole. To be sure, this is an empirically contested area, but some facts are not in dispute. First, since the inauguration of the AVF, the share of officers identifying themselves as Republican has nearly doubled, from 33 to 64 percent. (To be sure, officers were always technically volunteers, but as I can attest from personal experience, the threat of the draft significantly affected the willingness of young men to volunteer for officer candidacy.) Second, and more significantly, the share of elected officials with military experience has declined sharply. From 1900 through 1975, the percentage of members of Congress who were veterans was always higher than in the comparable age cohort of the general population. Since the mid-1990s, the congressional percentage has been lower, and it continues to fall.

Lack of military experience does not necessarily imply hostility to the military. Rather, it means ignorance of the nature of military service, as well as diminished capacity and confidence to assess critically the claims that military leaders make. (It is no accident that of all the post-war presidents, Dwight Eisenhower was clearly the most capable of saying no to the military's strategic assessments and requests for additional resources.)

For these reasons, among others, I believe that as part of a reconsideration of the relation between mandatory service and citizenship, we should review and revise the decision we made thirty years ago to institute an all-volunteer armed force. I hasten to add that I do not favor reinstating anything like the Vietnam-era draft. It is hard to see how a reasonable person could prefer that fatally flawed system to today's arrangements. The question, rather, is whether feasible reforms could preserve the gains of the past thirty years while enlisting the military more effectively in the cause of civic renewal.

### An Abuse of State Power?

My suggestion faces a threshold objection, however, to the effect that any significant shift back toward a mandatory system of military manpower would represent an abuse of state power. In a recent article, Judge Richard Posner drafts nineteenth-century political theorist John Stuart Mill as an ally in the cause of classical liberalism—a theory of limited government that provides an “unobtrusive framework for private activities.” Limited government so conceived, Posner asserts, “has no ideology, no ‘projects,’ but is really just an association for mutual protection.” Posner celebrates the recent emergence of what he calls the

“Millian center”—a form of politics that (unlike the left) embraces economic liberty and (unlike the right) endorses personal liberty, and he deplores modern communitarianism's critique of untrammelled personal liberty in the name of the common good. High on Posner's bill of particulars is the recommendation of some (not all) communitarians to reinstitute a draft.

**Mill misapplied.** Before engaging Posner's own argument, I should note that his attempt to appropriate Mill's *On Liberty* to support an anti-conscription stance is deeply misguided. To clinch this point, I need only cite a few of the opening sentences from Chapter Four, entitled “Of the Limits to the Authority of Society Over the Individual”:

[E]veryone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct toward the rest. This conduct consists, first, in not injuring the interests of one another, or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights; and secondly, in each person's bearing his share (to be fixed on some equitable principle) or the labors and sacrifices incurred for defending the society or its members from injury and molestation. These conditions society is justified in enforcing at all costs to those who endeavor to withhold fulfillment.

Posner's view of Mill would make sense only if Mill had never written the words I have italicized.

**The fair share argument.** It is not difficult to recast Mill's position in the vocabulary of contemporary liberal political thought. Begin with a conception of society as a system of cooperation for mutual advantage. Society is legitimate when the criterion of mutual

---

*We should review and revise the decision we made thirty years ago to institute an all-volunteer armed force.*

---

advantage is broadly satisfied (versus, say, a situation in which the government or some group systematically coerces some for the sake of others). When society meets the standard of broad legitimacy, each citizen has a duty to do his or her fair share to sustain the social arrangements from which all benefit, and society is justified in using its coercive power when necessary to ensure the performance of this duty. That legitimate society coercion may include mandatory military service in the nation's defense.

A counterargument urged by the late political philosopher Robert Nozick that that we typically do not consent to the social benefits we receive and that the involuntary receipt of benefits does not trigger a duty to contribute. Mill anticipated, and rejected, that

thesis, insisting that the duty to contribute does not rest on a social contract or voluntarist account of social membership. Besides, the argument Socrates imputes to the Laws in the *Crito* is a compelling one: if a society is not a prison, if as an adult you remain when you have the choice to leave, then you have in fact accepted the benefits, along with whatever burdens the principle of social reciprocity may impose.

Economist Robert Litan has recently suggested that citizens should be “required to give something to their country in exchange for the full range of rights to which citizenship entitles them.” Responding in a quasi-libertarian vein, public policy expert Bruce Chapman charges that this proposal has “no moral justification.” Linking rights to concrete responsibilities is “contrary to the purposes for which [the United States] was founded and has endured.” This simply is not true. For example, the right to receive GI Bill benefits is linked to the fulfillment of military duties. Even the right to vote (and what could be more central to citizenship than that?) rests on law-abidingness; many

---

*Each citizen has a duty to do his or her fair share to sustain the social arrangements from which all benefit, and society is justified in using its coercive power when necessary to ensure the performance of this duty.*

---

states disenfranchise convicted felons for extended periods. As Litan points out, this linkage is hardly tyrannical moralism. Rather, it reflects the bedrock reality that “the rights we enjoy are not free” and that it takes real work—contributions from citizens—to sustain constitutional institutions.

**Conscription as slavery.** Now on to the main event. Posner contends that “Conscription could be described as a form of slavery, in the sense that a conscript is a person deprived of the ownership of his own labor.” If slavery is immoral, so is the draft. In a similar vein, Nozick once contended that “taxation of earnings from labor is on a par with forced labor.” (If Nozick were right, then the AVF that Posner supports, funded as it is with tax dollars, could also be described as on a par with forced labor.)

Both Posner’s and Nozick’s arguments prove too much. If each individual’s ownership of his or her own labor is seen as absolute, then society as such becomes impossible, because no political community can operate without resources, which must ultimately come from *someone*. Public choice theory predicts, and all of human history proves, that no polity of any size can subsist through voluntary contributions alone; the inevitable free riders must be compelled by law, backed by force, to ante up.

Posner might object, reasonably enough, that this argument illustrates the difference between taxation and conscription: while political community is inconceivable without taxation, it is demonstrably sustainable without conscription. It is one thing to restrict self-ownership of labor out of necessity, but a very different matter to restrict it out of choice. The problem is that this argument proves too little. Posner concedes

---

*A legitimate government would not be exceeding its rightful authority if it chose to move toward a more mandatory system of military recruitment.*

---

that “there are circumstances in which military service is an obligation of citizenship.” But there are no circumstances in which slavery is an obligation of citizenship. Moreover, it is not morally impermissible to volunteer for military service. But it is impermissible, and rightly forbidden, to voluntarily place oneself in slavery. Therefore, slavery and military service differ in kind, not degree. And if there are circumstances in which military service is an obligation of citizenship, then the state justified in enforcing that obligation through conscription, which is not impermissible forced labor, let alone a form of slavery. QED. For the purposes of this article, then, I will suppose that a legitimate government would not be exceeding its rightful authority if it chose to move toward a more mandatory system of military recruitment.

**Celebrating the cash nexus: four thought experiments.** But this is not the end of the argument, because Posner has another arrow in his quiver. He rejects the claim, advanced by Michael Sandel and other communitarians, that substituting market for non-market services represents a degrading “commodification” of social and civic life. Indeed, Posner celebrates what communitarians deplore. “Commodification promotes prosperity,” he informs us, “and prosperity alleviates social ills.” Moreover, commodification enables individuals to transform burdensome obligations into bearable cash payments: middle-aged couples can purchase both care for their children and assisted living for their parents, and so forth.

Posner charges that communitarian theory is incapable of drawing a line between matters that rightly belong within the scope of the market and those that do not. Posner’s celebration of the cash nexus is exposed to precisely the same objection. Rather than scoring rhetorical points, I will offer a series of examples designed to help delimit the proper sphere of non-market relations.

**Paying people to obey the law.** Suppose we offered individuals a “compliance bonus”—a cash payment at the end of each year completed without being convicted of a felony or significant misdemeanor. It is not hard to imagine situations in which the benefits of this policy (measured in reduced enforcement costs) would outweigh the outlays for bonuses. What (if anything) is wrong with this?

My answer: at least two things. First, it alters for the worse the expressive meaning of law. In a legitimate order, criminal law represents an authoritative declaration of the behavior the members of society expect of one another. The authoritativeness of the law is supposed to be a sufficient condition for obeying it, and internalizing the sense of law as authoritative is supposed to be a sufficient motive for obedience. To offer compliance payments is to contradict the moral and motivation sufficiency of the law.

Second, payment for compliance constitutes a moral version of Gresham’s law: lower motives will tend to drive out higher, and the more comfortable to drive out the more demanding. When those who are inclined to obey the law for its own sake see others

---

*It is important for all citizens to understand that citizenship is an office, not just a status. As an office, citizenship comprises matters of both rights and duties. . . .*

---

receiving compensation, they are likely to question the reasonableness of their conduct and to begin thinking of themselves as suckers. Most would end up accepting payment and coming to resemble more closely those who began by doing so.

**Paying citizens for jury duty.** Consider the analogy (or disanalogy) between national defense and domestic law enforcement. The latter is divided into two sub-categories: voluntary service (there is no draft for police officers) and mandatory service (e.g., jury duty). Our current system of military manpower is all “police” and no “jury.” If we conducted domestic law enforcement on our current military model we’d have what might be called “The All-Volunteer Jury,” in which we’d pay enough to ensure a steady flow of the jurors the law enforcement system requires to function.

There are two compelling reasons not to move in this direction. First, citizens who self-select for jury duty are unlikely to be representative of the population as a whole. Individuals who incur high opportunity costs (those who are gainfully employed, for example) would tend not to show up. The same considerations that militate against forced exclusion of racial and ethnic groups from jury pools should weigh equally against voluntary self-exclusion based upon income or

employment status. (We should ask ourselves why these considerations do not apply to the composition of the military.)

Second, it is important for all citizens to understand that citizenship is an *office*, not just a *status*. As an office, citizenship comprises matters of both rights and duties—indeed, some matters that are both. Service on juries is simultaneously a right, in the sense that there is a strong presumption against exclusion, and a duty, in the sense that there is a strong presumption against evasion. To move jury duty into the category of voluntary, compensated acts would be to remove one of the last reminders that citizenship is more than a legal status.

**Paying foreigners to do our fighting for us.** Consider: we might do as well or better to hire foreigners (the All-Mercenary Armed Forces) as kings and princes did regularly during the eighteenth century. The cost might well be lower, and the military performance just as high. Besides, if we hire foreigners to pick our grapes, why not hire them to do our fighting?

There is of course a practical problem, discussed by Machiavelli among others: a pure cash nexus suggests the mercenaries’ openness to opportunistic side-switching in response to a better offer, as happened in Afghanistan. In addition, what Abraham Lincoln called the “last full measure of devotion” would be less likely to be forthcoming in the handful of extreme situations in which it is required.

Beyond these practical considerations lies a moral intuition: even if a mercenary army were reliable and effective, it would be wrong, even shameful, to use our wealth to get non-citizens to do our fighting for us. This is something we ought to do for ourselves, as a self-respecting people. I want to suggest that a similar moral principle does some real work in the purely domestic sphere, among citizens.

**Paying other citizens to do our fighting for us.** Consider military recruitment during the Civil War. In April 1861 President Lincoln called for, and quickly received, 75,000 volunteers. But the expectation of a quick and easy Union victory was soon dashed, and the first conscription act was passed in March, 1863. The act contained two opt-out provisions: an individual facing conscription could pay a fee of \$300 to avoid a specific draft notice; and an individual could avoid service for the entire war by paying a substitute to volunteer for three years.

This law created a complex pattern of individual incentives and unanticipated social outcomes, such as anti-conscription riots among urban workers. Setting these aside, was there anything wrong in principle with these opt-out provisions? I think so. In the first place, there was an obvious distributional unfairness: the well off could afford to avoid military service, while the poor and working class could not. Second,

even if income and wealth had been more nearly equal, there would have been something wrong in principle with the idea that dollars could purchase exemption from an important civic duty.

### The Legacy of the AVF: Economic and Social Stratification

We can now ask: What is the difference between the use of personal resources to opt *out* of military service and the impact of personal resources on the decision to opt *in*? My answer: as both a practical and a moral matter, less than the defenders of the current system would like to believe. To begin with, the decision to implement an AVF has had a profound effect on the educational and class composition of the U.S. military. During World War Two and the Korean War—indeed, through the early 1960s—roughly equal percentages of high school and college graduates saw military service, and about one third of college graduates were in

---

*What is the difference between the use of personal resources to opt out of military service and the impact of personal resources on the decision to opt in?*

---

the enlisted (that is, non-officer) ranks. Today, enlisted men and women are rarely college graduates, and elite colleges other than the service academies are far less likely to produce military personnel of any rank, officer or enlisted. As a lengthy *New York Times* feature story recently put it, today's military "mirrors a working-class America." Of the first twenty-eight soldiers to die in Iraq, only one came from a family that could be described as well off.

Many have argued that this income skew is a virtue, not a vice, because the military extends good career opportunities to young men and women whose prospects are otherwise limited. There is something to this argument, of course. But the current system purchases social mobility at the expense of social integration. Today's privileged young people tend to grow up hermetically sealed from the rest of society. Episodic volunteering in soup kitchens does not really break the seal. Military service is one of the few experiences that can.

In an evocative letter to his sons, Brookings Institution scholar Stephen Hess reflects on his experiences as a draftee and defends military service as a vital socializing experience for children from fortunate families. His argument is instructive: "Being forced to be the lowest rank . . . , serving for long enough that you

can't clearly see 'the light at the end of the tunnel,' is as close as you will ever come to being a member of society's underclass. To put it bluntly, you will feel in your gut what it means to be at the bottom of the heap. . . . Why should you want to be deprived of your individuality? You shouldn't, of course. But many people are, and you should want to know how this feels, especially if you someday have some responsibility over the lives of other people." It is a matter, not just of compassion, but of respect: "The middle class draftee learns to appreciate a lot of talents (and the people who have them) that are not part of the lives you have known, and, after military duty, will know again for the rest of your lives. This will come from being thrown together with—and having to depend on—people who are very different from you and your friends."

A modern democracy, in short, combines a high level of legal equality with an equally high level of economic and social stratification. It far from inevitable, or even natural, that democratic leaders who are drawn disproportionately from the upper ranks of society will adequately understand the experiences or respect the contributions of those from the lower. Integrative experiences are needed to bring this about. In a society in which economic class largely determines residence and education and in which the fortunate will not willingly associate with the rest, only non-voluntary institutions cutting across class lines can hope to provide such experiences. If some kind of sustained mandatory service does not fill this bill, it is hard to see what will.

### The Importance of Universal Service

The inference I draw from this analysis is far from original: to the extent that circumstances permit, we should move toward a system of universal eighteen-month service for all high school graduates (and in the case of dropouts, all eighteen year olds) who are capable of performing it. Within the limits imposed by whatever ceiling is imposed on military manpower, those subject to this system would be able to choose between military and full-time civilian service. (If all military slots are filled, then some form of civilian service would be the only option.) The cost of fully implementing this proposal (a minimum of \$60 billion per year) would certainly slow the pace of implementation and might well impose a permanent ceiling on the extent of implementation. The best response to these constraints would be a lottery to which all are exposed and from which none except those unfit to serve can escape.

It might be argued that a program of this sort would have little if any effect on the armed forces, which would continue to draw their manpower from the current stream of volunteers. That may be the case if the military does not expand during the next decade.

But there are reasons to believe that it will. It is fast becoming evident that the post-war occupation of Iraq will take more troops and last longer than administration officials had predicted. As an interim response, the military has already moved away from the all-volunteer principle. The US Marine Corps has frozen enlistments for all of the 175,000 personnel currently on active duty. Marines whose period of voluntary enlistment has expired are required to remain in the service, on active duty, until the free expires. Other services have imposed similar if more limited freezes. It is likely, moreover, that the prospect of being sent to Iraq as part of a vulnerable long-term occupation force will depress voluntary enlistments, especially in the Army and Marines.

There is evidence suggesting that movement toward a less purely voluntary system of military and civilian service could pass the test of democratic legitimacy. For example, a 2002 survey sponsored by the Center for Information and Research on Civic Learning and Engagement (CIRCLE) found 60 percent-plus support for such a move across lines of gender, race and ethnicity, partisan affiliation, and ideology. Still, it is plausible that intense opposition on the part of young adults

---

*Some of our nation's best social scientists see a link between World War Two-era military service and that generation's subsequent dedication to our nation's civic life.*

---

and their parents could stymie such a change. Assuming that this is the case, there are some feasible interim steps that could yield civic rewards. Let me mention just two.

First, we could follow the advice of former secretary of the navy John Lehman and eliminate the current bias of military recruiters in favor of career personnel and against those willing to serve for shorter periods. As Lehman puts it, we should "actively seek to attract the most talented from all backgrounds with service options that allow them to serve their country . . . without having to commit to six to ten years' active duty." He makes a strong case that this change would markedly increase the number of young men and women from elite colleges and universities who would be willing to undergo military service.

Second, the Congress could pass legislation sponsored by senators John McCain (R-AZ) and Evan Bayh (D-IN) that would dramatically expand AmeriCorps (the Clinton-era national and community service program) from its current level of 50,000 to 250,000 full-time volunteers each year. Survey evidence shows

overwhelming (80 percent-plus) support for the basic tenet of this program, that young people should have the opportunity to serve full-time for a year or two and earn significant post-service benefits that can be used for higher education and advanced technical training. As Sen. McCain rightly puts it, "one of the curious truths of our era is that while opportunities to serve ourselves have exploded . . . [,] opportunities to spend some time serving our country have dwindled." In this context, the ongoing resistance to AmeriCorps in some quarters of Congress verges on incomprehensible.

It would be wrong to oversell the civic benefits that might accrue from the revisions to the AVF that I propose, let alone the more modest steps I have just sketched. Still, some of our nation's best social scientists see a link between World War Two-era military service and that generation's subsequent dedication to our nation's civic life. If reconsidering a decision about military manpower made three decades ago could yield even a fraction of this civic improvement, it would be well worth the effort.

William A. Galston  
Saul I. Stern Professor of Civic Engagement  
Director, Institute for Philosophy and Public Policy  
Director, Center for Information and Research on  
Civic Learning and Engagement (CIRCLE)  
School of Public Affairs  
University of Maryland  
bgalston@umd.edu

Sources: The Gallup Poll referred to is cited by Robin Toner, in "Trust in the Military Heightens Among Baby Boomers' Children," *New York Times* (May 27, 2003); Richard Posner, "An Army of the Willing," *New Republic* (May 9, 2003); John Stuart Mill, *On Liberty* (Viking, 1982); Robert Litan's arguments for compulsory service occur in, among other sources, "September 11, 2001: The Case for Universal Service," *Brookings Review* (Fall 2002), and Bruce Chapman's response, "A Bad Idea Whose Time Is Past: The Case Against Universal Service," occurs in the same issue. David M. Halbfinger and Steven A. Holmes, "Military Mirrors Working Class America," *New York Times* (March 30, 2003); Stephen Hess, "Military Service and the Middle Class: A Letter to My Sons," in *United We Serve: National Service and the Future of Citizenship*, edited by E.J. Dionne, Jr., Kayla Meltzer Drogosz, Robert E. Litan (Brookings, 2003); John Lehman's editorial, "Military Recruiting and Common Sense" has been reprinted variously; for instance, see: [www.nwaonline.net/pdfarchive/2003/january/28/1-28-03%20A6.pdf](http://www.nwaonline.net/pdfarchive/2003/january/28/1-28-03%20A6.pdf); Senator John McCain, "Putting the 'National' in National Service," also has been variously reprinted; see for instance <http://www.washington-monthly.com/features/2001/0110.mccain.html> ((the online edition of the *Washington Monthly*, October 2001).

# Conscription—No

Robert K. Fullinwider

In his brief for restoring military conscription, Bill Galston attributes to the All-Volunteer Force two significant civic costs. The all-volunteer policy of raising military forces permits the flourishing of citizenship-without-responsibility, he claims, and “has contributed to a widening gap between the orientation and experience of military personnel and that of the citizenry as a whole.”

As to the second cost, Galston misidentifies its cause. An “experience gap” is a function of numbers. If a large proportion of Americans serves under arms decade after decade, eventually a large percentage of the civilian population will have military experience. If a very small number serves, an “experience gap” will become a prominent feature of the civilian world. It doesn’t matter what mechanism—conscription or volunteering—generates the big or small numbers. Currently, the military takes in 250,000 recruits a year. Given our total population of 290 million, this intake (and consequent outflow) is miniscule. Small force size is the cause of any present and future “experience gap.”

As to the first cost, why does Galston impute it to the all-volunteer policy of military recruitment? There are any number of historical and structural features of American life that might lead some young Americans to believe citizenship is duty-free or too casually to endorse military action. However, suppose the existence of the AVF does contribute to these outcomes. Despite this unfortunate side-effect, the soundness of the all-volunteer policy is determined by its effectiveness in producing a first-class military force, and Galston concedes that on this score the all-volunteer policy has been an “impressive” success.

Nevertheless, he wants, while preserving “the gains [in military effectiveness] over the past thirty years,” to tamper with the all-volunteer policy by “enlist[ing] the military more effectively in the cause of civic renewal.” He would reinstate conscription and make it universal for eighteen-year-olds, although he leaves vague the operational details of the new policy of forced service and the effects it would have on the uniformed services. These details and effects matter a lot, as I will show below.

## Philosophical Foundations

Galston also provides a philosophical defense of the government’s resorting to coerced service. Against Richard Posner’s paean to the libertarian state, Galston quotes John Stuart Mill:

Everyone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct toward the rest. This conduct consists, first in not injuring the interests of one another . . . and, secondly, in each person’s bearing his share . . . of the labors and sacrifices incurred for defending the society or its members from injury and molestation.

From these propositions, it is not hard to draw the same conclusion Galston draws: society may legitimately coerce military service *in the nation’s defense*. I agree that society may do so when such coercion is necessary. However, under current circumstances, our nation’s military defense is being met without coercion. Coercion would add nothing to it. In fact, the universal service scheme Galston proposes reaches far beyond the simple propositions Mill adduces on behalf of conscription to defend “society or its members from injury

---

*Under current circumstances, our nation’s military defense is being met without coercion. Coercion would add nothing to it.*

---

and molestation.” Galston needs premises that support *conscription to promote a social experiment*. Why? Because almost all of those conscripted under his plan will end up working in some inner city homeless shelter or tutoring first-graders how to read or engaging in some similar task that by no stretch of the imagination can be called “defense of the nation.” In being forced to undertake these “duties,” young people will learn, Galston hopes, that citizenship is not free and that rights bring responsibilities. Moreover, they will experience a kind of “civic socialization,” the rich and privileged sons and daughters of America no longer “hermetically sealed from the rest of society” but laboring alongside the

lower classes. For a brief time in forced service, upper, middle, and lower class kids will experience intensely a kind of equality they will not know most of their lives. However, that this forced service will actually civically profit those who bear it or successfully teach the right lessons in responsibility is highly speculative. This is why I said Galston needs a philosophical defense not of conscription to defend the nation but of conscription to promote a social experiment.

### Practical Difficulties

Galston limns military service as one of the few experiences that can yield the civic socializing he wants, but a close reading of his essay shows that military service is *not* what his coerced servers will be experiencing. He proposes, ideally, a universal draft of eighteen-year-olds. The draftees can choose between military or civilian service. However, if all military slots are already filled, he notes parenthetically, then civilian service will be the only option available to new conscripts.

Now, since the military services have met their accession needs over the last two decades through volunteers, a coercive universal service scheme piggy-backed onto the present system would seem to yield no increase in military experience and, thus, no increase in egalitarian shoulder-rubbing. Of course, no coercive scheme can actually be piggy-backed onto the present system without *altering* it, and that is why Galston needs to put some operational details of his draft on the table and discuss their effects.

If we are to have the draft Galston envisages, here are some basic changes we might expect. First, we have to reconstitute the central bureaucracy of the Selective Service System and reestablish the roughly 4,000 local draft boards around the country. Second, we have to be prepared to put people in jail. For good reasons and silly ones, plenty of conscripts will resist. Their resistance cannot be allowed to succeed if the whole coercive scheme is not to be undermined. Third, we have to be prepared for gender inequities. Suppose there *were* some slots in the military the new draftees could take. Those slots could be filled only on an 8 to 1 ratio, men to women. This ratio represents the current gender configuration of the military and no one in the services or Congress wants to change it. Under Galston's draft, some women will complain that they are disproportionately and unfairly excluded from their preferred choice, military service.

Fourth, we have to be prepared to put in place a set of exemptions and deferments. Galston insists that only the unfit (physically and mentally) will be exempted from service under his plan but this is surely not feasible (and further, this exempted group itself will turn out to be very large if *military* standards are

imposed; the single largest group of young men of draft-age who did not serve in the Vietnam War era were those who failed their preinduction physicals). For example, a new high school graduate may be an unmarried mother of a small child or the financial mainstay of a household with ill or disabled parents or a crucial income-earner in a family already below the poverty line. There can be no politically feasible conscription that does not exempt on the basis of hardship (and it is worth recalling that ten times as many young men received hardship exemptions from the Vietnam draft as received student deferments). There will be clamor for other exemptions, as well. For example, young Mormons go on extended tours of foreign missionary work after high school; Congress will undoubtedly be asked by the Mormon Church to exempt these young people from Galston's draft or at least defer their service. Other groups will make their claims, as well.

More important from the military's point of view will be way in which a draft will threaten enlistment standards. Galston asserts that the AVF policy has had a profound effect on the educational composition of the services and he is right, but not in the way he suggests. The eighteen-year-olds recruited into today's

---

*There can be no politically feasible conscription that does not exempt on the basis of hardship. . . . There will be clamor for other exemptions, as well.*

---

military are far better educated than their civilian counterparts. This is because the military can be selective. It can turn away not only unqualified but *minimally* qualified applicants and accept only those who meet a much higher standard. Newspaper stories periodically observe that the AVF has to work hard to meet its recruiting goals. What the stories don't mention is that the services have to work hard because they set their standards so high. They recruit, with few exceptions, only high school graduates, and among those the services look for kids who score above average on the Armed Forces Qualifying Test (more than two-thirds of enlistees do). The services would have far less trouble recruiting if they lowered standards—especially if they lowered them to the level prevailing in the conscription years Galston looks back on fondly. And lower its standards the military might have to do if Galston's conscription plan goes into effect. If the new conscripts are to be given a choice of service, military or civilian, it will be politically difficult to deny the military option to those who are *minimally* (though not exceptionally) qualified to serve.

### The Real Message of Coerced Service

As part of his philosophical defense of coerced service, Galston notes the expressive dimension of the law. The law not only tells us what to do, it sends messages as well. What message will Galston's draft send?

It won't be the message World War II conscription sent. In World War II, America was in a fight to the death against fascism in both its German and Japanese variants. Between 1941 and 1945, ten million men were drafted and twenty million served overall—this out of a national population of 140,000,000. The great majority of able-bodied men under thirty bore arms. Those who remained on the home front—men, women, and children—did their part. Women went into the factories; children collected scrap. Everyone submitted to rationing and regimentation. Consequently, the conscription law's expressive effect was unmistakably a message of social duty and needed sacrifice.

Galston's draft law is unlikely to send any such message because its rationale is so transparently didactic. His law will more likely come across as a meddling busybody, disdaining the life courses young adults might choose for themselves (with civic and service components incorporated in any number of legitimate ways) and insisting that all of them submit to the particular pattern the government thinks best for their civic souls.

Galston claims to eschew any policy like the Vietnam-era draft. This is a wise move, since that draft was thoroughly discredited by the time it ended in 1973. However, the basic flaw in that draft was not that it gave some college kids deferments or led to an active force skewed toward the lower middle classes. Indeed, the Vietnam-era draft had far fewer loopholes than the 1950s draft Galston admires. (For example, Galston notes that the conscription of the 1950s brought college graduates into the enlisted ranks, thus producing the social mixing he desires. However, he doesn't say how many of these graduates stayed in uniform and for how long. In the 1950s, a drafted college graduate could get right back out of the service by teaching in a public school, and some not insubstantial number did.)

What discredited the Vietnam-era draft more than anything else was its expressive content. Let me explain. By 1968, although America's active-duty military numbered 3.6 million, Selective Service was filling slots from a national population of 200 million, a population disproportionately bulging right at the youth end, as the leading edge of the baby boom was slamming its way through high school. Nearly 27 million men came of draft age during the Vietnam War but 16 million of them—more than half—never served at all. Of that number, four million were lottery escapees—men put in the lottery pool after 1969 but lucky enough to possess lottery numbers that excluded them from the annual draft calls. (Incidentally, these lottery

escapees amounted to eight times the number of college kids given student deferments.) Small draft calls from a large target population made conscription look not like a mechanism of universal service but like a booby-prize for the unlucky few. *That* was the expressive effect of the Vietnam-era draft.

If a draft is to teach a lesson in universal duty, it needs to approach universality itself, as it did in World War II and in the early stages of the Cold War. This is no doubt why Galston wants to conscript all eighteen-year-olds. However, he concedes that shanghaiing into service a sizeable portion of the four million kids who turn eighteen each year might take a considerable bite out of the public fisc and dampen voter enthusiasm for a fully universal conscription. "The best response" to this state of affairs, writes Galston, is limited conscription using a lottery—in other words, the best response is reinstating the very feature of the Vietnam-era draft that divided youth into the unlucky few and the lucky many.

### Conscription Properly Bounded

Galston suggests that the country's current military engagements may require more manpower than current enlistments provide. If manpower shortages arise, the military will be loathe to return to a draft until other options fail. The impressive success of the AVF that Galston refers to arises out of three facts—first, that the men and women who make up the services' platoons, companies, and battalions want to be there; second, that they are well-educated, committed, disciplined, and trainable; and third, that they serve long enough to become highly proficient at their jobs. The American military is an expeditionary force, designed to fight overseas, using complex weaponry and sophisticated tactics. Even in the infantry, it needs soldiers who can master an array of technical tasks. Short-termers (which is what draftees would be) would barely learn their craft before finishing their active duty. Moreover, nothing undermines unit morale and cohesion like the presence of malcontents, troublemakers, and malingerers—and a draft will deliver up plenty of each. Under conscription, the Army cannot reward bad behavior with a discharge—otherwise coerced service wouldn't work. It has to keep bad eggs in the barracks or in the brig.

Even so, if the Army truly needs not 70,000 but 140,000 or 280,000 recruits a year and can't meet this need through voluntary enlistments, then the country may have to resort to a draft. It might be a draft short on the civic lessons desired by Galston but it would be one justified on the grounds set out by Mill.

Further, if the country decided that defense against domestic terror attacks requires the creation of a substantial new homeland "light" military force (e.g., soldiers trained to stand guard around every nuclear



*"Next to my two years in the Marines,  
you're the best thing I've ever done."*

©The New Yorker Collection 1997, Robert Weber  
from cartoonbank.com.  
All Rights Reserved.

power plant, chemical factory, airport, train station, power grid, hydroelectric dam, hospital, and government office in the country), then something approaching universal conscription might be appropriate. The point is, the question of conscription should be settled on grounds of national defense, not determined by hoped-for civic by-products.

### Postscript: A Comment on Class

Galston laments the absence of the college-educated from the ranks. Privileged youth currently escape the burden of service, he says, and this is bad for America.

Others likewise see the AVF through the prism of "class." Unfortunately, much of the discussion of the military's class structure is built on an implicit class bias. For example, consider a recent policy report by Marc Magee and Steven J. Nider, "Citizen Soldiers and the War on Terror," for the Progressive Policy Institute. In their report, Magee and Nider praise legislation passed last year that will make available a "citizen soldier" option in which individuals can enlist for an 18-month tour of duty in one of the armed services and then serve a further period in the Individual Ready Reserves, the Peace Corps, or Americorps.

The new short-term option, Magee and Nider believe, "would appeal especially to college-educated

youths, who are now dramatically underrepresented in" the military.

The creation of a citizen soldier enlistment track marks the most important change in America's military recruitment policies since the draft was ended. The introduction of the all-volunteer force in 1974 ushered in an era of military recruitment that targeted people primarily interested in cash, job security, or technical training. The citizen soldier track adds a civic dimension to this economic model.

Instead of using a recruitment strategy "based exclusively on economic incentives," write Magee and Nider, the new track will allow "the nation's most fortunate sons and daughters" to act on their duty to contribute to America's defense.

Here we see the germs of a charge that has been thrown at the AVF since its beginnings—that it amounts to a "mercenary" force. (One recent example: John Gregory Dunne, essayist and novelist, gives voice in the May 29, 2003 issue of the *New York Review of Books* to the claim that the AVF is a "Hessian force of the unlettered and underprivileged.") Do we want people to do our fighting who enter service motivated exclusively by the prospect of financial gain? That's how mercenary armies are formed. Can we honor what Magee and Nider call our "civic ethic of equal sacrifice" by turning the job of defense over to mere hired hands?

This “mercenary” charge has been around since the AVF was created. What merit does it have? None. It is true that military pay was raised after the draft ended, because military recruiters had to begin competing in an open job market. Today, a private in the Army with less than two years service earns almost \$1,100 a month basic pay. Factor in the free food, housing, and medical care he receives by living on base, and this is not a bad income for a twenty year old with only a high school diploma. Moreover, the private may get an up-front cash bonus for enlisting and be eligible to receive quite substantial college tuition benefits at the end of his term. All in all, the military offers an attractive option for many youth. But this is not an option open to the truly “unlettered and underprivileged.” As we’ve already seen, the services set a high bar for admission. Those who fill the enlisted ranks of the AVF come principally from lower middle- and middle-class blue collar and white collar families. They are high school graduates with good grades, good entry-test scores, and capable of college work. Indeed, many of those who leave service after their initial term of enlistment go straight on for a baccalaureate using the tuition benefits they’ve earned.

A decent wage and prospects of future financial rewards: do these make a recruit a mercenary? Where is the evidence that no “civic dimension” weighs in the choices of current recruits? Where is the evidence that enlistees in the AVF are motivated “exclusively” by financial inducements rather than by a mix of patriotic feeling, desire for adventure, and a wish for an occupation both socially meaningful and personally challenging, all of this leavened by an attractive economic package to boot? Where is the evidence that members of the AVF are Hessians who would abandon their Army, Air Force, or Navy jobs to serve in the Canadian, Libyan, German, Venezuelan, or Chinese armies for higher wages and bonuses? There is none. Indeed, the “mercenary” charge is not an induction from empirical evidence, and never has been, but a deduction from unstated prejudices. The deduction moves from the fact that economic incentives offered by the military play a role in enlistments to the conclusion that enlistees are mercenaries. There’s a missing premise here. What is it? That people for whom economic incentives make a difference are mercenaries? This can hardly be the right premise, as the report by Magee and Nider so ironically illustrates. After initially characterizing the AVF policy as targeting people “primarily interested” in money and relying “exclusively on economic incentives,” they extol the new “citizen soldier” option that will, they hope, appeal to upper middle-class and college-educated youth. Part of that appeal, however, turns out to be *cash*—a \$5,000 cash bonus or an \$18,000 education grant to pay off tuition loans! Now, if upper-class youth aren’t turned

into mercenaries by accepting substantial bundles of cash, how are lower middle-class youth nevertheless compromised by the military’s financial compensation packages?

Consider this further fact. The military maintains a substantial officer corps, largely composed of graduates from the service academies or from college ROTC programs. These graduates are not individuals who’ve taken a vow of poverty. The cadets and midshipmen at the academies gain a free college education; many ROTC students receive substantial scholarships. A newly commissioned lieutenant begins with more than twice the basic pay of a private. While a Master Sergeant with fifteen years experience and a family of four takes home \$53,000 in RMC (regular military compensation, which includes basic pay, food and housing allowances, and tax advantages), a Lt. Colonel with fifteen years experience and a family of four takes home \$95,000. To the critics of the AVF like Magee and Nider, the Sergeant is part of a tainted volunteer system relying “exclusively” or “primarily” on economic incentives. Yet, except for rare moments in our history, the officer corps has always been all-volunteer. If the Sergeant is a mercenary, why then isn’t the Lt. Colonel a super-mercenary? The critics of the AVF never draw this conclusion. Why not? It begins to look like the missing premise in the “mercenary” argument is some piece of class snobbery: for lower-class kids the money is all that counts, while for upper-class kids the money merely eases the way for them to act on selfless motives of service and duty. What else explains the dual attitude Magee and Nider take toward the regular enlistee and the “citizen soldier,” the latter drawn (they hope) from “the ranks of the best educated and most well-off citizens,” while the former comes from an average American family?

Magee and Nider, like many critics of the AVF, focus on the enlisted ranks and then treat them as the whole military. For example, they claim that college-educated youth are dramatically underrepresented in the AVF. However, the college-educated are underrepresented only in the enlisted ranks, not in the officer corps. Nearly every commissioned officer is a college graduate. Magee and Nider lament the fact that only 6.5 percent of active duty enlistees have had some college experience, by contrast to 46 percent of the general population. However, when you add in the officer corps, the percentage of active duty military personnel *in total* with some college experience jumps to 21 percent. Indeed, 15 percent of the military have a bachelor’s degree or higher, a figure not terribly out of line with the civilian world, where 26 percent of individuals twenty-five or older possess at least a baccalaureate.

The low percentage of bachelor’s degrees in the enlisted ranks is a matter of concern only if we think the military will perform better by having college-

trained privates and corporals serving under high-school-educated sergeants. Even Galston's universal draft wouldn't supply the services with more college-educated privates, only more college-bound ones.

Robert K. Fullinwider  
Institute for Philosophy and Public Policy  
School of Public Affairs  
University of Maryland  
rfullinw@umd.edu

Sources: Demographic data taken from Table 1, "Age and Sex: 2000," *United States: 2000: Summary Population and Housing Characteristics*, Part 1 (Washington, D.C.: U. S. Census Bureau, November 2002), p. 2; and "Educational Attainment in the United States," Report P20-536 (Washington, D. C.: U. S. Census Bureau, December 2000). Data about characteristics of

manpower in the services is drawn from the *Defense Almanac* <[www.defenselink.mil/pub/almanac](http://www.defenselink.mil/pub/almanac)>. On the military recruitment standards and the qualities of current recruits, see Charles Abell, Principal Deputy Undersecretary of Defense for Manpower and Readiness, "Media Roundtable on Personnel and Readiness Issues," *Defense Link*, December 23, 2002 <[www.defenselink.mil/news/Dec2002/t12232002caq.html](http://www.defenselink.mil/news/Dec2002/t12232002caq.html)>. For military pay, see "Military Compensation: Monthly Basic Pay Table - January 1, 2003" <<http://military-pay.dtic.mil/pay/bp/paytables/Jan2003.html>> and "Military Pay: Regular Military Compensation Calculator" <<http://militarypay.dtic.mil/militarypay/cgi-bin/rmc.pl>>. For details of the Vietnam-era draft, see Lawrence M. Baskir and William A. Strauss, *Chance and Circumstance: The Draft, the War, and the Vietnam Generation* (New York: Vintage Books, 1978), esp. pp. 20-22. The "citizen soldier" option is discussed by Marc Magee and Steven J. Nider, "Policy Report: Citizen Soldiers and the War on Terror" (Washington, D. C.: Progressive Policy Institute, December 2002). The remark by John Gregory Dunne is in "The Horror is Seductive," *New York Review of Books*, 50 (May 29, 2003), p. 23.

## New Anthology

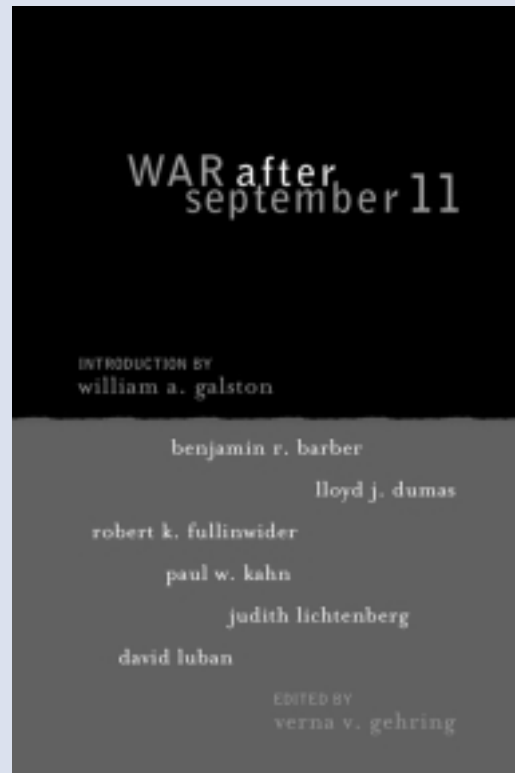
### WAR AFTER SEPTEMBER 11

What are the limits of justified retaliation against aggression? What actions are morally permissible in preventing future aggression? Against whom may retaliation be aimed? These questions have long been part of the debate over the ethics of warfare. They all took on new meaning after terrorists hijacked four US airliners on September 11, 2001.

*War after September 11* considers the just aims and legitimate limits of the United States' response to the terrorist attacks. Six essayists from the Institute for Philosophy and Public Policy at the University of Maryland pair off to discuss ethical questions such as, What are the moral challenges posed by terrorism? Can modern terrorism be addressed within the existing paradigms of just war and international law? Should the U.S. respond militarily or by some other means? Taken together, the essays in this volume ask the fundamental question: How should the United States use its power to combat terrorism?

Contributors: Benjamin R. Barber, Lloyd J. Dumas, Robert K. Fullinwider, William A. Galston, Paul W. Kahn, Judith Lichtenberg, David Luban; Verna V. Gehring, editor.

110 pages  
Paper, \$14.95  
ISBN 0-7425-1468-4



For orders and information please write or telephone the publisher:

Rowman & Littlefield Publishers, Inc.  
4720 Boston Way  
Lanham, Maryland 20706  
1-800-462-6420  
[www.rowmanlittlefield.com](http://www.rowmanlittlefield.com)

# Finessing Nature

Richard M. Zaner

## Introduction

Even those who favor the prospect of human cloning have become troubled, largely because, they believe, so many of us in this complex society are simply too *laissez faire*, too jaded to appreciate the altogether serious implications of scientific endeavors. We sometimes seek too avidly advances in biomedical science that are meant to benefit us and are rich with promise for our future children and for humanity—but these advances also can risk the very things we cherish most. This applies especially to the prospect of human cloning. Declared over four decades ago, the sentiment expressed by Nobel Laureate geneticist Joshua Lederberg in 1966 is captivating still: “cloning could help us overcome the unpredictable variety that still rules human reproduction, and allow us to benefit from perpetuating superior genetic endowments.”

That theme was later adopted by other Nobel Laureates in genetics—Sir John Eccles, Sir Macfarlane Burnett, and more recently by Walter Gilbert and James Watson. Scientists seem a united front. Their vision embodies the notion that it is best that “nature” not be left to its own devices, as it is essentially blind and unpredictable. Therefore, nature must be, as I prefer to say, finessed. Human beings must actively support scientific efforts to take matters into their hands through planned interventions. Those who oppose genetic manipulation and cloning are not only wrongly suspicious of science, proponents argue, but also irrationalism and numeric illiteracy also often account for their suspicion.

This orientation toward human life and reproduction outrages those most opposed to cloning and manipulation of the human genome. Expressed energetically some decades ago by biomedical ethicists June Goodfield and Paul Ramsey, most recently this view has seen vigorous expression by Leon Kass, chair of President George W. Bush’s Council on Bioethics. (The Council was established on October 3, 2001, following the expiration of the charter of the National Bioethics Advisory Commission, NBAC, which itself was created by Presidential Executive Order in 1995,

during the Clinton administration.) Kass had long been a critic of the NBAC, worrying that it would yield “to the wishes of the scientists to clone human embryos,” and would call for only a temporary moratorium on “implanting cloned embryos to make a child.” The NBAC did indeed recommend only a temporary ban. Kass and other scientists, who are deeply suspicious of genetic manipulation generally, and of cloning especially, embrace the belief that the so-called “natural” way is indeed the preferable way, because it is ultimately ordained by God. (Further complicating matters is that, while opponents of cloning hold views that typically rely on some understanding of religion, they rarely seem to find a place for religious language in their defense of cloning, stem cell research, and genetic engineering.)

The purpose of this article is to suggest that we need to consider carefully the ethical implications of substituting technology and genetically innovative means to assist human reproduction—that is, of “finessing”

---

*We need to consider carefully the ethical implications of substituting technology and genetically innovative means to assist human reproduction—that is, of “finessing” nature.*

---

nature. To do this, one must first understand some of the ethical debates surrounding the most contentious form of assisted reproduction that lies in the future—that of human cloning. After examining the arguments against cloning, I present thoughtful reconsiderations of those arguments (some of reconsiderations actually support the prospect of human cloning). Finally, I discuss the work of two Canadian researchers, who suggest that environmental conditions might actually accelerate the use of reproductive technologies. I conclude by proposing the outlines of the ethical stance we must take in order to approach with care the prospect of finessing nature.

## Arguments against Cloning

**1. Cloning is repugnant.** Kass's appointment as chair of the President's Council on Bioethics suggests that a new day has dawned for the opponents of cloning and related research. The trouble with human cloning is that it is fundamentally "dehumanizing" and everyone ought to find it repugnant. At the crux of his argument, oddly, is the simple and undefended assertion that cloning should evoke a common feeling—"repugnance"—that points to a "deep wisdom, beyond reason's power fully to articulate." Even Ian Wilmut apparently agrees: during his initial announcement of Dolly, the first cloned mammal, he declared that using his technique to produce human beings would be "quite inhuman."

**2. The "natural" way is the "profound" way.** Kass also argues that human beings are sexual in a special sense: reproduction in its "natural" form brings about "some very special and related and complementary" relationships to others. The power of sexuality, he finds, "is, at bottom, rooted in its strange connection to mortality, which it simultaneously accepts and tries to overcome." In contrast, human cloning is essentially asexual reproduction; the organism that is divided to become two is itself preserved (doubly), and nothing dies. Sexuality, however, "means perishability and serves replacement; the two that come together to generate one soon will die. . . . Whether we know it or not, when we are sexually active we are voting with our genitalia for our own demise. . . ." Therefore, he continues, "sex is bound up with death, to which it holds a partial answer in procreation."

This understanding of human sexuality allows Kass to set forward his main objections to cloning. He believes that cloning creates serious issues of identity and individuality. Not only will the clone be genetically identical to another human being, but the clone also might be twin to the person who is his "father" or "mother," adding "psychic burdens" to being the child or parent of one's own twin. The clone will also "be saddled with a genotype [genetic constitution] that has already been lived. He will not fully be "a surprise to the world," but will instead be used goods. Kass also argues that cloning is a giant step toward making procreation manufacture—"a process already begun with *in vitro* fertilization and genetic testing of embryos." Cloning will allow "human artisans" to select "the total genetic blueprint of the cloned individual." In this kind of reproduction, the maker is not equal but superior to the one made, who is a product designed to "serve rational human purposes." Cloning, finally, Kass insists, confuses and disrupts the human relationship, introducing a "profound and mischievous misunderstanding of the meaning of having children and of the parent-child relationship." Natural procreation *means* that by their act the partners affirm the creating

of a new life, blending themselves into a baby with its "own and never-before-enacted life to live."

**3. The "bright line": here and no further.** Concerned that the NBAC did not represent "the voices of grassroots Americans," a group calling itself The American Life League, Inc. established in 1997 the American Bioethics Advisory Commission (ABAC), which subsequently issued its own report. The ABAC stressed that there exists a "bright line dividing legitimate and exciting scientific research and development from dangerous and dehumanizing manipulation." The only way to "embrace what is good and reject what is evil," is to respect this line by encouraging "responsible experiments in animal cloning," but imposing a global ban on human cloning. The mention of "good" and "evil" were meant to raise religious concerns that, according to ABAC, were absent in debates of this kind.

**4. You just can't trust 'em.** In fact, the ABAC also contended that the rare mention of "religion" is often accompanied by embarrassment. The NBAC apparently agreed with this point and, enlisting the assistance of several groups, authorized a study of the religious issues and themes raised by human cloning. One group, the Program for Ethics, Science, and the Environment (housed at Oregon State University's Philosophy Department) sought the view of persons of faith from a wide variety of traditions. Worries about the prospect of human cloning varied, with, for instance, one clergyman speculating that "cloning would violate practically every sacramental dimension of marriage, family life, physical and spiritual nurture, and the integrity and dignity of the human person." But another clergyman suggested that cloning should be permitted to continue, but "the impetus and ethical motivations behind human cloning [must] be meticulously monitored," its practices "tightly regulated," cloning of human cells must never be permitted to reflect "racial or ethnic, or other demographic subgroup (i.e., gender)" and, finally, access to any benefit must be universal.

The range of recommendations by religious thinkers reveals that technology is not itself disturbing; rather, these thinkers seem to worry that scientists and physicians, in whose hands genetic manipulation is entrusted, are more likely to break than to keep that trust.

**5. The reach of myth.** Wendy Doniger, a distinguished history of religions scholar at the University of Chicago, suggests that the notions of threat and promise that accompany the prospect of cloning human beings are deeply embedded in Western history and mythology. Although the actual prospect of cloning a human being is quite recent, Doniger points out that something very much like it has fired the human imagination for millennia and finds expression in a variety of myths. She is particularly interested in

the historically embedded notion that “doubles could be produced by the ancient counterpart of science—magic.”

According to her research, a main reason to oppose the making of “doubles”—combined with fear and fascination, not unlike today—had to do with attitudes about sexual conduct: “time and again one clone somehow or other stumbles in the other’s bed, and this feel of advertent or inadvertent sexual betrayal” is “an inescapable part of the terror of cloning.” Mythic sources suggest that clones—or “doubles,” “duplicates,” “multiples,” erase the individuality of the one doubled and thus threaten personal identity. Another main mythological theme concerns eugenics, the search for ways to use biological means to “improve” future humans. The sexual side predominates here as well, since the principal theme is that of males who want to ensure that their offspring look like them—guaranteeing their paternity as well as the presumed quality of their offspring. At the heart of these myths is an elemental resistance to the possibility “that a clone—that is, a magically created double—could have a separate soul, that in creating a body *de novo*, the magician could create a soul *de novo* too.”

### Responses to the Objections

Although much has been made of the presumed repugnance at the prospect of human cloning, the subversion of the natural, and the inappropriate power of its practitioners, challenges to the arguments against cloning are put forward just as vigorously.

**1. Questioning the “identical” nature of clones.** The well-known Harvard University scientist Stephen Jay Gould has noted with palpable irony how fashion often governs not just public mood but even scientific projects. Much of the knowledge and technical skill needed to clone humans has been around for some time now, and Wilmut’s Dolly was not in fact the first mammalian clone—it was merely the first engineered from an adult cell. Gould asks the obvious question: what’s the big deal anyway? To which his answer is blunt and immediate: no big deal at all, *if and when* you think about it.

The trouble is, not many have thought about cloning. Not only had Wilmut and his colleagues also cloned sheep from the cells of a nine-day embryo and a twenty-six-day fetus (with much greater success, incidentally), but far and away the most significant of the seemingly endless outpouring of questions about human cloning have already been answered, in good old empirical fashion: “We have known human clones from the dawn of our consciousness. We call them identical twins—and they are far better clones than Dolly and her mother.” Gould thus wonders, “Why have we overlooked this central principle in our fears

about Dolly? Identical twins provide sturdy proof that inevitable differences of nurture guarantee the individuality and personhood of each human clone.”

The preeminent twin researcher, Nancy L. Segal, emphasizes just this point, insisting that “*identical twins are clones, but clones are not identical twins.*” Cloned human beings are not identical in the strict sense “because they fail to fulfill the three twinship criteria: simultaneous conception, shared prenatal environments and common birth.” Moreover, cloned individuals differ in other significant ways, because environmental factors will vary; thus, she stresses, however one feels about the perennial dispute, “the *nurture* part of the nature versus nurture equation will be *completely* different.” Finally, as many researchers and medical ethicists have noted, not even identical twins are, strictly, *identical*: differences in fingerprints, organic brain structures, intelligence, personalities, and the like are the rule, not the exception. Thus, even if clones were more like naturally occurring identical twins than they in fact are, one would still find significant differences, the sum of which demonstrate the complete falsity of the notion that a clone is an exact copy of a person.

**2. Reconsidering the “Yuk factor.”** Evolutionary biologist Richard Dawkins clearly agrees with the considerations of Gould and others, to which he adds that he finds nothing wrong with human cloning. To those,

---

*Those who rely on the ambiguous distinction between “natural” and “unnatural” in their opposition to human cloning must accept the onus of showing that it is “any more momentous than the introduction of antibiotics, vaccination, or efficient agriculture. . . .”*

---

like Kass, who appeal to “repugnance,” Dawkins insists that this “‘yuk reaction’ to everything ‘unnatural’” should make the rest of us stop and think about such a “reflex and unthinking antipathy.” In fact, anyone disturbed by scientific interventions into the “natural” order of things should consider the fact that, for instance, it is just as *unnatural* to read books, drive an automobile, cut up carrots, or wear clothing, as it would be to clone babies. Correlatively, it is just as *natural* to clone an infant in order to acquire more healthy cells as it is to use antibiotics to help heal wounds.

As Gould and Dawkins make clear, those who rely on the ambiguous distinction between “natural” and “unnatural” in their opposition to human cloning must accept the onus of showing that it is “any more momentous than the introduction of antibiotics, vaccination, or efficient agriculture, or than the abolition of slavery.”

**3. We are not in our genes.** George Johnson, a science correspondent for the *New York Times*, nicely summarizes several key points in the dispute, observing that “the queasiness many people feel over the news that a scientist in Scotland has made a carbon copy of a sheep comes down to this: If a cell can be taken from a human being and used to create a genetically identical double, then any of us could lose our uniqueness. One would no longer be a self.” The anxious sense that human cloning poses challenges to personal identity has deep mythic and biological roots; but here too, when one thinks about it, there is little to fear. Johnson’s rendition of the point is worth citing at length:

That each creature from microbe to man is unique in all the world is amazing when you consider that every life-form is assembled from the same identical building blocks. Every electron in the universe is indistinguishable . . . all protons and all neutrons are also precisely the same. . . .

Every carbon atom and every hydrogen atom is identical. When atoms are strung together into complex wholes—the enzymes and other proteins—this uniformity begins to break down. Minor variations occur. But it is only at the next step up the ladder that something strange and wonderful happens. There are so many ways molecules can be combined into the complex little machines called cells that no two of them can be exactly alike.

Even cloned cells, with identical sets of genes, vary somewhat in shape or coloration. . . . But when cells are combined to form organisms, the differences become overwhelming. A threshold is crossed and individuality is born.

Two genetically identical twins inside a womb will unfold in slightly different ways. The shape of the kidneys or the curve of the skull won’t be quite the same. The differences are small enough that an organ from one twin can probably be transplanted into the other. But with the organs called brains the differences become profound.

Although one can argue with the conclusion Johnson draws: “While it is possible to clone a body, it is impossible to clone a brain,” he is correct that from the earliest beginnings to the most sophisticated forms of human life, our human genes have the capability of indicating only the *rough outlines* of neural wiring. Random mutation and environment influence neural connections and all aspects of the organism.

**4. “Success” in perspective.** In a published adaptation of a lecture on cloning delivered at a joint meeting of the medical societies of San Bernardino and Riverside Counties (California), Mark D. Eibert makes a case for encouraging human cloning. Eibert points out that in the case of Dolly, Ian Wilmut began with 277 reconstructed eggs (eggs that had their nuclei removed and were then fused with an adult cell). These eggs were then cultured in sheep oviducts; of the original 277 reconstructed eggs, only 29 successfully divided and became embryos. These 29 were transferred to the uteruses of 13 sheep (some received one, others two or three eggs), but only one sheep became pregnant—from which Dolly was born.

Eibert emphasizes that, comparing this figure—one success from thirteen attempts—to the ratio of live births resulting from *in vitro* fertilization (IVF), it was not until 1990—twelve years after the birth of the first IVF baby in England—that the average success rate for IVF “got to be as good as one out of 13.” (Currently, the IVF success rate worldwide is about 25 percent, a rate that took twenty years of highly focused efforts.)

But Dolly was only the first cloning experiment of its kind. In the second—cloning of fifty mice in Hawaii—the efficiency rate was even better (again, comparing the number of eggs per live birth): ten times higher than Wilmut’s experiment. The third published adult cell cloning experiment, Eibert points out—this occasion, the cloning of cows in Japan—was seventeen times more efficient than Wilmut’s results. Moreover, a variety of other species have already been cloned using Wilmut’s technique—goats, pigs, rhesus monkeys—“literally hundreds of animals in the world who were conceived through adult cell cloning.” Because none of these efforts have been nearly as risky as the detractors

---

*Arguments used more than twenty years ago in the effort to stop IVF are now being used again, this time against human cloning.*

---

constantly allege, Eibert concludes that the argument against cloning based on safety concerns is getting weaker almost daily.

Indeed, for those people unable to have children (between 10 to 15 percent of the population) and for whom IVF or alternative means have failed, cloning might be the only chance to have children. Eibert notes that arguments used more than twenty years ago in the effort to stop IVF are now being used again, this time against human cloning. Before the birth of Louise Brown, the first baby born from IVF, the large majority of Americans polled (85 percent) were opposed to IVF—until successes began to receive public notice, parents of IVF children became more widely known and more commonly encountered, and “safety” a demonstrably irrelevant issue. Precisely the same, Eibert believes, will inevitably occur when human cloning is finally with us, as it most assuredly will be. Human cloning, just as IVF, will become an accepted way of finessing nature’s shortcomings.

### New Considerations

A quite different and fascinating case raises important questions about human cloning and other tech-

niques that scientists and physicians use to finesse the natural processes involved in human reproduction. Two Canadian sociologists—Louise Vandelac and her research assistant Marie-Hélène Bacon of the University of Quebec at Montréal—argue that “paradoxically” the significant worldwide increase of environmental pollutants, which have been shown to disrupt the human endocrine system, “may accelerate the use of reproductive technologies . . . and even cloning, as well as the dissemination of genetically modified organisms.”

Breast cancer, endometriosis, the decline in animal and human sperm density and potency over the past fifty years, as well as a number of maladies have been

---

*The expected decline in traditional reproductive ability, . . . might lead us to finesse nature, substituting technologically and genetically innovative means to reproduce.*

---

directly associated with the sharp increase in pesticide use and environmental organochlorine chemicals such as polychlorinated biphenyls (PCBs) and hexachlorobenzene (HCB). Vandelac and Bacon argue that there arise serious, long-term *ethical* consequences of the choices now faced by all nations, individually and collectively. On the one hand, “we could adopt the principles of caution, solidarity and concern for public health,” which lead to fewer industrial pollutants, more environmental sensitivity, as well as world-wide education and sound policies that can prevent future damage—a direction they recognize is unlikely to be followed, given the values of a world market economy. On the other hand is the current course of action, in which existing rates and kinds of environmental degradation are permitted to continue and even increase, elevating, in Vandelac and Bacon’s words, “the technologization of conception and the ‘geneticization’ of the living.” Since the first option is unlikely to see adoption, continuing the current trend could yield, they speculate, to:

. . . the growth and widespread institution of a merchant or institutional economy of artificial reproduction, which would gradually replace natural conception for wealthy populations in the Northern hemisphere . . . We may also witness the proliferation of research on embryos, soon to be cloned, patented, genetically altered, or even used as a vector of cellular lines, thus giving the term ‘producer’ a whole new meaning. This could also lead to . . . the alteration of the concept we have of human beings and humanity itself, an alteration which has already begun due to the technologization of conception, will be further amplified, giving an unprecedented depth to the mutation of human species.

This kind of future would not necessarily result from the rise in endocrine disruptors alone, but this increase in genetic manipulation and resultant compromise to human reproductivity “could be simply used as an easy justification” for “technologization” and “geneticization,” with human cloning waiting in the wings for the call to move to center stage. This process is similar to *in vitro* fertilization, which made its way into the center of the reproduction industry. The expected decline in traditional reproductive ability, Vandelac and Bacon contend, might lead us to finesse nature, substituting technologically and genetically innovative means to reproduce.

Their conclusion is interesting: “if” the market is allowed to move ever further into human reproduction; “if” the boundaries between and among species continue to be eroded by innovations in gene splicing; and “if” by widespread indifference and apathy humanity is allowed redefinition and manipulation, then, they speculate, we shall have been witness to, and even participants by default in, our own degradation if not demise—one as definitive and final as the disappearance of the dinosaurs. While this is a lot of freight to pile on such an ‘iffy’ platform, their point is intriguing and merits careful deliberation, for it lays out with clarity an entire series of hard choices we must face squarely and at some point decide.

### Toward a Conclusion

To consider these matters clearly, we must conceive of, in the words of Vandelac and Bacon, “a global ethics of the living,” embracing environmental concerns as requisite counterpoint to uncontrolled growth of technoscience. We must also make certain to “impose a new ethics of politics,” and, finally, ethics must be conceived as perhaps humanity’s sole remaining way to counteract the market pressures to “redesign the human . . .,” working toward “a new ethics of economy.”

One need not wholly agree with their analysis and plea, but it seems to me that only if ethics is reconceived along these lines is there even the slightest change that it can gain a seat at the corporate conference tables and the halls of government. Only such a reconceived ethics can take an effective part in the much-needed broad and democratic ethical debate that can alone assess, Vandelac and Bacon argue, “this future that some want to impose on others.” As the eminent ethicist Hans Jonas once remarked, poignantly if also with some sense of lament, we need wisdom most when we hardly believe any longer in its very possibility—yet need it we do, and if we fail to rise to the monumental task of a new ethics capable of addressing itself directly to “exorbitant power,” we fail ultimately in the most solemn way our very humanity.

I close with the razor-sharp words of a poet:

How then shall we make love?  
The alligators, with their tiny testicles, mourn in  
the evergladed swamps  
And frogs hop on several of their many legs in  
Minnesota,  
While women on Staten Island hug their barren  
 chests and yearn for breasts

What? We did this to ourselves?  
Diminished the very thing that kept us fertile?  
Laughed at the gods that gave us better living  
through chemistry, and  
Then tried to sell us the cure for their product-  
aided ailments.

If there be butterflies still, then there be life . . .  
If there be moths, and bees and birds, then there  
be life . . .  
Somewhere, in test-tubes, frozen, gleaming  
sperm-like histories  
Will be what remains of our love-making —  
The tiny Jacks and Jills that have survived to tell  
the story,  
To sing our love-sick-song.

—June Zaner, July 2002

Richard M. Zaner  
Ann Geddes Stahlman Professor Emeritus of  
Medical Ethics and Philosophy of Medicine  
Vanderbilt University School of Medicine  
rzaner@houston.rr.com

Sources: Joshua Lederberg's quote appears in an article published in the *Washington Post* and is cited by Leon R. Kass, "The Wisdom of Repugnance," *New Republic* (June 2, 1997), and Kass's article was later published along with a supposed

rebuttal article by James Q. Wilson, in the volume, *The Ethics of Human Cloning* (The American Enterprise Institute Press, 1998); Ian Wilmut's "quite inhuman" remark is found at [www.cnn.com](http://www.cnn.com) (March 12, 1997); Leon Kass's three main objections to cloning are reiterations of objections made by Hans Jonas, in his *Philosophical Essays: From Ancient Creed to Technological Man* (Prentice-Hall, 1974) and also Paul Ramsey's "Shall We 'Reproduce'? II. Rejoinders and Future Forecast," *Journal of the American Medical Association*, vol. 220 (1972); The "voices of grassroots Americans" description occurs in: *Letter to President William J. Clinton from the American Bioethics Advisory Commission* (a project of American Life League, Inc., Stafford, VA), June 21, 1997; "Ban Human Cloning," *Report of the American Bioethics Advisory Commission*, unpublished, a Project of American Life League, Inc., 1179 Courthouse Rd., Stafford, VA 22554 (the Report was sent to President Clinton on June 21, 1997); Wendy Doniger, *The Bedtrick: Tales of Sex and Masquerade* (University of Chicago Press, 2000); Stephen Jay Gould, "Dolly's Fashion and Louis's Passion," in *Clones and Clones: Facts and Fantasies About Human Cloning*, edited by Martha C. Nussbaum and Cass R. Sunstein (W. W. Norton & Co., 1998). Gould, who, at the time of his death, was Alexander Agassiz Professor of Zoology and Professor of Geology at Harvard University and was also widely acknowledged as a preeminent theorist of evolution, offers as proof that "differences of nurture guarantee the individuality and personhood of each human clone" by citing the failures to clone Hitler in *The Boys from Brazil*, and the remarkable individuality evidenced in the famous case of Eng and Chang, the original Siamese twins: one was "a morose alcoholic, the other remained a benign and cheerful man." Nancy L. Segal, *Entwined Lives: Twins and What They Tell Us About Human Behavior* (Penguin, 2000, and republished from the 1999 Dutton edition); Richard Dawkins, "What's Wrong with Cloning?" appears in the Nussbaum and Sunstein anthology, as does George Johnson, "Soul Searching;" all quotes from Mark D. Eibert, Esq. occur in "Human Cloning: Myths, Medical Benefits and Constitutional Rights," *U&I Magazine*, and available from the Human Cloning Foundation at <http://www.humancloning.org/users/infertil/human-cloning/htm>; for a discussion of IVF success rates and how they are determined, see the Center for Disease Control's site at: <http://www.cdc.gov/nccdphp/drh/ART00/PDFs/ART2000.pdf>; Louise Vandelac and Marie-Hélène Bacon, "Will We Be Taught Ethics by Our Clones? The Mutations of the Living, From Endocrine Disruptors to Genetics," *Baillière's Clinical Obstetrics and Gynaecology*, vol. 13 (1999).



Copyright-free graphics on this and the next page are from: Pictorial Archive of Printer's Ornaments from the Renaissance to the 20th Century, edited by Carol Belanger Grafton (Dover Publications, Inc., 1980) and Men: A Pictorial Archive from Nineteenth-Century Sources, edited by Jim Harter (Dover Publications, Inc., 1980).

# The Ethical Implications of Direct-to-Consumer Pharmaceutical Advertising

Joseph M. Farrell

Anyone watching television these days is all too familiar with the barrage of product advertisements for beer, potato chips, non-pest strips, and a plethora of other products. Generations of television viewers have seen myriad ads, and we all know that this is what pays for news and entertainment programming. What is new, or at least recent, is the direct-to-consumer television advertisementst of prescription medications.

I can recall the first time I saw one of these new kinds of ads on television. The advertisement showed an attractive young woman windsurfing through a cornfield, and the voiceover of the narrator directed me to ask my doctor about a certain prescription medication. I found the advertisement puzzling. Why was the woman windsurfing in a cornfield? Why was she so ecstatic? Why should I ask my doctor about this particular medication? In a later version of the same commercial, the narrator listed in rapid-fire order the numerous possible side effects that the drug might cause, and which would require immediate medical attention. In this later ad, I now seemed to have too much information—and too little. I could remember some of the dire possible side effects of the medication, but I still had no idea of what the prescription medication was supposed to do. The main point of the ad, it seemed to me, was to be sure to ask my doctor about the medication. Of course, the suggestion was that I should ask for a prescription.

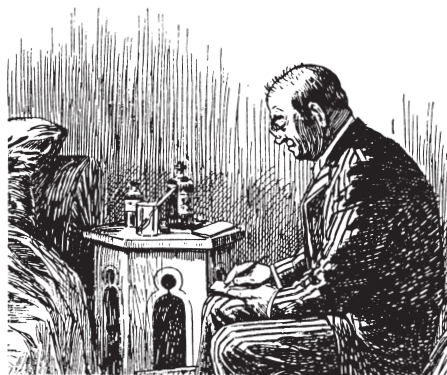
Although I did not know it at the time, I was watching a fundamental change in the marketing of pharmaceuticals. Traditionally, direct advertising took the form of pharmaceutical “detail” men making periodic visits to physicians in their territories in order to tout the virtues of various prescription medications. The Food and Drug Administration (FDA) permitted phar-

maceutical advertisements directed to the public, but only with a full disclosure of the information on a warning label, which included a list of possible side effects, contraindications, and effectiveness. While the FDA’s requirement was suitable for print advertisements in magazines and other popular periodicals, the thirty- to sixty-second air time limit for commercials on television was too restrictive to meet the FDA’s guidelines for pharmaceutical ad placement.

Everything changed in 1997, when the FDA relaxed its standards. According to the Code of Federal Regulations (Section 202) direct-to-consumer advertisement of prescription drugs may mention the product’s proprietary name and the disease it is used to treat, so long as major risks are summarized and adequate provision is made for the dissemination of full product label information. The thirty- to sixty-second advertisement spot was now sufficient.

Some might contend that the relaxation of the FDA regulations finally allows for full patient autonomy. The advocates of television advertising of prescription-only medications argue that ads contribute to the education of an active consumer-patient, who now might be able to describe ailments more effectively and to participate actively in a treatment plan. In fact, so this view advocates, denying consumer-patients access to the kind of information provided by ads limits autonomy and encourages a paternalistic doctor-patient relationship, because patients must rely too much on doctors for information.

But I suggest that the power to prescribe is in danger of erosion by the influence of direct-to-consumer marketing of pharmaceuticals. Prescription-giving might be influenced too much by consumer demand, and, if so, then all that stands between the marketing departments of pharmaceutical companies and consumers



are prudent physicians who can fend off the increasing pressure to provide prescriptions to patients influenced by advertising. The strength to withstand the pressure of marketing comes in part, I will argue, from acceptance—even welcome—of the role of paternalism in the physician-patient relationship.

### The Power to Prescribe

Physicians are licensed to practice medicine only after approximately a decade of schooling, training, and internship. Among their lifesaving skills is the power to prescribe. Some, among them medical ethicist Alan Goldman, argue that both the process of licensing physicians and their power to prescribe drugs are paternalistic. Paternalism—the systematic control of a person or group that is similar to a parental relationship over children—characterizes the doctor-patient relationship because patients have no control how doctors are licensed—that is the role of the American Medical Association (the AMA)—and no control over what chemical compounds are deemed controlled substances. That power belongs to governmental bodies such as the Food and Drug Administration (the FDA), and to bodies of experts. The consumer's access to controlled substances lies in the power of physician prescription. While citizens can influence some workings of government, they have no say in how the FDA does its job, whom the AMA will license and according to what standards, and what chemical substances are to be restricted.

But this sort of paternalism, one could argue, is both practically necessary and morally permissible. Since

---

*Whenever someone is in charge of some aspect of our lives, we have relinquished at least some control.*

---

everyone wants high quality healthcare, we need an infrastructure that consistently provides experts properly trained to provide that care. Further, since some substances are dangerous, though helpful for some medical conditions, citizens leave it to experts to describe the potential dangers of substances and to limit access to them via prescription. Government agencies, private and quasi-private bodies indirectly—and physicians most directly—have the power to treat us, heal us, and medicate us rather than allow us to risk the dangers of doing so ourselves. In short, the liberty to self-treatment and free access to any and all medically active compounds are restricted—a paternalistic practice that is necessary if the public is to be spared

the dire consequences of treatment in ignorance and the dangers of self-medication.

Although paternalism is acceptable in matters of licensing, expert opinion, and prescribing, some seem to believe that the ideal doctor-patient relationship should have no aspects of paternalism. Although Goldman explores such elements as informed consent, many ethicists seem to ignore the point that *whenever* someone is in charge of *some* aspect of our lives, we have relinquished at least some control. While medical practice attempts to include the patient in treatment decisions, paternalism is to some degree inescapable—and, I argue, even paternalism in the doctor-patient relationship is to some extent unavoidable, and it is morally acceptable.

### Paternalism and the Physician-Patient Relationship

Medical ethicists Ezekiel and Linda Emanuel examine four models of the physician-patient relationship: the paternalistic, the informative, the interpretive, and the deliberative. The “paternalistic” model requires little examination; at its worst, patients receive little, or false, information from their doctors, who take no account of the patient's values and wishes, and who decide what is for the patient's “own good” in designing and implementing a treatment plan. When one looks closely at the other models of the patient-physician relationship, however, one also finds in them paternalistic aspects.

**The informative model.** The “informative” model calls for the “physician to provide the patient with all relevant information, for the patient to select the medical interventions he wants, and for the physician to execute the selected interventions.” This model seems the farthest from medical paternalism. However, realistically, no doctor, because of time constraints or difficulty of putting complex medical jargon into laymen's terms, can give patients all of the facts. The “facts” here might include chemical interactions of a two-drug regimen, possible side effects, and the reasons why these side effects occur. Understanding most of this would require substantial scientific training the typical patient neither has nor cares to undertake. However, to be informative in the strictest sense of the model, all of the facts need to be presented in order for the patient to make an educated decision. If a physician is to be informative, he must be thorough, and since he cannot strictly be *completely thorough*, paternalism has crept in the moment a doctor decides that certain facts either are or are not necessary to divulge to the patient.

Degrees of paternalism are present in the “interpretive” and “deliberative” models as well.

**The interpretive model.** The “interpretive” model requires the doctor to present the facts to her patient, to

understand the patient's values, and to consider treatment options in light of those values. In addition to the paternalism that occurs because disclosure of full information is an impossibility, paternalism also creeps in because complete and correct interpretation of patient values is also an impossibility. Suppose, for instance, that the patient is shy or fearful; his values might be hidden or expressed in a muddled way. Because patient values must be surmised, the physician can only interpret, or make an educated guess about, those values.

**The deliberative model.** The "deliberative" model also contains paternalistic elements. This model attempts to help the patient "develop" her value systems with her physician during the office visit. But here, too, the physician's own opinions, values, and priorities inevitably will creep in.

All three models, in short, show that paternalism is present even in well-intentioned and sensitive patient-physician relationships. Again, however, this is not to cast aspersions on physicians for their paternalism. One visits a physician for assistance, recognizing her wealth of knowledge, and wanting a firm opinion and a discussion of treatment options. Goldman focusses on the paternalism that exists in the procedural aspects of training and licensing doctors, and in the power to prescribe restricted pharmaceuticals. Unlicensed individuals are barred from exercising their full autonomy, because a limit to autonomy is preferable to the possibly disastrous consequences of self-diagnosis and self-treatment. The Emanuels focus on the physician-patient relationship. But their characterizations of the various models show that, even when physicians are informative, offer medical opinions, and discuss treatment options, the relationship is paternalistic because the physician must choose what information to give, in what form, and influenced by the physician's values and priorities, based on suppositions about those of her patient.

My contention is that *all* interactions between physician and patient are paternalistic to some degree, and that they *should be* so. The degree of paternalism might be in question, but not its existence or appropriateness. If paternalism exists, and it is practically necessary and morally permissible, then the question remains: How does direct-to-consumer advertising and marketing of pharmaceuticals influence the power to prescribe and, more broadly, the the necessarily paternal relationship between doctor and patient?

### The Power of Suggestion: Marketing and Commercialism

All humans have needs and desires. While needs are required to survive, desires can include needs, but, in addition, desires include those things we seek out to

make life more pleasant or satisfying. Among the strategies of advertising and marketing are: 1.) to show the consumer ways to fulfill already-existing needs or desires (the new or improved cleaning agent), or 2.) to create new needs or desires in the consumer (try this particular allergy medication so you'll feel free like you're surfing on dry land), or 3.) to challenge a pre-existing belief about a product (Brand X pain relief product is no longer dangerous because the bottles are now tamper resistant).

Radio, television, the Internet, in addition to written media, are all marshalled to sell both necessary and unnecessary products. The result of ubiquitous and insistent advertising is what one might call *commercialism*, which is the subconscious or conscious effect of manufacturing a desire or perceived need in someone through the power of suggestion. Who has not felt that she must have something she has just seen for the first time in an advertisement, never mind that she has no use for that product, and in fact, has never felt a need that the item supposedly fills?

The desire for some items might be harmless—wanting a certain kind of car, shoes, or mouth wash. But some manufactured desires are not so innocuous. Consider tobacco products. Even today, with smoking being the habit of the damned, advertising is limited but still plentiful. The images portrayed—rugged outdoorsmen, willowy and glamorous women—are meant to encourage admiration and emulation. Because tobacco products are unhealthy and addictive, governmental policy now restricts its promotion via advertisement, with the goal of reducing the number of new adult smokers, and preventing the acquisition of the habit among young people. The right of the manufacturer to advertise is limited because the potential harm to the public and to public health is so catastrophic. If the harmfulness of tobacco products justifies limits to marketing, should other potentially hazardous products be treated differently? Alcohol consumption is legal for adults, yet here too, advertisement of alcohol products is restricted for the public good. Can a similar case be made for direct-to-consumer advertising of pharmaceutical products?

### Combatting Commercialism with Paternalism

Some might say that pharmaceutical product advertising *is* sufficiently restrictive. But recall my experience with the television ad of the the young woman on the surfboard. A seed is planted: Could the touted allergy medication have the same salutary effect on me? Was this the magic I was looking for? Perhaps it would be, if I suffered from significant allergies. The victory of marketing genius begins the moment I call my physician at the suggestion of the advertisement's sponsors. Victory is assured when I visit my doctor,

especially if my experience of the advertisement leads me to apply pressure to my physician for a prescription. Further, because my doctor is a responsible, knowledgeable person, he describes the medication's uses and effects. It may be the case, however, that his description allows me to deceive myself into believing that I have the symptoms that will be alleviated by prescription. I leave my doctor's office, prescription in hand; the marketing victory is complete.

But medications can be used improperly. If marketing and advertising create new needs or desires, then prescription-only medications can also be the object of manufactured need or desire, and the public clamor for them can result in suffering dire side effects and result in long-term harm. Cholesterol-lowering medications, for instance, can damage the liver; anti-depressants can affect sexual function, and medications for erectile dysfunction can cause heart attack or stroke. Manufactured needs can result not only in damage to health, but people who are seduced by direct-to-consumer advertising of pharmaceuticals also might never explore the safer and efficacious options possible with lifestyle changes, such as healthy diet, exercise, or stress reduction. Consumers, finally, in emphasizing the severity of symptoms or by manufacturing symptoms, could lose the important skill of "listening" to their bodies and seeking health care sensibly and when necessary.

In prescription medication commercials, patients are encouraged to ask their physicians about certain drugs and, by implication, they are encouraged to request a prescription. If the medication is not needed, or is dispensed based on the description of a non-existent condition, then harm—even dire harm—might be the result. Even more worrisome is the availability of prescription medications ordered from the Internet and without a doctor's office visit. The doctors who prescribe through the Internet do no service to any patient (if one can call a person a "patient" when he or she has never been examined by the physician in question). Any time a patient succeeds in obtaining unneeded prescription medication, the marketing campaign is the winner.

However, if the issue began and ended in the physician's office, paternalism would serve the true interests of the patient. The patient who demands prescriptions based on an appealing ad is not autonomous or actively involved in her health care. A physician-patient relationship that is based on an informative discussion leads to patients who are truly informed and therefore better capable of making free and educated decisions. Advertising is selective in the information it provides because its sponsors hope to generate desire for the product. Physicians are selective in giving patients information, based on judgments about the efficacy of some treatment options and judgments about the patient's ability to make

informed choices among those options. This sort of selective presentation of information is paternalistic, or so I have argued. However, it is practically necessary, morally justified, and it should not be confused with the selectivity of information in advertising directly to consumer-patients. Advertisement selectivity serves not the patient, but the corporate sponsor; but when a physician selects among all the information she has in educating her patient, she does so with the patient's best interest in mind. Direct-to-consumer advertising of pharmaceuticals intrudes on the physician-patient relationship. It conflates the differences between selective presentation of medical information by ads and by doctors, it confuses the strong urges of consumer product desire with taking responsibility for one's health care.

Assuming that no further substantial governmental intervention is on the horizon, and that drug manufacturers will continue to directly advertise to consumers, such advertising can usefully inform consumers of the existence of prescription medications that might help genuine maladies. Certainly, patient-consumers should be encouraged to involve themselves in their treatment to the extent that they feel confident and comfortable doing so. However, it is also important to remember that we seek out physicians for their expertise and guidance, and that this relationship is to an extent paternalistic. If physicians falter in exercising their power to prescribe—that is, if they shirk from this aspect of the necessarily paternalistic doctor-patient relationship—then in effect doctors will be relinquishing the power to prescribe, and they will be transferring that power, not to patients, which is also inappropriate, but to pharmaceutical manufacturers. The patient's true condition becomes almost irrelevant; what he or she *wants* becomes primary. The role of the physician is transformed into that of mere prescription dispenser in the consumer's search to realize a health fantasy. The practice of medicine could become just that, practice, in the worst sense of the word.

Joseph M. Farrell  
Lecturer in Philosophy  
Morgan State University  
Baltimore, Maryland  
jmf1371@yahoo.com

Sources: Ezekiel J. And Linda L. Emanuel: "Four Models of the Physician-Patient Relationship" in *Journal of the American Medical Association*, 267, no.16, April 22/29, 1992, pages 2221-2226; Alan Goldman, *The Moral Foundations of Professional Ethics*. (Rowman and Littlefield, 1980); United States Food and Drug Administration, Center for Drug Evaluation and Research: *Guidance for Industry: Consumer-Directed Broadcast Advertisements*. (Food and Drug Administration, 2003).

Established in 1976 at the University of Maryland and now part of the School of Public Affairs, the Institute for Philosophy and Public Policy was founded to conduct research into the conceptual and normative questions underlying public policy formation. This research is conducted cooperatively by philosophers, policy makers and analysts, and other experts both within and outside of government.

To make its research readily available to a broad audience, the Institute for Philosophy and Public Policy publishes this quarterly journal. Articles are intended to advance philosophically-informed debate on current policy choices; the views presented are not necessarily those of the Institute or its sponsors.

**Editorial Policy:** While the principal mission of *Philosophy & Public Policy Quarterly* (ISSN 1067-2478) is to present the work of Institute members, the work of individuals who are not members of the Institute also appears in the *Quarterly* from time to time. Interested individuals should direct submissions to the editor. Articles that appear in the *Quarterly* may be made available in whole or in part to third-party indexing sources.

**Correspondence with Contributors:** Readers may direct their correspondence to authors, whose mailing addresses and e-mail addresses follow their articles, or in care of the editor.

**Subscriptions:** A subscription to *Philosophy & Public Policy Quarterly* is free of charge to anyone making a request. Please let us know of changes in address, or whether you are receiving multiple copies of the *Quarterly*.

**Electronic Access:** The Institute for Philosophy and Public Policy directs interested individuals to its Web site: [www.puaf.umd.edu/ippp](http://www.puaf.umd.edu/ippp). Current and past issues of the *Quarterly* are available on the site. Copies of articles may be downloaded for personal use free of charge. Downloading for classroom or other use requires permission.

**Permission:** All materials are copyrighted by the Institute for Philosophy and Public Policy, unless otherwise acknowledged. Please direct to the editor all requests for permission to reprint articles appearing in this publication.

---

---

## The Institute for Philosophy and Public Policy

### Research Scholars:

William A. Galston, Director

David A. Crocker

Robert K. Fullinwider

Peter Levine

Xiaorong Li

Judith Lichtenberg

Mark Sagoff

Jerome M. Segal

Robert Wachbroit

David Wasserman

The Institute's Scholars constitute the *Philosophy & Public Policy Quarterly* Editorial Board

Verna V. Gehring, Editor  
vgehring@umd.edu

Carroll Linkins, Program Management Specialist  
Barbara Cronin, Business Manager

---

---



Non-Profit Organization  
U.S. Postage  
PAID  
Permit No. 10  
College Park, MD

Institute for Philosophy and Public Policy  
School of Public Affairs  
University of Maryland  
College Park, MD 20742

Address Service Requested