



SOCIETY FOR THE STUDY OF SOCIAL PROBLEMS

# *Solutions*

*AGENDA FOR SOCIAL JUSTICE*

*2004*



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Dear Reader,

The SOCIETY FOR THE STUDY OF SOCIAL PROBLEMS was formed in 1951 by social scientists interested in using social research to help in the solution of persistent social problems. This report – **Agenda for Social Justice: Solutions 2004** – is designed to inform elected officials and the public-at-large about some of the nation’s most pressing social problems and to propose policy responses to those problems. It is being mailed to all members of Congress, state governors, the mayors of larger cities, national newspapers, and opinion-shaping policy centers. The report is being issued to coincide with the national presidential and congressional elections in the hope that it will enter public discussion.

The eleven chapters in this report are based on valid and reliable knowledge and they present possible **solutions to social issues** that are focused on *inequality*, *social control*, and *the family*. The papers focus on policies that can (a) reduce inequality between communities and among their members, (b) provide protection of civil liberties, and (c) strengthen the American family.

We hope that you and your staff find the **Agenda for Social Justice: Solutions 2004** to be a useful resource as you work toward creating a more just society.

With best wishes,

Robert Perrucci, Chair  
SSSP Justice 21 Committee

The SOCIETY FOR THE STUDY OF SOCIAL PROBLEMS

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## **Equity in Education**

by  
Robert Brem and Ken Kyle

### **The Problem**

**The contemporary education debate and many education policies too often reflect a narrow understanding of knowledge, intelligence, teaching and learning, and a preoccupation with free market principles and technology that fails many students. These limited understandings often lead to narrow policies driven by ideological agendas.**

Such educational policies fail many students since they do *not* adequately address larger social ills that hamper education. For example, parents can be too tired from overworking to meet the basic needs to actively support and engage in their children's schooling or their school districts. Thus, many students are effectively left behind. Such policies fail some students by *not* preparing them to function well in contemporary society, thus students are left behind. They fail students by keeping them from pursuing higher education, thus would-be college and university students are left behind. And they fail many students by *not* preparing them to engage actively in democratic governance, thus society at large suffers. Yet Thomas Jefferson and John Dewey, among others, have noted that one of the primary reasons, if not the central reason, for education in a democratic republic is to prepare democratic citizens for self governance.

However, much discussion about education reform downplays or even ignores this educational goal. Instead, the goals of efficiency in education and technological innovation are major driving forces in the evolution of education reform at all levels. Indeed, they appear to eclipse concerns about democratic governance altogether, favoring "training" workers over educating citizens.

An example is the national trend toward mandatory standardized testing, which is driven in part by concerns with achieving greater efficiency. Similarly, experimentation with school vouchers, allowing children to attend private schools using public funding, is often justified in terms of promoting greater efficiency by introducing market principles to education. In keeping with calls for greater efficiency, technological innovations have facilitated wide-spread use of distance education and over-reliance on computers and the Internet in K-12 and college settings. Indeed, some K-12 charter schools are completely computer-based.

And some state institutions of higher learning require students to purchase and use their own computers.

Such policies do not address the goal of fostering democratic citizenship and may even undercut such efforts. Emphasizing efficiency at the expense of other goals and uncritically adopting the latest technological innovations may not be in the best interest of our children or of our society.

## **The Research Evidence**

**Research by scientists, social scientists, and educators suggests that a number of prominent education policies and trends merit serious reconsideration. Specifically, policies that promote over-reliance upon standardized testing, that promote teacher retention through merit bonuses for individual teachers and schools, that advance school choice through charter schools and school voucher programs in place of addressing inequities in school funding, and that promote overuse of web-based teaching exercises and distance learning, and/or mandatory computer ownership for students should not be pursued uncritically.**

As many educators will attest, preparing students to take standardized tests is training, not teaching. Education is about applying knowledge – generating and using ideas – rather than rote memorization. Effective teaching revolves around igniting passion for ideas fostered in face-to-face interaction with others and in sustained engagement with challenging ideas. Critical thinking, a skill needed by democratic citizens to fully carry out their civic duties, is not fostered by “training” for standardized tests.

Research shows that standardized tests are too often culturally biased, and are often founded upon a limited notion of intelligence and learning. Such a narrow notion underpins a limited range of educational approaches that favor some and disadvantage others.

In contrast, many researchers offer a solid, well-developed and well-supported framework founded upon the notion of “multiple intelligences.” For example, besides cognitive and linguistic intelligence, there is also verbal intelligence, visual intelligence, mathematical intelligence, and so forth. Therefore, whether an individual student can learn something easily or with difficulty depends in part upon the way the subject is taught, and the understanding of intelligence guiding

the teaching methods and approach. No truly intelligent activity uses only one of these modes of intelligence.

To design education policies based upon a single notion of intelligence is to see everyone as intelligent in the same way, when this is not the case. It is also to reward those who are better and punish those who are not as good at an institutionally favored type of intelligence.

Thus, narrowly focusing upon only logical or linguistic intelligence, as standardized tests typically have, disadvantages many students whose optimal way of learning is grounded in other intelligences. In effect, by overemphasizing logical or linguistic modes of intelligence, the abilities and achievements of many highly intelligent children will be mis-appraised. This effectively undercuts the premises underlying the bipartisan-supported No Child Left Behind Act (2002).

Many education problems and their corresponding reform efforts, such as inadequate teacher training and retention problems, school vouchers and charter school initiatives, and an over-reliance upon technological solutions to fundamental pedagogical issues, are driven at least in part by funding issues.

While some argue that it is unrealistic or undesirable to expect the public to completely fund education, private funding has never been up to the task of meeting public needs.

We must acknowledge that in the best of times charitable giving has accounted for approximately 40 percent of public need. Therefore, engaging in education policies that shift funding around without adequately addressing public funding inadequacies is self-sabotaging. As Oliver Wendell Holmes argued, “taxes are the price of civilization.”

Many school districts have a difficult time attracting and keeping well qualified, passionate teachers, and this is especially true in low income districts and communities. In response, some school reformers offer merit-pay bonuses to individual teachers or schools as the solution. Such policies, however, do not address the overall low pay offered teachers generally.

Given the serious charge that teachers hold, it is ironic that many education reforms are guided by market principles, yet teacher pay is one of the only areas in education that is insulated from market forces due to the chronic under-funding that many school districts perpetually experience.

In allowing public education dollars to follow students to charter schools rather than to districts, money is shuffled around potentially “enriching” some schools, but only at the expense of other schools. Rhetorically, school choice will benefit students by allowing them to choose the best school to meet their interest and proclivities, and will encourage ineffective schools to improve since their revenue is threatened. However, this does not address under-funding within school districts, a factor that research has shown greatly contributes to poor school performance.

Too many charter schools emphasize financial efficiency over quality. For example, some K-12 charter schools are virtual schools, completely computer and Internet-based which leaves behind a student who learns best from human interaction.

Driven by claims of greater efficiency in outcomes resulting from greater consumer choice and funding tied to those choices, employment of school vouchers raises at least two fundamental problems.

First, such policies beg the question of under-funding overall. If students go from one school to another, some schools may be overstressed as they must accommodate new students with resources determined by previous years’ enrollment figures. In essence, as more students choose to attend particular schools, the student-teacher ratios will increase, thus some of the expected advantage of transferring schools may be lost.

Second, research has repeatedly illustrated the important role that environmental factors like family support, parental supervision, and community resources have on children’s education. School voucher policies do not seriously address environmental factors.

Schools and universities are relying upon web-based assignments with greater and greater frequency. However, computer experts and scholars point out the limitations of web-based assignments and computer technology generally, and illustrate how computer technologies are never neutral. Web-based teaching practices inherently affirm the greater importance of visual and cognitive modes of intelligence. Emphasizing these modes of intelligence favors some students and disadvantages others.

In addition, web-based assignments are too often isolating activities. Thus, they may be teaching students that working in isolation, rather than in cooperation

with others, is acceptable and even desirable. Yet many democratic theorists and scholars show that such beliefs are antithetical to democratic governance.

Social science researchers and educators illustrate that distance learning is limited in the types of pedagogical methods that may be employed. In comparison, classroom instruction allows teachers and students to interact with one another in complex ways. Consider that during classroom instruction, students and teachers must take into account not only the content of what is presented, but also the way the content is presented. Moreover, through presentation of materials and discussion of ideas in real time with other compatriots, students learn to interpret facial expressions, body language, and intonation more effectively. Also, through observation and participation, they may become familiar with public speaking. That is, students may learn to deal with multiple speakers speaking at the same time, and they may learn to deal with people who interrupt, who digress endlessly, and who are vocally skeptical.

Accordingly, they may become better communicators, and in doing so, they hone skills necessary for active democratic engagement. This is not the case with distance education which necessarily emphasizes content to the exclusion of interaction.

Moreover, the physical presence of trained professional teachers in the classroom allows teachers to interact in real time with students, to spot cues that signal the onset of learning moments when students are most open to expanding their horizons, and to respond to such opportunities accordingly. In contrast, teachers involved in distance education typically are relegated to paper grading, and to text, E-mail, and chat room monitoring. Opportunities to engage students at crucial learning moments are virtually nonexistent.

Similarly, research shows that classroom teachers are better positioned than distance education instructors to engage in transformative teaching methods and exercises, and to foster critical thinking skills that ultimately promote democratic governance.

Finally, research illustrates that access to computers is uneven and varies greatly by race, ethnicity and class. Even those benefits afforded by the use of Internet and computer-based pedagogical exercises are not available for many. Furthermore, computer training of teachers is uneven. Thus, over reliance upon computer technology may act as a barrier keeping some students from obtaining an adequate education.



## Recommendations and Solutions

**Our antiquated method for funding education underlies many of today's educational problems and many proposed reforms. In order to address fundamental problems, we must address inadequacies and inequities in school funding and avoid the temptation to explore only the solutions grounded in preconceived political beliefs like "market principles are education's salvation" or "education is a private, not a public good."**

Ultimately, sound education policies must meet four criteria:

1. They should be efficient or parsimonious: They should be done the right way but in a cost effective manner.
2. They should be effective: They should address the specific problem.
3. They should be sufficient: They should be employed widely enough to address the problem.
4. They should promote equity: They should address the specific problem as it is experienced by those who suffer most from the problem.

Too many of today's piecemeal education reform efforts do not meet these criteria. In general, we need to adequately fund all schools and understand that some schools do in fact need more funding than others, due to environmental concerns. For example, lower socio-economic status areas with higher social strife that affect school success need higher levels of funding. Further, beliefs that poor teachers are the cause of much of today's educational crisis must be reconsidered. Were such teachers adequately supported, they could teach, but when under-supported, they are set up for failure or burnout and are ultimately blamed by critics who would substitute symbolically raised standards for substantively supported democratic education.

Educational policy is set at multiple levels by political units ranging from school boards to mayoral offices to state and federal administrations. Lawmakers and school board members should consider numerous education-related and fiscal decisions:

- **National educational standards should be instituted such that all Americans have a comparable education resulting minimally in reading, writing, and arithmetic proficiency, and in the development of the skills necessary to carry out their democratic duties.**

- **National standards should be developed in light of a keen awareness that multiple intelligences exist.**
- **Adequate resources must be allocated to facilitate effective teaching across multiple intelligences.**
- **New ways to adequately fund education must be implemented so that these educational standards are met.**

While many schools engage in Internet-based learning and other technology-dependent educational exercises and practices, many of the staff members and students report that such practices do not always live up to their advertised potential. As students claim: “It’s just not real!” Therefore, distance education and an over reliance upon approaches using high technology should be considered with caution:

- **Reduce reliance upon distance education and online courses while providing greater support for in-class instruction.**
- **Require list-serv or real-time chat interaction online for all distance learning courses.**
- **Require face-to-face discussion meetings at the beginning and end of online courses, and at least occasional face-to-face group meetings for online course participants.**
- **Reduce reliance upon other high technology teaching methods and practices.**
- **Discontinue policies that require students to use their own personal computers to attend publicly funded institutions of higher learning.**

Relative to standardized testing, we recommend:

- **The results of standardized tests should not be the sole criterion for graduation. A variety of methods should be used to assess unique learning styles.**
- **Legislation should prohibit employers from using required standardized academic test results to make hiring decisions.**

- **Funding decisions for individual schools and for school districts should not be made based exclusively upon test results. They should be based upon needs that would help the schools to perform better.**
- **Social programs should be sponsored that support students in their lives to empower them to perform to the best of their abilities in the classroom.**

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## **Unemployment as a Public Health Problem**

by

Carolyn C. Perrucci and Robert Perrucci

### **The Problem**

**Current methods for reporting and responding to unemployment have serious problems. 1) The official unemployment rate underestimates the size of the problem. 2) The response to unemployment fails to consider negative health effects on workers, their families, and their communities.**

Each month, in newspapers and on television, the American public is told about the unemployment rate and whether the number of new claims for unemployment compensation have gone up or down. These estimates are obtained from the Current Population Survey of U.S. Households, conducted by the Bureau of Labor Statistics, and they are used as an indicator of the nation's economic health. Unfortunately, the official unemployment rate hides more than it reveals and it prevents recognition of the true magnitude of unemployment and a serious examination of needed remedies.

The monthly official unemployment rate excludes part-time workers who seek full-time jobs and discouraged workers who have given up looking for work. The official rate also fails to acknowledge that the unemployment rate for different groups of Americans, such as women and minorities, may be double or triple the official rate. Black Americans, for example, typically are unemployed at a rate that is double the white rate, and the number of jobless young people in America's cities presents a major crisis. It is time to acknowledge that the magnitude of the problem is large and that a remedy must involve more than unemployment compensation for the temporary loss of income.

Large scale involuntary unemployment in the United States is as much a social as an individual matter, leading to a public health problem in terms of impaired physical and mental health in the population; it is remediable with appropriate social policies. Specifically, the workings of a market economy, including technological changes in industrial production and corporate relocation to minimize costs – conscious corporate decisions rather than deficiencies of individual workers – cause unemployment, and stress, which can lead to negative health outcomes. It is the unemployed workers who experience income loss, anxiety, reduced self-esteem, loss of social contacts, smoking and alcohol use,

lower quality nutrition, postponed health care, and family conflicts, who are most likely to manifest illness symptoms. Whether displaced workers with health symptoms eventually become patients in a health delivery system depends on the family and community setting in which the symptoms are manifested.

## **Research Evidence**

**Unemployment is a public health issue. Displaced workers and their families experience negative health symptoms, and communities experience great difficulty in providing needed services for the unemployed and for encouraging community development.**

Extensive research has been conducted on the health impact of economic downturns and unemployment. Research based on state and county unemployment rates and its effects indicates the existence of a relationship between economic downturns and aggregate rates of negative health symptoms. Moreover, economic decline in geographical areas also results in increased stress for employed workers, subjecting them to the threat of job loss and other work-related stresses.

Research focused on the link between unemployment and health has been conducted on both broad, general samples of unemployed workers as well as on workers displaced by plant closings. For general samples of unemployed workers, studies conducted at one point in time and studies that take repeated measurements across time, demonstrate the development of mild levels of distress or increases in levels of psychological distress subsequent to unemployment.

Workers who have been displaced by a specific plant closing in a community experience greater health impacts than workers drawn from a general sample of unemployed persons. The difference is probably due to (1) the impact that a plant closing has on a community's economy, reducing the chances for reemployment, (2) longer periods of unemployment for workers in a depressed local economy, and (3) greater economic strain resulting from longer periods of unemployment.

Social science research documents the impact of unemployment on families and communities. Unemployed couples have significantly lower marital adjustment, poorer marital communication, and lower satisfaction and harmony in family relations. Additionally, children whose fathers are unemployed are more likely to experience infectious disease as well as illness of longer duration in comparison with children whose parents are continuously employed. Interestingly, even for continuously employed fathers, children whose fathers feel considerable job

insecurity are more likely to experience illness than children whose fathers feel very secure in their work positions, suggesting that the anticipation of joblessness affects health.

The effects of unemployment can reach beyond the individual worker to affect entire communities in situations where tax revenues are reduced and needs for additional public social expenditures increase. Some such effects may be considered aspects of psychological well-being broadly conceived. Several case studies of unemployment indicate that the loss of economic security usually adversely affects the social cohesiveness of communities as the unemployed workers lose faith in the economic system and become dependent, precluding redevelopment of their communities. Cutbacks in public services, such as education and police protection, reduce quality of life, and impair the community's ability to attract higher income families to move – or stay – in the community. There also may be a weakening of labor's future ability to get rehired, and to negotiate with management because of anti-union sentiment in the community and the existence of potential strike-breakers among displaced workers.

Research on the way in which unemployment impacts health points to three explanatory factors. First, and perhaps most important, is income loss and the threat to future financial security. Second, is the loss of meaningful work and self-esteem. Finally, is the lack of social support from friends, kin, and community.

## **Recommendations and Solutions**

**Unemployment is an economic problem and much more. Its impact on individuals, families and communities results in human and social costs that require a public response.**

A consideration of the nature and effectiveness of current public policy on unemployment, and assumptions about patterns of economic change in the decade ahead also argue for a policy response.

Current policy assumes that unemployment is a normal and unavoidable cost of a growing, changing economy operating in a free market. A growing economy requires change, and change will leave behind those individuals who lack the needed human capital (education and skills) and those firms that cannot compete in the marketplace. The challenge is how to get corporations to accept some of the costs of unemployment that now jeopardize workers and their communities.

The costs are seen primarily as a short-term problem of individual income loss, which unemployment insurance and severance pay or continuing job-related fringe benefits (especially health insurance) will ease. There is little evidence, however, that existing programs help most of the unemployed with their financial difficulties.

Additionally, under current policy there is failure to recognize that when unemployment occurs during a recession, or by a plant closing by a major employer in a small community, there is also a decline in the availability of community resources to assist displaced workers. There is increased competition for shrinking resources among advocates of human services and the business community.

Current policy attempts to assist those whose jobs have been moved overseas through the Trade Adjustment Act and Title III of the Job Training and Partnership Act. The former provides some severance and retraining for workers whose unemployment is due to international competition, and the latter provides retraining for workers whose jobs have been eliminated. Studies of the effectiveness of these programs, however, indicate that they serve relatively few displaced workers.

In addition to limitations of current policy, the changing nature of the American economy mandates a change in policy that responds to unemployment. It is likely that this decade will see a greater integration of the United States into the world economy, and not necessarily as the dominant economic actor. This will result in continued investment in foreign operations, movement of U.S. production facilities to developing countries, and new technology to hold down labor costs.

These trends are already unfolding. If they continue, the United States will have a four-part labor force: 1) educated and skilled workers who enjoy the protection of employment in large corporations and/or membership in powerful national unions; 2) workers in low wage, insecure service occupations in food service, health care, retail sales, and clerical tasks; 3) periodically and permanently unemployed middle-age and older workers who are displaced from manufacturing jobs; and 4) never-employed youth who are unable to find a secure place in the economy.

The present situation, and the possibility of a near future when tens of millions are unemployed or employed in jobs with high levels of economic *insecurity*, calls for serious consideration of new policies to deal with the present and to shape the future. Four general policy initiatives should be considered.



- **Job Relocation Assessment**

The first policy initiative should be job-centered, with a focus on maintaining jobs through stronger legislation to place the human and social costs of unemployment at the center of economic decision-making. Congress should enact legislation to slow down the flight of jobs and capital by making disinvestment less attractive to corporate decision makers. Legislation should require corporations that close or reduce domestic operations to move jobs abroad, to pay for the costs of (1) retraining and educating displaced workers, and (2) the repayment of tax abatements and other financial incentives provided to the corporation by the community. The collection and disbursement of assessment funds should be the responsibility of an appropriate agency in the Department of Labor.

The proposed job relocation assessment might also include such things as severance pay, one year of continuous health coverage following a shutdown, and job transfer rights, in addition to the funds for retraining workers, and repayments to a community. The proposed legislation could be viewed as an extension of law enacted in 1988 when the U.S. Congress and the President approved legislation that would require firms with more than 100 employees to provide a 60-day notice of intent to close a plant.

- **Improved Economic Assistance**

A second policy initiative should be a straightforward response to the problems of income loss experienced by unemployed workers. There are differences across states in the amounts and duration of unemployment benefits, but in general, benefits are too limited. In contrast, some European countries have a uniform national policy on unemployment benefits.

The United States requires a major policy initiative involving the federal government to improve the amount of unemployment benefits available to displaced workers, and to set uniform standards for states to follow to deliver benefits. This should be combined with efforts at the state and local levels to assist the unemployed in obtaining temporary delays in rent

or home mortgage payments and utility bills (which account for a sizable proportion of monthly expenses).

Improved unemployment benefits will be particularly effective if combined with an adequately funded program that coordinates job retraining and relocation expenses. The length of the benefit period might be tied to retraining in order to prevent benefits from becoming a disincentive to new employment.

- **Expanded Social Services for the Unemployed**

A third policy initiative should provide social services to unemployed workers and their families while they are participating in retraining and relocation programs. Such assistance would help workers to better cope with job loss, and it would help spouses and other family members to obtain advice, training, and agency referrals to help the entire family deal with unemployment. Local unemployment offices could establish referral relationships between the unemployed workers/families and appropriate agencies and counseling practitioners in the community. The availability of such social services is often an important mediator of stress and can serve to limit the negative health effects of unemployment.

- **Government as Employer**

If the export of American jobs overseas continues at the present pace, the likely outcomes will be not only expanded unemployment, but long term unemployment. The existence of tens of millions of Americans without work, and without reasonable chances of reemployment, constitutes a serious danger to social stability. Under such conditions, the federal government should undertake a jobs program, implemented through state and local governments, to hire the unemployed into meaningful and valued jobs in communities across the country. These workers could assist with vital community services in underserved areas of education, health care, and other community-based services. The unemployed could be trained to assist teachers in local schools, work in hospitals and nursing homes, expand the hours of service in parks and libraries, provide community-based security in neighborhoods, and restore deteriorated housing in low income areas. Many communities would benefit from the availability of a new workforce, and the unemployed would benefit from gainful employment and a sense of contributing to the community.

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## **Poverty as a Social Problem: A Call for Action**

by

Charles Trent, Richard Caputo, and Chris Baker

### **The Problem**

**Poverty is a pervasive and enduring social problem that injures vulnerable children, families, and communities throughout the United States. Hidden as it often is, poverty can have devastating affects for any central city, suburb, small town, or rural community in the nation.**

During the 1960s, many social policy makers thought that poverty could be eliminated in the United States by the end of the 1980s. Over the past half century, poverty rates have fluctuated with the booms and busts of the market, but there has been no overall decline in poverty since the mid-1970s. Poverty has been perceived as a product of individual failures, as well as that of structural factors (such as the loss of high paying jobs for marginally skilled workers). Public policies have been developed to correspond to each of these two supposed causal factors.

If the 1960s War on Poverty was indeed a failure, then subsequent initiatives, including the Family Support Act of 1988, the expansion of the Earned Income Tax Credit in 1993, and the Personal Responsibility and Opportunity Act of 1996, fared little better.

While there has been little noticeable effect in the official poverty rates over the past several decades, the situation faced by some segments of the U.S. population, such as minority children, has worsened. This occurred despite sustained federal spending for means-tested programs at approximately 16.8 percent of the total federal budget in the late 1990s. Moreover, the number of persons experiencing poverty has increased over the last two years.

Researchers have established the dire consequences of urban poverty. Rural poverty, albeit less often the focus of systematic study, is prevalent. Indeed, it is more chronic than urban poverty. Overall in the United States the rural poor are concentrated on Native American reservations, and in the South and Appalachia. Rural poverty has multiple causes linked to social and economic changes. The poorest communities are often found in isolated geographical areas. Eastern Kentucky, for example, has ten percent of the nation's poorest counties. Poor

rural communities typically have a disproportionate share of unskilled workers and elder citizens.

The rural elderly experience significant challenges and threats to their economic, physical, and social well-being. West Virginia has one of the country's oldest populations, in part due to out-migration of skilled workers. Elderly men and women are unjustifiably impoverished to the extent that basic living needs remain unmet.

Rural communities have large *working* poor populations. Within rural regions, the areas not directly linked to economic development initiatives, and those facing declining industrial bases and rising low-wage job sectors are the areas that exhibit long-term, chronic poverty. Increasingly, these regions are isolated from mainstream access to supporting institutions and their populations drift deeper into poverty.

Rural communities are often unable to take full advantage of available economic incentive programs due to location and the lack of organizations (including nonprofit organizations) to participate in development initiatives and to create programs to meet their specific needs.

USDA-sponsored Empowerment Zone (EZ) and Enterprise Community (EC) funding is designed to revitalize distressed communities. To obtain EZ or EC funds, a community must create and submit proposals addressing need and participate in the implementation of the grant in a zone. Such activities are difficult or impossible in areas that lack appropriate levels of social capital.

## **The Research Evidence**

**The numbers of individuals and families living in poverty, and the poverty rate have increased for two consecutive years in the United States. Last year, *severe poverty* defined by the U.S. Census Bureau as those with family incomes totaling less than one-half of the poverty threshold, affected 14.1 million people in the United States.**

The United States Census Bureau estimates that 34.6 million persons in the United States lived below the official poverty threshold in 2002. The number of children in poverty increased, from 11.7 million in 2001, to 12.1 million in 2002. The number of families in poverty increased to 7.2 million. The poverty rate and the number of persons in poverty increased in suburban areas in 2002.

Most poverty research focuses on central cities in the United States that experience concentrated poverty or high rates of poverty. Urban poverty, exacerbated by deindustrialization, results in an increased risk of homelessness, inadequate housing, and disadvantaged schools. A cluster of social problems related to poverty, especially high deviance and mortality rates, are likely to affect an impoverished urban community.

Suburban poverty affected at least 13.3 million persons in 2002. A 20-year empirical analysis that was reported in *Urban Studies* finds that the Northeastern and Midwestern suburbs, especially those that are closest to central cities, experienced increased poverty rates over the recent decades. The majority of families that experience poverty spells, whether they reside in the suburbs or in the inner city, have at least one working adult in the household.

In 2003 the Anne E. Casey Foundation reported that 195 of the 200 most persistently poor counties in the United States are rural. The persistently poor rural counties have poverty rates of at least 30 percent. Poverty in rural counties has insidious consequences for children who receive inadequate health care and education.

**Inadequate Estimates of Poverty: The measures used by the U.S. Government to estimate poverty examine poverty thresholds, or need; and family income, or resources. Alternative measures are necessary to accurately estimate poverty in the United States.**

The official poverty measures that are used by the federal government were developed in 1963. The cost of a nutritionally adequate diet is the basis for determining what families need to earn in order to fall above or below the poverty threshold. In 1995, the National Academy of Sciences (NAS) suggested revisions to poverty measures that would account for changes in the costs of housing, medical care, child care, and other goods and services that characterize the contemporary cost of living in the United States. NAS and other organizations propose the development of poverty measures and definitions that would account for variation in the overall cost of living across regions and states, and across urban, suburban, and rural communities.

The Census Bureau is currently researching at least six different measures for estimating poverty. The potential new measures, however, do not account for the federal and local tax burdens that affect the disposable incomes that individuals and families need to survive.

## Recommendations and Solutions

**There is no justification for ignoring the millions of people who live in poverty; no longer should they be invisible to our public policy makers. To propose tenable solutions for poverty, the general population must become aware of the persistent poverty problems.**

Despite federal expenditures for research on poverty in urban, suburban, and rural communities, the epidemic of poverty continues to plague this wealthy nation. Public opinion polls show that the general population's knowledge of poverty is inadequate. All told, the experiences of poverty and the poverty rates are grossly misunderstood, mischaracterized, and underestimated. Social science researchers find that the media dramatically misrepresents who the poor are, what the poor do, and how the problems of poverty can be remedied.

We recommend that each candidate for President, Congress, and state or local office:

- **Make platform statements to recognize poverty as a significant social problem in urban, suburban, and rural communities.**
- **Create and distribute fact sheets that show how the candidate defines, measures, and estimates poverty.**
- **Offer plans on how poverty in the nation and in local communities will be approached as a prominent and important social policy agenda item for political, economic, and social consumption, debate, and decision-making.**

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## **Proposal for More Equitable Allocation of Environmental Health Risks: The Case of Treatment, Storage and Disposal Installations**

by

Sammy Zahran, Donald W. Hastings, and Lisa Anne Zilney

### **The Problem**

**Site selection for commercial treatment, storage, and disposal installations of hazardous waste is problematic. Current policy guidelines produce uneven environmental health risks by community racial composition and income status, violating President Clinton's Executive Order 12898 mandating fair treatment of minority and low-income populations with regard to development, implementation, and enforcement of environmental laws, regulations, and policies.**

On February 11, 1994, President Clinton signed *Executive Order 12898* directing federal agencies to evaluate the effects of environmental health policies on minority and low-income populations. The Order promotes fair treatment of all people in the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people should be burdened disproportionately by environmental health risks emanating from publicly and privately owned industrial operations. Of great concern to environmental justice advocates is the distribution of treatment, storage, and disposal (TSD) installations of hazardous waste.

The siting of a regular industrial facility is a decision generally left to business enterprises based on their own scientific and economic criteria. Public involvement is limited and generally favorable, given the anticipated economic benefits of such operations.

The siting of a TSD installation is different: Federal law requires commercial hazardous waste handlers obtain a permit from the EPA, and go through a lengthy process of negotiation with government officials and residents of a sited community. The reason for such differential treatment is that TSD installations handle substances known to increase rates of mortality and serious irreversible illness, and that pose a significant hazard to the environment and human habitat. Public concern over the potentially negative health effects of such installations is widespread.

According to the U.S. Council on Environmental Quality, most individuals want the benefits of proper and safe disposal of hazardous waste, but few want to bear the burden of a TSD installation in their community. How this dilemma is managed, in the context of the proportionately criterion of Order 12898, is the purpose of this chapter. Before discussion of the mechanics and advantages of our proposed hazardous waste allocation system, we review research evidence on the uneven distribution of TSD installations by population characteristics.

## **Research Evidence**

**Research evidence strongly indicates that environmental health risks emanating from commercial treatment, storage, and disposal installations of hazardous waste are concentrated in politically disadvantaged, poor, and minority communities.**

The majority of scholarly articles on the geographic distribution of environmental health risks radiating from commercial treatment, storage, and disposal installations reveal that minority and low-income communities are disproportionately exposed to environmental hazards. Three such studies are discussed briefly to give a sense of the empirical evidence.

In 1983, at the urging of Walter Fauntroy, Chair of the Congressional Black Caucus, the General Accounting Office undertook an empirical study examining the factors of race and economic disadvantage in the distribution of hazardous waste facilities in the Environmental Protection Agency's Region IV. Researchers analyzed data from the U.S. Census Bureau and the EPA, and conducted telephone interviews with various stakeholders. Results indicated that African Americans were burdened disproportionately by hazardous waste. In three of the four hazardous waste locations examined, African Americans constituted a demographic majority. The study also suggested that economic disadvantage played a role in the distribution of environmental burdens. Rates of poverty increased as one moved closer spatially to the hazardous waste installation. In fact, the relationship appeared perfectly linear. In environmentally affected areas, rates of poverty ranged from 26 to 42 percent, almost three times the region's average.

Since the GAO study, numerous scientifically valid cross-sectional and longitudinal studies have been conducted. The results vary slightly depending on the research design, but the majority of studies confirm the suspicion of environmental justice advocates that commercial hazardous waste installations are distributed non-randomly by community racial composition and/or income status.

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In 1987, the United Church of Christ's (UCC) Commission for Racial Justice published the first national, cross-sectional study of 415 commercial hazardous waste facilities in the United States. Zip code level population and housing data were obtained from the U.S. Census Bureau, and data on commercial TSD installations gathered from the Environmental Services Directory and the EPA's Hazardous Waste Data Management System. The study compared host and non-host communities to isolate the independent effects of race in siting outcomes.

Researchers found that communities with the highest percentage of minorities had the highest concentration of hazardous waste facilities. This pattern of environmental discrimination was national. Statistical controls did not diminish the relationship between race and environmental risk. In fact, "race proved to be the most significant among variables tested in association with the location of commercial hazardous facilities." According to researchers, the likelihood of this finding being a function of chance is "virtually impossible."

The UCC study also noted the role of political economic factors in the location of hazardous waste facilities. Commercial operators are motivated by utility maximizing logic. They seek inexpensive land, access to raw materials and skilled labor, and politically compliant neighborhoods. Such factors increase profitability and reduce potential transaction costs. These factors, according to UCC researchers, cluster in minority communities. The combination of racial and political economic disadvantage makes minority neighborhoods vulnerable to siting of environmentally suspect land uses.

In 1995, James Hamilton published a TSD installation capacity expansion study using socio-demographic data from 207 zip code areas with fully operational TSD installations as of 1986. Of these facilities, 84 had expansion plans, and 123 did not. Basic statistical tests indicated that communities with expanding TSD installations had higher nonwhite populations and higher rates of poverty. More advanced statistics diminished the significance of race as a predictor of TSD installation expansion plans. Communities targeted for capacity expansion were found to have lower rates of voter participation, lower median household income, and smaller population size.

Hamilton discovered that the ability or the willingness of communities to mobilize politically against noxious facilities was the strongest predictor of TSD installation capacity expansion. Hamilton's study suggests that in addition to community racial composition and income status, community political efficacy and power matter in the distribution of environmental health risks. This finding

deepens our suspicion that current policy guidelines on TSD installation site selection are flawed.

These studies and dozens of others indicate that location decisions for commercial treatment, storage, and disposal installations are not motivated strictly by scientific and commercial criteria as delineated in current policy guidelines. Statistical evidence suggests that population characteristics figure in decision making and environmental health outcomes, with racially, economically, and politically disadvantaged communities susceptible to hazardous waste exposure.

## **Recommendations and Solutions**

The proposed hazardous waste allocation system builds on current site selection criteria. Technical and economic criteria still drive the identification of sites suitable for a commercial TSD installation. The first step of our proposed system is the scientific evaluation of a site or neighborhood.

Floodplains, watersheds, seismic hazard zones, groundwater aquifer and recharge areas, and preservation areas are to be avoided as per existing Environmental Protection Agency guidelines.

**First, U. S. Census Bureau data should be used to divide the country usefully into census tract subdivisions or neighborhoods.** The scientific suitability of a census tract area is measurable using geologic and hydrologic data from the U.S. Geological Survey. For example, the U.S. Geological Survey's Hazard Mapping System estimates earthquake probability for zip code areas and latitude-longitude coordinates for the contiguous United States. Each census tract area can be assigned an earthquake probability estimate. These data can be used to rank neighborhoods on their geological suitability for hosting a treatment, storage, and disposal installation of hazardous waste. Developments in mapping technologies allow one to evaluate areas of the country on other scientifically relevant dimensions like hydrology and land contouring.

**Second, areas should be assessed economically.** Commercially suitable areas are those zoned for industrial use, are close to major transportation routes, possess large quantity generators of hazardous waste nearby, and an adequate labor supply. Commercial suitability is estimable using many measures, including large quantity generator activity, industrial labor rate, property cost, and transport cost estimates. Mapping the whole country on these dimensions is possible and inexpensive, using Census Bureau and EPA data.

**Third, site-specific characteristics should be considered, involving the screening of sites culturally and ecologically.** Considerations should include: ecological habitat and endangered species, surrounding land uses of cultural importance, and areas of archaeological significance. This site evaluation process ought to be shepherded by the EPA and handled jointly by private and public sector actors to guarantee all criteria are given fair consideration.

**Fourth, a list of feasible sites should be drawn.** After the evaluation process is complete, a national list of feasible sites should be drawn, organized regionally and by facility type to give operators flexibility in site selection. The national feasibility list acts as a sampling frame, with each area on the list having an equal chance of being selected for a TSD installation. This list should be made public to allow citizens to make informed and rational residential choices. All commercial TSD operators meeting administrative and technical standards delineated in the EPA permit application would then be given a regional list of sites matching facility design specifications and commercial criteria.

**Fifth, sites would then be selected randomly from regional feasibility lists.** Areas not selected would be required to pay a small fee for non-selection: A \$2 dollar fee per household would suffice. This fee could be added to existing property assessments and collected by municipalities. Such payment for non-selection would diffuse the cost of proper hazardous waste disposal. Large quantity generators of hazardous waste should also pay a small fee for every ton of waste generated. For example, at \$1 dollar per ton, a minimum of \$250 million dollars could be collected annually. If tonnage fees were collected from small quantity generators of hazardous waste, \$750 million dollars could be collected annually. There are other ways of paying for the costs of waste disposal including (a) a more broadly based tax plan; (b) a special assessment on companies that produce toxic waste; and (c) shifting the cost burden to TSD operators.

Non-selection and generator fees could be pooled for a negotiated compensation agreement with the selected community. The special needs of the selected community could then be addressed to offset the direct burden of the TSD installation. Offsetting benefits may include direct payments to affected residents, grants for local health care, parks and recreational amenities, and distribution of abatement devices to reduce the risk of exposure to hazardous substances. Selected communities would also be given the option of buying-out or selling their compensation agreement to other communities desiring such facilities for economic ends.

Buy-out and buy-in options harness the power of market allocation, enabling a

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potentially more equitable distribution of TSD installations. It should be recognized that site selection under any system is a contentious issue in many communities, and legal challenges are to be expected.

What are the advantages of this simple hazardous waste allocation program? Seven advantages over the current system are identified. First, the program helps guarantee fair and equitable distribution of environmental burdens as directed by Executive Order 12898. Site selection is based only on scientific, economic, and cultural criteria, not population characteristics or the propensity of groups to resist the placement of a facility in their community. Post-list assembly randomization counters the effects of random birth assignment.

Second, the proposal eliminates the free-rider problem of high-income, predominantly white communities. Under this proposal, all communities are invested in the benefits of proper hazardous waste disposal, no matter income status or racial composition. The elimination of the free-rider problem will undoubtedly encourage greater public concern and involvement in management and reduction of the hazardous waste stream. Greater public involvement will deepen democratic adjudication of potentially harmful land uses.

Third, generator fees and public financing of the non-selection fund significantly reduces the cost of operations for TSD facilities. Under the current system, local officials and residents typically coerce TSD facility operators into host fees, tonnage fees, and compensatory schemes. Such practices cause TSD operators to rationally calculate liability and compensation demands into site selection. This reasoning retards the current process with TSD operators selecting population characteristics, not scientifically suitable areas. TSD installation operators also pass these transaction costs to hazardous waste generators. This proposal eliminates these costs, increasing incentive for proper hazardous waste disposal and commercial investment in waste conservation and recovery technologies. TSD facility operators can pass transaction cost savings to hazardous waste producers to offset generator fees. This action fulfills the Resource Conservation and Recovery Act requirement of commercialization of waste management.

Fourth, selected communities are guaranteed a publicly financed compensation package for bearing the hazardous waste burden directly. The compensation agreement can offset residential instabilities arising from population out-migration, shocks to property values, and potential threats to human health. Some of the negative economic and social burdens of facility placement can thus be adequately neutralized.

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Fifth, buy-out and buy-in options harness the power of market allocation, giving communities a choice in the matter. This proposal is different from current practice because high-income communities are brought into the market, and their historic non-participation is prevented. However, high-income communities will likely purchase their way out of selection, and lower-income communities will more likely purchase selection for the economic benefits that accompany a TSD installation. Currently, relatively poor communities court such facilities for job growth and economic gain. As the proposal constrains choices for high-income free riders, it expands choice-making for disadvantaged populations, increasing the aggregate level of choice in the system.

Sixth, this proposal inoculates the federal government and commercial TSD operators from accusations of discrimination. Because the current system produces uneven distribution of TSD facilities by race and community social capital, federal agencies and TSD operators are embroiled in expensive legal and political wrangling. This proposal significantly reduces these costs, enabling federal agencies to properly direct energies away from the courtroom to the delivery of public goods. The cost savings to tax payers could offset non-selection fees.

Seventh, this hazardous waste allocation program is an improvement over the current system because it advances the conditions for environmental justice. The requirement to expand the pool of potential sites, including high-income communities, results in a program that is more procedurally just, color-blind, and optimizes equity and fairness in distribution of environmental health risks. The coercive toxic assault on poor communities of color can be managed more effectively. Elimination of all racial and class biases in treatment, storage, and disposal facility location outcomes are improbable, short of de-commercializing the hazardous waste industry, and centrally coordinating residential decisions. Both options are politically impossible in a democratic liberal society as the United States. Our proposal aims to order site selection criteria scientifically, commercially, and culturally, eliminating the morally questionable practice of using population and housing characteristics of community for site selection. This hazardous waste allocation proposal is an example of a win-win situation for all stakeholders. The existing EPA permit process is difficult. Applications range from 500 to 2000 pages of text. TSD facility operators must meet strict administrative and technical requirements. Administrative requirements involve record keeping and reporting, preparedness and prevention strategies, and emergency procedures should something go wrong. Technical requirements include standards for groundwater monitoring, facility closure and post-closure procedures, and specific engineering standards for design and operation of the

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installation. Our program maintains these important technical and administrative safeguards, while simplifying the post permit burden on TSD facility operators.

TSD facility operators receive a cost reduction with the negotiated compensation procedure shifted to generators and the public, are protected against accusations of discrimination and racial animus, and extricated from the time-consuming and expensive process of hiring lobbyists and consultants to navigate the political thicket of site selection. These savings enable TSD facility operators to concentrate energies on technological improvements, and decrease barriers to commercial involvement in hazardous waste management.

Poor communities of color are given a procedurally fair system of hazardous waste allocation. The environmental justice movement has struggled valiantly for greater fairness in the application of environmental laws and policies, and for equity in the distribution of environmental hazards.

This proposal does not eliminate the advantages enjoyed by high-income communities to buy out of site selection. But their inclusion as potential sites in the site selection process may result in greater public attention to issues of hazardous waste and renewed interest in finding substitutes for hazardous waste materials. Moreover, the proposal should not preclude efforts to get industries to reduce production of hazardous waste. This proposal can reduce the toxic burden on disadvantaged communities, without denying them the economic opportunity to host a TSD installation should they desire one for job growth and community improvement.

Governments benefit from the proposal in numerous ways. Because the program is transparent and fair, government actors are perceived as legitimate and neutral actors. Less energy is spent defending decisions, and more energy and tax dollars are spent on technical and scientific management of the country's environmental resources. Above all, our program brings federal agencies into compliance with President Clinton's Executive Order 12898.

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## **Global Economic Change, Protest, and its Implications for U.S. Policymakers**

by  
Jon Shefner

### **The Problem**

**The push to allow the global economy to operate without restrictions has imposed extensive damage on working people across the world.**

For many observers, the first glimmerings of a movement against the pains induced by the global economy came with the 1999 protests in Seattle. The vitality and international character of this protest movement appeared to gain strength with protests in such distant locales as Quebec, Washington, D.C., and Prague. These protests have brought issues of globalization and economic justice to the forefront of people's day-to-day understanding of our world. Many do not recognize, however, that this wave of protest began in less developed nations over 25 years ago. This chapter traces the history of international institutions involved in the global economy, documents changes in focus and reach of international bodies with the consolidation of the economic philosophy of neoliberalism, and provides evidence that demonstrates international economic devastation and subsequent protest. Finally, we offer recommendations to deal with the inequalities and hardships created by globalization.

**The International Monetary Fund and the World Bank were created near the end of World War II to reinvigorate trade in a devastated international economy. These institutions faced a new global context with de-colonization and the Cold War. After international banks lent money to developing nations at unprecedented levels, the nations were left unable to repay loans. These policies marked the debt crisis.**

In November, 1944, representatives from 44 nations met in Bretton Woods, New Hampshire to assess the needs of an international economy devastated by war. Although World War II still raged, it had become clear to policy makers that Allied military success was imminent. Cessation of hostilities, however, presented a series of problems such as destroyed economic infrastructure and unstable trade arrangements. In response to the impending problem, the Bretton Woods conference participants designed a trio of international institutions with separate yet complementary mandates. The General Agreement on Tariff and

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Trade (which has transformed into the World Trade Organization, or WTO) was designed to coordinate global trade. The International Bank for Reconstruction and Development, more commonly known as the World Bank, was designed to build the economic infrastructure required for national development, relying on loan or grant programs. Finally, the International Monetary Fund (IMF) was created to coordinate global lending in order to resolve short term difficulties resulting from global economic fluctuations or unequal trade relations between nations. These multilateral efforts, joined with U.S.-based programs such as the Marshall Plan, enjoyed substantial success. Much of Europe's and Asia's devastated economies were rebuilt, trade was reestablished, and the task of global economic integration proceeded.

Yet the post World War II environment posed new economic and political challenges. Over the next two decades, many former British, French, Belgian, and Portuguese colonies won independence. Independence, however, did not bring the economic progress for which national liberation movements hoped. Poverty continued to define many of the newly independent countries of Africa and Asia, in addition to long-independent nations in Latin America. Simultaneously, global politics became defined by the Cold War, and developing nations had a choice of different political and economic models for development. In the attempt to gain the support of developing nations, economic assistance became one of the weapons of East-West competition. In the 1960s, institutions designed to rebuild war-torn nations increasingly turned their attention to developing nations.

With the approval of international institutions, Western banks holding a large amount of lending capital responded to the mid-1960s European recession by pushing large loans to developing and even socialist nations. Lasting into the 1970s, the recession was accompanied by increasing oil prices and consequently greater OPEC funds in Western banks, providing further impetus for large loans. Developing nations borrowed at unprecedented levels, using capital to build infrastructure and address social needs. In some nations, unscrupulous government officials stole from the new source of foreign investment. As debts came due, oil prices continued to climb while costs of many of the primary products produced by developing nations fell. Interest rates also rose, increasing the debt burden. In response, many nations took out new loans just to pay off older debts.

The 1980s marked the beginning of a global debt crisis that still affects us. The total external public debt of those nations labeled low and middle-income

countries by the World Bank in 1970 was \$64 billion; by 1984 it had reached \$895 billion, and rose to \$2.5 trillion by 1998.

## Research Evidence

**The international debt crisis ushered in a period of economic reforms that have harmed citizens across the globe. Citizens have answered with wide-ranging protests.**

The early 1980s continued the trend of declining export prices and increasing interest rates. Amid this economic context, few of the indebted nations could pay their debts. Nation after nation asked for debt renegotiation, but the extent of the crisis went unrecognized until 1982, when one of Latin America's economic giants, Mexico, announced its inability to pay its debt. The IMF took on a new role as debt manager, recommending reforms on domestic economic policy as conditions of debt renegotiation. The conditions suggested by the IMF and imposed by national governments have followed neoliberal economic thought, and have consistently taken the form of "shock treatments" intended to elicit economic stabilization.

Neoliberalism extends classical liberal economics and argues that economies should be as unregulated by governmental constraints as possible. Economic growth rather than governmental intervention in the economy, in this view, is believed to be the best way to redress poverty. To address previous governmental "excesses," intervention in the economy in support of working people and domestic businesses had to be curtailed with structural adjustment or austerity policies.

Research on the debt crisis demonstrated that IMF intervention in national economies had severely negative consequences for developing nations. Yet the implementation of these policies, and the subsequent economic and social devastation continues. Although the developing world no longer suffers from the zero to negative growth of the early 1980s, average annual growth rates of the 1990s (measured by GDP) have declined among World Bank-designated low income nations to 2.4 percent. Average annual growth rates among World Bank - designated middle income countries have varied little, ranging from 3.2 percent to 3.5 percent across the two decades.

Debt and subsequent national vulnerability to policy designed by international financial agencies continues to define the economic policies of developing nations even more now than it did twenty years ago.

The IMF's influence on national governments is inescapable, as both access to new loans and remaining part of international trade agreements is contingent upon following the policy suggestions. Specific policies include currency devaluation and reduction of public-devoted expenditures such as social welfare spending and consumer subsidies. These policies follow free-market ideology by reducing state control of domestic industry, often by privatizing state-owned enterprises. Easing foreign investment has been achieved by cutting wages, reducing industrial protection, and increasing export production.

These policies have had savage effects on almost all sectors of developing nations. Globalization has meant increasing penetration of imported food in these nations, while currency devaluation makes food buying more expensive. Wage freezes amid inflation further reduce buying power. Reductions in, or privatization of, public spending means that the quality and quantity of education, health care, housing and other social services have declined. Often basic foodstuffs and transportation were subsidized; the removal of those subsidies cuts an already thin margin of survival. Increased interest rates have meant both increased debt and unemployment among the middle and working classes, as small business owners find it harder to obtain capital. Finally, increasing the access of foreign business using capital-intensive production methods, coupled with cutting protection for domestic industry, has meant the dissolution of local business relying on labor-intensive production. Again, employment drops, local production falters, and populations fall into poverty. (For information on GDP trends and poverty levels, see Table 1 and Chart 1).

Citizens have reacted with great dismay to these policies and their impact on survival and social mobility. The first documented protests against austerity policies occurred in Peru and Egypt in 1976. Research on global protests established a database detailing protest in 60 debtor nations over the course of the 1990s. Drawing on a *Lexis-Nexis General News* search of 58 national and international newspapers, we reviewed over 25,000 newspaper and magazine articles, and found evidence for over 800 protests against IMF policies. It is important to note that our estimates of the number of protest events is very conservative because 1) we limited our search to only 60 nations during the 1990s, 2) we used only English-language newspapers, and 3) we limited our count of protest events to ones which we could demonstrate had direct links to the imposition of IMF policies.

Many of the articles we reviewed cited numerous other protests that we could not document using the same methods, and so were not included in our database. All these qualifications suggest our count of protest events is quite low.

The protests range from riots to demonstrations, from general strikes to sit-ins. Some protests are peaceful, while others result in multiple deaths. They last from an afternoon to weeks in duration. The impacts of these protests have ranged widely: They forced the turnover of several national governments in Argentina while little changed in other nations. They represent a truly global wave of protest, occurring in nations throughout Latin America, Asia, Africa, and Western and Eastern Europe.

Protestors in these nations share the critique of their better-known counterparts in Seattle and Prague. They articulate a position that says the current process of global economic integration is leaving working people behind, privileging large business, and damaging material wellbeing to the extent that IMF and global commitment to social justice is called into question. Global income is increasingly polarized between poor and rich nations, and within nations. These global protests demonstrate a popular consensus that international economic policy is misconceived, imposing costs on the many who have little in exchange for advantages for the few that possess much more.

Austerity protests have influenced national governments' willingness to continue forging agreements to reinforce global trade by making formal resistance to further negotiations more viable. Protests and hardships stemming from the global economy helped win elections for new governmental leaders in nations such as Ecuador, Brazil, Indonesia, Argentina, Bolivia, and Venezuela, and have influenced government leaders in their trade negotiations.

The recent Doha round of WTO meetings was intended to address both competitiveness and social welfare needs of developing nations. The Group of 22 (Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand, and Venezuela) emerged during the October 2003 Cancun meeting of the WTO.

This new coalition forcefully articulated its opposition to U.S., Western European, and Japan-dominated WTO policy regarding intellectual property rights, agricultural subsidies, and capital movement. Despite earlier promises, the United States, Japan, and the European Union refused to remove protection and subsidies from farm sectors key to their economics and politics. Failure to address the Group of 22's concerns halted the Cancun meetings without further trade agreement. Importantly, the Group coalesced some of the economic giants of the developing world, and represents half the world's population and two-thirds of its farmers. The united economic power of these nations represents significant

potential for resistance to the current rules of the global economy, and simultaneously provides opportunities for new policy.

## **Recommendations and Solutions**

**Protests in both Western and developing nations confirm the need for new policy to address current inequities. New treaty negotiations such as the Free Trade Agreement of the Americas (FTAA) provide opportunities for broad policy initiatives to address the inequalities and hardships created by globalization.**

### **Democratize trade**

The strength of Western economies is in part due to their industrialization and development during an historical moment when competition from other nations was minimal. It is unrealistic to expect that similar gains in economic, political, and social development can occur with the imposition of strict regulations on governmental spending, on the one hand, and unlimited access of foreign entry into emerging markets, on the other hand. Finally, the level of competition that developing nations currently face is much higher than Western nations experienced during their analogous periods of industrialization. Developing nations can re-create the success of Western nations only through regulation that protects emerging industries and establishes a common market among weaker economies.

Trade barriers disadvantaging poor countries must be eliminated. This will strengthen industries in these nations, with subsequent gains in employment and decreases in poverty. Subsidies for large corporations and industries in Western nations must be eliminated, as suggested during the WTO's Doha round.

Saturation of markets abroad which eliminates national industries and agricultural production (dumping) must be eliminated through selective tariffs. Regional common markets can help nations build on their market strengths while protecting new industries.

Conditions must be imposed on the entry of foreign capital: Foreign enterprises must pay decent wages; they must assure nations of ongoing investment presence, rather than the willingness to leave when cheaper labor markets open; and international standards of treatment of labor and environmental pollution must be applied. Such standards will simultaneously increase standards of living in the

nations where multinational corporations re-locate and limit the attraction of offshore manufacturing locations.

### **Create new policies and new institutions to address debt**

Currently, the IMF prioritizes creditor's needs over those of impoverished debtors. New institutions and policies, representing both creditors and debtors, must be created to resolve debt. The Jubilee Framework has suggested a series of measures:

- Create ad hoc tribunals to address issues of insolvency, thereby removing the IMF from its dominant role. The new tribunals will operate under the guidance of the UN.
- Insure fair representation for creditors, debtor governments, and citizens of indebted nations. Moving decision-making authority to a third body independent of creditors and debtors will ensure democratization of the decision-making process.
- Allow nations to file for moratorium in debt payments while negotiations continue.
- Abandon secret negotiations regarding debt re-negotiation and subsequent national policy change, making all information available to all stakeholders.
- If debts are deemed to be payable only at a cost of violating internationally agreed upon standards of human rights, they are to be deemed unpayable.
- Fulfill and extend agreements such as those made by the G8 nations to cancel debt.
- Additionally, voting rights in institutions like the IMF and the WTO must be democratized so that poor countries have greater power to set trade and investment rules, not merely abide by rules set by others. Although such measures may seem unlikely given current polarization of economic and political power, it is useful to note that the Jubilee Framework builds on U.S. bankruptcy laws to suggest a process to resolve debt. It is difficult to argue against an international standard that is built on our own domestic legal policy.



**Design international policies which will prioritize social and economic development needs as highly as capital investment**

One of the great innovations of U.S. industrialization was the recognition that the ability to mass produce was economically meaningless without the presence of consumers with sufficient buying power. This recognition ushered in a long period of high wages for U.S. workers. Following such a model requires paying as much attention to the social and economic needs of global consumers as to those of global investors.

National governments, aided by international agencies, must be empowered to address domestic economic and social needs. This will require national and global policy that re-invests in social welfare needs of housing, health, nutrition, and education, in addition to strengthening economic infrastructure and redressing environmental degradation. For example:

- Economist and Nobel Prize winner James Tobin has suggested the imposition of a .05 percent tax on the international movement of speculative capital. In 1995, the volume of international financial transactions reached \$1.3 trillion, which if subjected to the ‘Tobin tax’ would generate a substantial sum that could be funneled to the developing world to be used for poverty eradication, infrastructure creation, and redressing environmental damage. If the tax has the expected result of limiting the movement of speculative capital, substantial funds could still be generated on one hand, while some of the abuses of capital flight and short-term currency fluctuation could be avoided on the other hand.
- UNICEF proposed a 20-20 proposal in which 20 percent of aid budgets and 20 percent of national budgets are to be allocated to the provision of global basic needs.

Many nations can currently provide what is needed with budget restructuring; some poor countries will need help in achieving this budget allocation. Currently, the average for developing nations for basic need provision is 13 percent of their national budgets. More can be obtained from these nations by diverting money from military spending and poorly conceived development projects. In contrast, those nations defined as donor countries only spend 8.3 percent on basic needs provision. Much more would have to be diverted by restructuring budget priorities. It has been estimated that such a policy will require approximately \$70-80 billion more than contained in current budgets. Yet such policy change

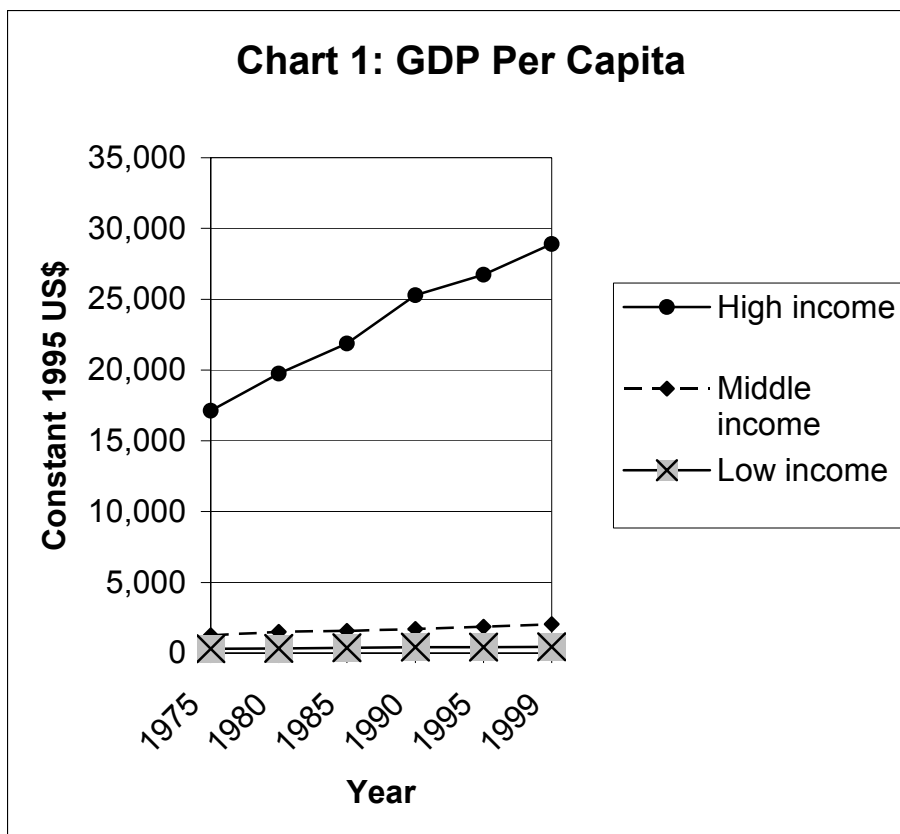
could increase economic viability of all nations, and so increase global consumption of goods and services.

These proposed policies may seem quite unrealistic given the current dominance of free-market thinking. However, current agreements exist which could ease passage of such policies. For example, in 1986 the UN General Assembly defined development as a right of all people “to participate in, to contribute to and enjoy economic, social and cultural political development, in which all human rights and fundamental freedoms can be fully realized.”

In 1995 the 20-20 proposal was agreed upon by almost all UN member states. Finally, in 1998 the United Nations Development Program called for a rights-based approach to economic planning.

Although these agreements and calls for policy change have limited weight, we should remember that governments have always intervened in markets for the benefit of various actors. Currently the actors benefited most by national policy making are the economically powerful. Yet there is no inevitability of such policy design in the future. Welfare policies of the 19th and early 20th centuries in Western Europe, and the New Deal in this nation, serve to remind us that government is a place of choice.

We must remember a basic insight: Many of the progressive political changes institutionalized into the formal political sphere were first driven by citizen protest. Legislation to improve civil rights, labor rights, and widen political participation all had antecedents in citizen protest. Such actions, and their results, demonstrate that it is possible to re-invent government as a place where human needs are addressed, not the organ that negotiates for diminished social protection. It is the use of governmental power in the attempt to protect citizens from unfair trade, discrimination, and environmental degradation that marks our hope for a just society.



**Table 1. Number of people living on less than \$2 (U.S.) per day (millions)**

	<u>1990</u>	<u>1999</u>
East Asia & Pacific	1,084	849
Europe & Central Asia	44	91
Latin America & Caribbean	167	168
Middle East & North Africa	59	87
South Asia	976	1,098
Sub-Saharan Africa	388	484
<b>Total</b>	<b>2,718</b>	<b>2,777</b>

Source: Global Economic Prospects, World Bank Online:  
<http://www.worldbank.org/prospects/gep2003/chap1.pdf>

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Wood, Robert E. 1986. *From Marshall Plan to Debt Crisis*. Berkeley: University of California Press.

### Useful Websites

Jubilee Research Online: <http://www.jubilee2000uk.org/>

Human Rights Research and Education Center: <http://www.cdp-hrc.uottawa.ca/globalization/links.html>

The Globalization Website:  
<http://www.emory.edu/SOC/globalization/about.html>

Global Business Dialogue: <http://www.gbdinc.org/>

Sustainability Online: <http://www.sustainability.com/home.asp>

World Policy Institute: <http://www.worldpolicy.org/globalrights/>

Austerity protests: <http://axle.doit.wisc.edu/~gwp/global/>

### About the Author

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## **Homeland Insecurity: The Patriot Act, the Domestic Security Enhancement Act, and American Civil Liberties**

by  
Robert Carl Schehr

### **The Problem**

**Bill Moyers remarked, “Secrecy is the condition zealots dream of.” A profound obstacle to any reasoned discussion of the USA Patriot Act is the extraordinary amount of secrecy surrounding its content and use.**

The passage of the USA Patriot Act represents a denigration of those rights guaranteed by the Bill of Rights to protect us from the irresponsible, unfettered, and authoritarian exercise of State power. With the passage of the USA Patriot Act on October 26<sup>th</sup>, 2001, and the commencement of lobbying efforts relating to the secretly drafted and circulated Domestic Security Enhancement Act, or Patriot Act II, America has started down a slippery slope leading to the usurpation of civil liberties, the cornerstone of democracy.

While the nation, and indeed, the world, has responded with revulsion to the horrific acts of 9/11, Americans must vigorously confront efforts to weaken the Bill of Rights. The Patriot Act and Patriot Act II signify the manifestation of far too much federal authority with far too little protection for the accused.

### **Research Evidence**

**Passage of the USA Patriot Act on October 26<sup>th</sup>, 2001 is the manifestation of a long history of statutory efforts to access information about, and prosecute Americans suspected of engaging in “un-American” activities. This act was passed without adequate deliberation and debate by Congress.**

The Patriot Act, and the more recently revealed Domestic Security Enhancement Act (Patriot Act II), mark a significant move in the direction away from a Constitutional system based on checks and balances, and toward secretive, unilateral, and unchecked power located in the Department of Justice and the newly established Department of Homeland Security. Most important, unlike previous attempts to gather information for purposes of law enforcement, for most activities covered under the Patriot Act there is no need to procure judicial approval.

With the passage of a statute granting an unprecedented amount of authority to the Executive branch of government, Americans should be able to assume that this legislation received due deliberation. This is not the case. The Patriot Act consists of 342 pages, 350 subjects, and affects 40 federal agencies. With numerous references to prior security enhancement legislation (e.g., the 1978 Foreign Intelligence Surveillance Act and the 1996 Anti-Terrorism and Effective Death Penalty Act), digesting the Patriot Act requires considerable time and effort, not to mention deliberation and debate by both houses of Congress. The debate never happened, the deliberation never occurred, and the Patriot Act legislation was passed within one month of its introduction. Compare that to the full year that Congress took debating provisions in the 1996 Anti-Terrorism and Effective Death Penalty Act. Passage of such an important piece of legislation deserved far greater scrutiny. Consider the following examples of activities now provided for under the new Patriot Act legislation.

### **Sneak and Peak Searches**

For nearly two decades Americans have witnessed a decisive diminution of Fourth Amendment protections against unwarranted searches and seizures. From roadside checkpoints with drug-sniffing dogs, to innovations in computer surveillance, courts and legislatures have been increasingly willing to cede authority to law enforcement in instances where personal privacy rights are at issue. With the approval of “sneak and peak” searches, the Patriot Act obliterates any formerly recognized Fourth Amendment protections prohibiting unwarranted searches of dwellings and possessions. The new provision enables “sneak and peak” searches of home and office by all levels of law enforcement without the procurement of a search warrant. Municipal, county, and state police, the FBI, and Justice Department officials can enter a private dwelling, search the location, remove what they perceive is relevant material evidence, and avoid having to notify the owner that they were ever present. Should they choose to use the materials they culled from their search they have ninety days before they have to notify the owner. Under section 213 of the Patriot Act this requirement can be extended indefinitely. If law enforcement determines it has not identified compelling material evidence following a search, the owner never has to be informed of their initial search.

To assist law enforcement in its efforts to gather information, the FBI has introduced “The Magic Lantern,” a software device affixed to the keyboard of a home computer that logs keystrokes. Sneak and peak searches provide law enforcement with the access it needs to make the initial keyboard placement, as well as to return to gather the device for decoding.

Certain provisions in the Patriot Act include a sunset clause sneak and peak searches do not. As with any legislation, once passed it tends to remain in place with its presence felt in ever increasing jurisdictions. For example, application of the sneak and peak provision is not limited to investigations of “terrorists,” but can be applied to any on-going criminal investigation.

Growing Congressional suspicion surrounding the undemocratic and unconstitutional nature of sneak and peak searches was revealed during the summer of 2003 when a bipartisan House of Representatives voted to eliminate sneak and peak searches from the Patriot Act.

### **Surveillance**

Warrants seeking judicial approval of surveillance of web caches, library, financial and medical records, or telecommunications can be approved through what has come to be known as warrant shopping. This particular practice was initiated as a part of the 1996 Anti-Terrorism and Affective Death Penalty Act and at the time was known as court stripping. Typically, surveillance and search warrants are presented to regional magistrates and judges, officials who know their communities and, arguably, respond to requests based on community sensibilities. Under the Patriot Act, law enforcement officials can seek surveillance approval from magistrates and judges living anywhere in the United States.

Moreover, there is no longer any need to specify the kind of information to be sought, the duration of the surveillance, or protection of those who have nothing at all to do with the surveillance in question. This has been of particular concern to Internet users who, with the assistance of Internet providers, have been subjected to law enforcement surveillance without their knowledge. Internet providers “capture” emails, Internet sites, and the like, through the use of “packet sniffers.” Captured emails are browsed by computer software programs (e.g., the FBI’s Carnivore, now called DS1000) searching for previously determined keywords. If the keywords are identified in a specific email correspondence, that email is dumped into a file for further review. The information capturing process violates the reasonableness standard, as well as public expectations of privacy.

### **Relevance**

To become the object of government surveillance efforts no longer requires suspicion of involvement in a crime, only that the subject be “relevant” to an ongoing investigation. This means that anyone who may have known someone



who is suspected of participation in a “terrorist” act is susceptible to surveillance and/or sneak and peak searches. Like random drug testing and roadside check points, the motivation is to cast a wide net to catch the few who are “guilty.”

Utilitarian arguments for the greater good are rhetorically used to legitimate these practices – “we are only acting on *your* behalf, we are seeking to assure *your* safety.” Unfortunately, practices like those introduced with the Patriot Act come dangerously close to state-based authoritarian control of public activities. In the case of “relevance,” application of surveillance and sneak and peak searches is applied absent probable cause or reasonable suspicion. And while guilt by association was established during the 1919 Palmer Raids, contemporary surveillance and search and seizure techniques are far more sophisticated and far more intrusive than ever was the case in the past. With the inclusion of “relevance” the Patriot Act has made potential suspects of every American.

### **Defining Terrorism**

Perhaps the most problematic aspect of the Patriot Act is the definition of “terrorism.” From among a list of activities that may signify an act of terrorism, federal, state and local authorities can include this caveat:

Appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; [and] to affect the conduct of a government by mass destruction, assassination, or kidnapping.

Each of the first two criteria could include any form of legal mass mobilization characteristic of democratic protest, including labor union, human rights, student, and environmental actions characterizing activities protected under First Amendment rights of assembly and speech.

### **Unlimited Detention**

Government estimates indicate that since September 11, 2001 more than five thousand people, mostly of Arabic descent, have been detained by the United States government. Of those detained, only four have been charged with a crime, two have been acquitted. The Patriot Act allows for indefinite detention of any person suspected of being a terrorist, as well as those American citizens who the Justice Department has labeled “enemy combatant.” In each case, detainees have no recourse to securing attorneys, cannot communicate with their families, are not entitled to *habeas* review, are not entitled to bond or bail, and can remain in the custody of the U.S. government until such time as it sees fit to release them. In

addition, those whom the Justice Department decides to press charges against will be tried in secret military courts beyond the familiar public scrutiny characteristic of criminal trials.

In April of 2003, the Office of the Inspector General released the results of a year-long study stimulated by concerns raised over the detention and confinement of aliens following the September 11<sup>th</sup> attacks. Within two months of the attacks over 1,200 citizens and aliens were detained. This report presents a detailed analysis of the arrest and processing of aliens, charges, clearance of cases, detention, conditions of confinement, and recommendations for changes. Among the most damning allegations are: physical and verbal abuse by law enforcement, inadequate housing, limited access to health care, and no access to legal representation.

Under the auspices of Homeland Security and investigations of allegations of terrorism, Attorney General John Ashcroft unilaterally introduced Justice Department monitoring of private communications between attorneys and their clients, thereby nullifying the centuries-old assurance of attorney-client privilege. Federal agents can monitor confidential meetings between inmates and attorneys whenever the Attorney General is convinced there is “reasonable suspicion to believe an inmate may use information to facilitate terrorism.” This policy was created by executive order and without Congressional approval.

## **Patriot Act II**

On February 7, 2003, the Center for Public Integrity exposed a plan by the Justice Department to increase its authority over those suspected of terrorist activities. The leaked document, The Domestic Security Enhancement Act, now known as Patriot Act II, contains a number of extremely troubling components. Word of a new Justice Department initiative had spread to members of Congress in late November of 2002. Repeated requests to see the document produced denials by the Justice Department that any such document existed. The denials continued into early 2003 when a copy of the document was procured by the Center for Public Integrity and leaked to numerous news outlets and Internet sites. Once exposed, the Justice Department claimed that the document only amounted to a series of working papers and ‘what if’ scenarios. The document, however, was already in bill form.

Among the proposed security enhancements is Section 501: Expatriation of Terrorists. An American citizen can be expatriated if “with the intent to relinquish his nationality, he becomes a member of, or provides material support

to, a group that the United States has designated as a ‘terrorist’ organization.” Consistent with provisions in the Patriot Act, expatriation can occur without judicial review.

Section 312 of the Patriot Act II includes a provision that no longer requires corporations to file “worst case scenario” projections or consent decrees relating to the use and discarding of toxic chemicals. Moreover, the Justice Department has restricted community access to environmental protection data. Restrictions placed on procurement of information by communities interested in uncovering the existence of dangerous chemicals, as well as the elimination of corporate reporting on “worst case scenarios” relative to their use of hazardous chemicals is, according to the Justice Department, a necessary step in preventing terrorists from obtaining and misusing EPA data.

Patriot Act II has not been passed into law and should not be. Its purpose is to extend the already unconstitutional components of Patriot I to ever-greater violations of personal privacy and group membership.

## **Policy Recommendations**

### **1. The Patriot Act should be repealed.**

The hastily drafted document presents a clear and present danger to the efficacy of the Bill of Rights. Moreover, it is unnecessary. In each area of law enforcement, surveillance, and detention provisions already exist to provide access to searches and seizures, suspect demographic data, and detention. As frightening and potentially dangerous as terrorist threats are, no act of terror can destroy the fabric of American democracy, only we can do that.

### **2. Short of a sweeping repeal of the Patriot Act, at minimum all levels of law enforcement must adhere to reasonable suspicion and probable cause standards.**

Law enforcement must cease the expansion of its surveillance and sneak and peak powers through claims of “relevance” to an ongoing investigation. For American democracy to thrive it is imperative that we not permit marginalization and criminalization of Americans based solely on group membership and participation absent evidence of illicit activity. Following the Sixth Circuit Court of Appeals, Americans have never agreed that the government should separate truth from fiction for us.

**3. Loosen restrictions on access to federal documents pertaining to detainees, surveillance, on-going investigations.**

Democracies cannot survive in an information vacuum. Americans must be able to monitor the activities of the Justice Department to ensure the preservation of due process. Specifically, return access to government documents procured under the federal Freedom of Information Act to their Clinton-era criteria. In addition, all deportation hearings must be open to media coverage.

**4. Eliminate secret military courts.**

Such courts cannot assure either American citizens or the global community of adherence to due process. Courts need to be exposed to public viewing. Secrecy arouses suspicion that all is not well.

**5. Return to the 1978 Foreign Intelligence Surveillance Act.**

This would provide for judicial oversight absent warrant shopping. In addition, warrants must include the purpose for the tap, and reasonable suspicion that the subject of surveillance is involved in illicit activities. Consider the 2003 Supreme Court decision granting the Justice Department access to library records. The records of books read by library patrons fall under the privacy provisions granted by the First Amendment. However, if law enforcement believed that procurement of library records would assist in a criminal investigation, they have always had the ability to present a warrant to a judge or magistrate who can then determine the merits of the request. The Supreme Court's ruling eliminates the necessity for a warrant. In addition, the Patriot Act has criminalized the act of telling library patrons that their records have been sought by law enforcement officials. Librarians who do so can be subject to criminal penalty.

**6. Uniformly apply the right of *habeas corpus* to federal detainees.**

A suspect's right to appear before a judicial authority and speak to her or his specific version of events is a foundational principle of enlightened criminal procedure. Without the federally protected guarantee of the right to face one's accuser and re-present situational facts before a judge or magistrate, autocratic forces assume control over the lives of the accused, and just as important, spread the chilling affect of repression across the nation. No common citizen can withstand the weight of federal authority. Adherence to the Bill of Rights guarantees the possibility of a more level playing field.

## **7. Patriot Act II should be abandoned.**

This proposed legislation expands on social control mechanisms already under scrutiny in Patriot I. There is no reason to provide the Justice Department with even greater authority.

### **Key Resources**

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Cole, D. and Dempsey, J. 2002. *Terrorism and the Constitution*. New York: The New Press.

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### **About the Author**

*Robert Schehr* is Chair of the Department of Criminal Justice at Northern Arizona University. He frequently lectures in the United States, the United Kingdom, and Australia on the topic of American Civil Liberties. His most recent publications address the topic of Civil Liberties and criminal due process, with a specific emphasis on wrongful conviction. His new book, *The French Connection in Criminology: Rediscovering Crime, Law, and Social Change* (SUNY Press), is co-authored with Bruce Arrigo and Dragon Milovanovic.

## **A Report Card to the Nation on Capital Punishment**

by  
John F. Galliher

### **The Problem**

**The United States is the only Western industrialized democracy that still imposes the death penalty as punishment for murder. France, in 1981, was the last European nation to abolish capital punishment.**

In 1972 the U.S. Supreme Court ruled that existing state statutes allowed the death penalty to be imposed in an arbitrary and irrational manner. Capital punishment was, therefore, ruled unconstitutional. By 1976, however, the Court signaled criteria by which the states could fashion constitutional death penalty laws. However, critical problems remain: The death penalty does not deter homicide, its financial costs are prohibitive, extra-legal factors influence the imposition of death, and wrongful convictions can result in a death sentence.

The Federal government and 38 states have capital punishment statutes. The U.S. Department of Justice reports that 71 men and women were executed in 2002. Prisons held 3,557 persons under a sentence of death.

The American Bar Association adopted a death penalty moratorium resolution in 1997 and created The Death Penalty Moratorium Implementation Project in 2001. The ABA identifies three major areas of concern:

1. Legal representation in capital punishment cases is inadequate.
2. Racial discrimination in death penalty sentencing persists.
3. The death sentence should not be imposed for juveniles and mentally ill or retarded defendants.

By March 2003, moratorium legislation was introduced in 21 of the death penalty states and the U.S. Congress.

A number of organized religions in the United States, the American Civil Liberties Union, NAACP, Amnesty International, and other organizations call for the abolition of capital punishment. Until lawmakers eliminate the death penalty for murder, a number of religious leaders, and a number of professional associations urge a moratorium on the use of capital punishment.

## Research Evidence

**Social science research shows clearly that the death penalty does not deter homicide, its costs are prohibitive, and an innocent but poor person is more likely than a guilty and affluent person to be executed by the state.**

- Capital punishment does not deter homicide. Murder rates remained unchanged in states that ended or suspended the death penalty. Murder rates in the United States are significantly higher than they are in European nations that have abolished the death penalty. There is no empirical evidence to support the claim that capital punishment is more effective than life imprisonment without the possibility of parole. Murder rates are higher in states with capital punishment than in states without capital punishment. The West South Central Region of the United States (Arkansas, Louisiana, Oklahoma, and Texas) has a high murder rate. Forty of the 71 persons put to death in 2002 were sentenced in the West South Central Region.
- The financial costs of a death sentence are significantly higher than the costs associated with imprisoning an offender for life. The financial differences begin with trials costs. The Indiana Criminal Law Study Commission compared the costs of non-capital murder trials to death penalty trials. On average, non-capital trials cost the state \$72,218. Death penalty trials cost the state \$272,796. A Texas study concluded that the state's \$2.3 million price tag per execution is equivalent to the cost of imprisoning an offender in a single-cell, maximum-security facility for 120 years. While costs vary across the states, every study that examines the price of the death penalty concludes that it is an extremely expensive punishment.
- Extra-legal factors account for how the death penalty is administered across the states. The ABA reports that indigent defendants charged with capital offenses face an unacceptable risk of inadequate legal representation. Moreover, racism continues to affect the determination of a death sentence. The state's prosecuting attorney is more likely to seek the death penalty when the victim is white. A North Carolina study reports that the odds of a Black person sentenced to death for murder are 3.5 times greater than the odds of a white person sentenced for a comparable offense.

- Wrongful convictions can result in the imposition of a death sentence. The ABA reports that at least 111 persons have been released from death row since 1973 with strong evidence of their innocence. On average, the wrongfully convicted spend 9 years on death row before they are exonerated. Not all wrongful convictions are reversible. In 2000, DNA testing exonerated a Florida man who died during his 14<sup>th</sup> year on death row.

## **Recommendations and Solutions**

**The federal government should fund a detailed survey to study general population views on the death penalty. Capital punishment states should support a death penalty moratorium.**

- Public opinion polls report that the majority of the general population supports the death penalty, but approval is definitely waning. The general population is less likely to approve a death sentence for a murder conviction when a life in prison sentence, without the possibility of parole, is a punishment option. The federal government should sponsor a carefully designed and detailed survey to precisely measure general population perceptions. Should the death penalty be abolished? Should the state and the federal governments implement a moratorium on the death penalty?
- The state governments should support a death penalty moratorium. Model legislation should be drafted to guide state lawmakers and policy makers. During the moratorium period, each of the 38 death penalty states should examine its capital punishment history, possible punishment strategies for murder convictions, and its procedures for adjudicating defendants accused of aggravated murder. A detailed financial analysis that compares the cost of non-capital and capital murder trials should be conducted. A financial analysis that compares the price of an executed death sentence to an alternative punishment should be prepared.
- All death row cases should be re-examined, even if the appeals process was completed, to prevent the execution of a wrongfully convicted man or woman.
- Each state should encourage legislation that provides alternative and rational punishments for murder. Each state's legislature should be



informed by community and religious leaders, and by groups of citizens to develop strategies that discourage and punish murder, while protecting and compensating victims.

### Key Resources

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Zimring, F. E. 2003. *Contradictions of American Capital Punishment*. New York: Oxford University Press.

### Internet Resource

The American Bar Association. <http://www.abanet.org>

### About the Author

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## Surveillance Technologies

by  
Glenn W. Muschert

### The Problem

**In contemporary society, we observe the increased utilization and development of electronic surveillance technologies.**

The relative unobtrusiveness of surveillance devices and their inexpensive nature have led to their increased utilization. Government agencies, corporations, and private individuals can engage in surveillance behaviors of varying types and for various reasons.

Although even the wariest of individuals might approve the use of surveillance technologies for monitoring convicted or even suspected criminals, many persons and social groups are disturbed by the thought that law-abiding citizens are routinely subjected to such observation. In the United States, the incidents of 9/11 have led to an increased anxiety about the potential risks to life and property posed by terrorist activities. The reorganization of criminal justice agencies and the legislation that emerged after these events have led to an increased use of surveillance by government agencies.

Citizens are subject to surveillance from government agencies, corporations and, to a lesser extent, private organizations. Persons are increasingly subject to new forms of surveillance, which extend the breadth, depth, pervasiveness, and organization of the use of these technologies of control.

One of the most striking aspects of the emergence of a new ethos of surveillance has been a shift in focus from monitoring individual behaviors to observing the behavior of groups whose members' behaviors might be of interest. Under new surveillance, law enforcement agencies might monitor the behavior of a segment of the young, male African American population, or the Arab American population, instead of focusing on the behaviors of individuals who are specifically suspected of criminal behavior.

The consequences associated with new surveillance are that all persons and organizations are potentially subjected to electronic observation. The negative consequences of this contemporary trend include:

- The violation of the individual's right to privacy,
- Increased bias and overcrowding in the criminal justice system, and
- The general breakdown of trust in society.

### **The Violation of the Individual's Right to Privacy**

In light of the legal stance on privacy, the use of surveillance technologies poses a serious threat to the individual's right to be left alone. Supreme Court Justice Brandeis wrote the dissenting opinion in the landmark case *Olmstead v. United States* (1928), which allowed law enforcement to wire tap telephone lines. He argued that the authors of the U.S. Constitution "conferred, as against the Government, the right to be left alone – the most comprehensive of rights, and the most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."

While the threat to privacy is generalized throughout the population, it falls disproportionately on the members of certain groups. Like many resources in contemporary U.S. society, the use of surveillance technologies is stratified. Under new surveillance, government in general, particularly law enforcement agencies, are increasingly watching categories of individuals, rather than suspect individuals.

Criminologists have pointed out that certain populations in the United States are more strongly policed, such as urban, male African American youth. The increased use of surveillance technologies to monitor groups instead of specific suspects leads to the disempowerment of both the group as a whole and the innocent members of that group.

In another case, police might disproportionately observe the behavior of Arab-Americans not because any particular individuals are suspect, but because some members of this group might be potential terrorists. When law enforcement agencies disproportionately monitor segments of the population, they violate those group members' Fourth Amendment right to equal protection under (and from) the law.

Similarly, corporate surveillance can lead to the disempowerment of groups and individuals, as contemporary marketing practices potentially increase the efficiency with which economically distressed groups, neighborhoods, and individuals are excluded from the market. Corporations increasingly collect data

on consumer habits, presumably for marketing purposes, to develop finer distinctions about the definition of market segments.

Companies are increasingly linking databases and, through data mining, are linking consumer habits across industries. For example, supermarket swipe cards collect data on individuals' consumption of groceries, pharmaceuticals, cigarettes, and many other products. These distinctions purportedly allow companies to improve the way they target desirable consumers, leading to a more efficient market. The negative consequence of this behavior is the disempowerment of individual consumers and many consumer groups who might not fit the profiles of preferred customers. The poor are already precluded from full participation in the capitalist economy, and this process will lead to the further omission of economically disadvantaged individuals, neighborhoods, and groups from the market. Simply stated, as a result of corporate surveillance in marketing practices, the poor are increasingly excluded as producers and consumers in the free market.

### **Increased Bias and Overcrowding in the Criminal Justice System**

Ironically, law enforcement agencies' utilization of emerging technologies of surveillance can cause a strain on criminal justice systems. The increased detection of criminal behaviors leads to more arrests and the improved quality and quantity of evidence available for prosecution. An unintended consequence of the enhanced ability to detect and collect records of criminal behavior is that crime rates, as recorded by law enforcement agencies, can appear to rise, creating the perception that crime problems are increasing, which leads to the further expansion of the criminal justice system, often in the form of increased use of surveillance technologies.

Despite the noted decline in violent crime rates in the 1990s the United States continues to have the highest rate of incarceration in the world. With more convictions, the corrections systems will bear the further strain of monitoring the behavior of offenders.

In another irony, we observe the increased use of surveillance technologies to monitor offenders who cannot be housed in jails or prisons. While house arrest and other forms of community corrections were initially touted as methods to alleviate the overcrowding problem in many prison systems, we observe instead that these alternative sanctions have expanded the number of citizens who are under surveillance by the criminal justice system.

In the United States, there are approximately two million offenders currently incarcerated, and approximately another four million on probation, under house arrest, or otherwise serving sentences in some form of community corrections. These persons are increasingly monitored using electronic surveillance systems.

Law enforcement agencies' use of surveillance technologies can increase the already existent racial and cultural bias observed in policing practices. While the general prevention, detection, and response to criminal behaviors is the overt purpose of the criminal justice system, criminologists have noted significant biases in law enforcement practices. In particular, young, urban, and minority group males are on average more heavily policed, and law enforcement agencies' use of surveillance technologies to monitor these groups leads to the increased detection of the crimes committed by these groups.

While detecting, responding to, and punishing criminal behavior is not a problem, what is a problem is the increased application of surveillance technologies to contemporary policing practices that can exacerbate the racial and cultural bias in the criminal justice system. The crimes of the wealthy are less likely to be detected than are crimes committed by young African-American males.

### **Breakdown of Trust in Society**

Society is maintained through the presence of a basic level of trust among its members. When that solidarity deteriorates, individuals experience psychological distress from the breakdown of the social fabric. The utilization of surveillance systems has, in part, served as a surrogate for a lack of trust experienced among individuals and organizations. We are substituting the ability to monitor for our lost ability to trust one another.

The act of monitoring in place of trusting is a threat to the integrity of basic social institutions, including the family, work, and government. Consider the difference between holding a family discussion about a teenager's use of the family car, with the installation of a monitoring device on the family car. The former builds trust, increasing the integrity of the family unit, while the latter circumvents the interpersonal problems of trust.

### **Research Evidence**

**All available evidence indicates that electronic surveillance practices are rapidly increasing in scope and depth.**

Social scientists have merely begun to collect factual data about the extent and use of these emerging technologies, and there is a need for further collection of data about this phenomenon. Among topics in the social sciences, the study of surveillance in society is noteworthy for its lack of empirical evidence. Much of the information about the use of these technologies is proprietary to the government agencies, corporations, or individuals who sell and utilize surveillance systems. Available evidence is anecdotal, such as factoids published in newspaper articles about police use of closed circuit television (CCTV) systems, highway surveillance cameras, embedding animals and persons with electronic ID chips, corporate compilation of databases, and the collection and use of biometric data.

Despite wide variation in surveillance practices, it is important to describe who engages in surveillance behaviors and their motivations for doing so. There are predominantly two types of organizations that use surveillance: government agencies and corporations. In addition, private individuals can utilize surveillance technologies.

Government and other public agencies engage in surveillance in order to maintain stability and to ensure the common good. Technologies of control are used in the normal process of preventing and responding to criminal behavior, and as part of the practice of punishment. Police increasingly rely on CCTV to monitor known crime hot spots.

Research indicates that police and criminologists have been overly optimistic regarding the efficacy of CCTV in policing hot spots. An additional utility of police video is that it can serve as a useful form of evidence for the prosecution of suspected criminals.

Surveillance is used to ensure the safety and economic viability of the movement of persons and goods both within the United States and abroad. The Border Patrol and U.S. Customs Service track the movement of persons and goods across the national border. Similarly, the newly federalized airport security system ensures the functioning of the network of air transportation.

Aside from the law enforcement mission of government agencies, there are numerous other public organizations that can engage in surveillance behaviors that mesh with law enforcement and crime control. For example, schools often use metal detectors and video cameras to ensure the safety of their students, teachers, and staff. An added function of these security measures is that they also

protect school districts against lawsuits brought by victims, or families of victims, of school violence.

Corporations engage in surveillance in the course of normal business activities. They are concerned with maintaining the proprietary nature of business information and the safety of persons and property. Workplace surveillance can monitor employee and visitor activities to ensure that they are of a legal and ethical nature. Companies are able to measure worker productivity by recording phone calls, computer keystrokes, and employee movement within the workplace.

Organizations utilize surveillance to maximize profits and to hedge against risk. Collection of information on consumer habits, such as purchases recorded on supermarket discount cards, aids in the profiling of customers leading to the development of finer market segmentation. Insurance companies use databases to estimate risk associated with market behavior and lifestyle choices. Medical insurance companies are becoming increasingly adept at estimating the risk and prevalence of disease. In addition to the actuarial uses of surveillance, companies also are better able to detect fraud.

Individuals engage in surveillance behaviors to protect their personal interests or for entertainment. Research indicates that the United States is increasingly entrenched in a “culture of surveillance” where trust among individuals is diminished and surveillance is used as a remedy. In these cases, it is possible to place locations or persons under surveillance. Parents might place video cameras in the house to monitor children’s behavior or the activities of babysitters they suspect of misconduct. Gated communities and alarm systems in homes increasingly replace more traditional methods of crime prevention, such as having fences or dogs.

Individuals also engage in surveillance as a form of entertainment or criminal behavior. Technologies magnify the effects of humans’ natural curiosity about their surroundings. Video cameras are able to extend the eyes and ears of the watchers, and personal nosiness is enhanced by electronic extensions of the five senses. One outgrowth of this is the use of surveillance to satisfy prurient pursuits, and some, though not all, voyeuristic uses of surveillance technologies are illegal. In addition, persons can use these technologies for criminal purposes, such as identity theft.

## Recommendations and Solutions

Surveillance studies is an emerging field of empirical research. Based on surveillance studies findings it is reasonable to consider general policy recommendations:

- **Change the focus of the criminal justice system use of surveillance technologies to punish those convicted of felony crimes, rather than to monitor individuals who are convicted of misdemeanor charges.**

- **Increase scrutiny of the use of surveillance technologies:**

Analyze law enforcement agencies' use of surveillance technologies, and the development of equitable practices for observing suspected offenders.

Develop a system of checks to prevent increased racial and cultural bias in policing.

Create an agency of democratically elected members to oversee government and corporate use of surveillance. The purpose of the agency should be to protect the citizenry against the power of government and corporate use of surveillance.

- **Increase funding for the study of the social consequences of surveillance behaviors, particularly when conducted by government agencies, law enforcement, and corporations.**

- **Legislate notification of surveillance practices:**

Mandate notification when persons are under surveillance, or when they might potentially be watched. Legislation should include notification of the surveillance media, the types of data collected, and the potential uses of that information.

Mandate disclosure of information stored in government and corporate databases, including credit reports, consumer profiles, police files, education records, personnel files, health records, and tax information. Disclosure should include the actual and/or potential uses of these data.



## Key Resources

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## About the Author

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## **Civil Unions, Domestic Partnerships, and the Extension of Marital Rights to Same-Sex Couples**

by  
Paula C. Rodríguez Rust

### **The Problem**

**Throughout U.S. history, the legal rights, duties, and benefits associated with marriage have changed to keep pace with the changing needs of real American families. Today's families include same-sex couples, many of which are raising children, but are denied more than a thousand rights, duties, and benefits because they are legally unable to marry.**

The choice of a life partner lies at the heart of a fundamental building block of American society – the family. Strong families create a strong society. States and the federal government have a legitimate interest in protecting families for the good of society by providing family members with certain rights and duties vis-à-vis each other. Toward this end, the states grant legal recognition to heterosexual couples in the form of marriage, conferring upon such couples certain rights, duties, and benefits designed to strengthen the family and enable them to protect family members.

Strong families create a strong society in many ways. A secure home life makes it possible for adults to make positive social contributions, and enables children to grow into responsible citizens. Strong families protect the financial, emotional, and physical well-being of their members, and financial stability within the family reduces the need for public assistance at all life stages, thereby reducing strain on public resources.

The lack of marriage rights for same-sex couples impairs the ability of these families to protect their members. This disadvantages children raised in these families, weakens society by weakening these families, and increases the cost of public assistance when family members who lack family-related benefits such as health insurance, inheritance rights, and social security survivor benefits must rely instead on social resources.

## **The Facts: Legal Facts and Research Evidence**

**Marriage is two distinct institutions: civil (legal) and religious. Civil, not religious, marriage is subject to regulation by the states. Civil marriage confers numerous rights, duties, and benefits upon spouses that enable families to protect their members. Numerous developments in the history of civil marriage, such as the recent decision by the Supreme Judicial Court of Massachusetts and the enactment of the Federal Defense of Marriage Act, have brought the issue of same-sex marriage into the public spotlight.**

### **The Difference between Civil and Religious Marriage**

The distinction between civil and religious marriage is fundamental. Civil marriage is marriage recognized by a state according to legislative and judicial criteria. Religious marriage is marriage recognized by a religious institution. Within each religion, beliefs and traditions establish which marriages shall be formed and recognized. State recognition of a marriage does not compel any religious institution to similarly recognize that marriage. For example, states permit divorced individuals to remarry, but this does not compel the Catholic Church to perform or recognize such marriages. Opponents of same-sex marriage often base their arguments on religious teachings regarding God's intention that marriage should involve one man and one woman. There are, however, many religious institutions that do not share this belief, and which perform same-sex union ceremonies although these ceremonies confer no legal status upon the couples.

Two fundamental principles of American law – freedom of religion and the consequent separation of Church and State – mandate that the teachings of some religions not be imposed upon all members of society. Although civil recognition of same-sex marriage does not compel any religion to recognize same-sex unions, the denial of civil same-sex marriage does compel all citizens to be restricted by the beliefs of certain religions. Therefore, the argument that state recognition of same-sex marriage would interfere with religious practice is specious. On the contrary, it is the civil enactment of the principles of certain religious traditions over those of others, which interferes with religious freedom. Civil recognition of same-sex marriage would uphold the separation of Church and State, thereby enhancing, not restricting, religious freedom.

In lieu of full marriage rights, some states, municipalities, employers, and private organizations have instituted Civil Unions or Domestic Partnerships. These forms of recognition, however, differ from civil marriage in important ways.

**The Benefits of Marriage Include:**

- **Social Security.** Same-sex partners pay the same social security tax rates as other-sex partners, but because they cannot marry, same-sex partners do not receive spousal social security benefits in the case of death or disability. In effect, wage earners with same-sex partners do not receive the same ability to protect their families in return for the social security taxes they pay; yet they are subsidizing the benefits received by heterosexual couples. For the elderly, or for a surviving partner with young children, survivor benefits can mean the difference between self-sufficiency with dignity or public assistance.
- **Health Insurance.** Health insurance is available to many individuals in the United States, including those staying home to care for children, only through their legally recognized spousal relationship. The denial of spousal health coverage to employees with same-sex partners means that these employees do not receive compensation for their labor equivalent to that received by similarly situated heterosexual employees. It also means their same-sex partners must either pay out of pocket for more expensive and less comprehensive individual health care policies or forego health insurance, thus placing unnecessary strain on public resources and on a health care system already struggling to care for the underinsured and uninsured. In states where insurance regulations permit, some employers offer health insurance coverage to employees' same-sex partners; in lieu of the availability of such insurance, other employers reimburse employees for premiums paid for their partners' health insurance. In both cases, these benefits are subject to income tax whereas spousal benefits are paid for with pre-tax dollars.
- **Income and Estate Taxes.** Same-sex couples, like other-sex couples, work together to build estates. Some contributions are monetary, whereas others are non-monetary, including housework, home repair, and childcare. The right to file joint income tax returns and pay lower federal and state estate taxes recognizes the financial interdependence of spouses, the joint contributions of spouses to the building of their estate, and the importance of non-monetary contributions to family financial well-being. The inability of same-sex couples to marry forces such couples to distinguish their estates for the purpose of

income tax filing, and forces a surviving partner to pay taxes to gain access to an estate he or she helped build.

- **Next of Kin Status.** Next of kin rights include the right to visit one's partner in the hospital, to make medical and financial decisions for an incapacitated partner, and to inherit from a partner who dies intestate. Most next of kin rights can be granted by one partner to the other via legal documents such as powers of attorney and legal wills. Hospitals and other relevant institutions, however, do not always respect next of kin rights. To fully exercise their next of kin rights, same-sex partners would have to have legal documents on their persons at the moment they are needed, such as during a medical emergency – a moment when all efforts should be focused on the crisis at hand, not on the demonstration of legal rights. This is a predicament not imposed upon married couples. The events of 9/11 made this burden painfully clear to individuals who lost same-sex life partners.
- **Medical and Family Leave Act.** Only married individuals have the right to take leave from work to care for a seriously ill spouse or to make arrangements and grieve for a deceased spouse, although some employers choose to provide such benefits for their employees with same-sex partners.

### **Legal Facts and History:**

- **Hawai'i:** In 1993, the Hawai'i Supreme Court ruled that restricting marriage to other-sex couples constitutes sex discrimination. In 1996, the Court ruled that the state had failed to provide a compelling reason to continue such discrimination. Recognition of same-sex marriage was, however, pre-empted by an amendment to the Hawai'i State Constitution.
- **Vermont:** In 1999, The Vermont Supreme Court ruled that restricting marriage to other-sex couples violates the equality guarantee of the Vermont State Constitution. In 2000, Vermont began recognizing the Civil Unions of same-sex couples.
- **Massachusetts:** In November 2003, the Supreme Judicial Court of Massachusetts ruled that the denial of marriage licenses to same-sex couples was unconstitutional and gave the legislature 180 days to revise existing regulations and procedures to comply with the ruling.

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With this ruling, Massachusetts will become the first state to recognize same-sex marriage.

- New Jersey: Governor McGreevey signed the Family Equality Act into law in January 2004. The law establishes a domestic partnership registry in New Jersey. Domestic partners will receive certain next of kin rights, recognition under state tax laws, and improved access to spousal health insurance benefits. Seven same-sex couples, who have been together for between ten and thirty years and five of whom have children, have filed a lawsuit against the State of New Jersey for the right to marry.
- The Federal Government: The power to regulate marriage is granted to states and not to the federal government by the Tenth Amendment, the absence of explicit congressional power, and historical practice. However, the Defense of Marriage Act (D.O.M.A.), signed into law by President Clinton, declares that the federal government will not recognize same-sex marriages. Also, despite the fact that marital law has traditionally fallen under the purview of the Full Faith and Credit clause of the U.S. Constitution, which obligates states to recognize certain legal acts on the part of other states, more than 30 States have enacted “mini-DOMA” laws that define marriage as a union between a man and a woman or otherwise declare their intention not to permit same-sex marriages nor to recognize such marriages constituted in other states. These laws were passed prior to the November 2003 Massachusetts Supreme Judicial Court decision. The Constitutionality of DOMA and mini-DOMA laws are questionable, and this is an issue to be settled by the U.S. Supreme Court when and if a relevant case is presented to the Court. Proposed federal legislation, bills H.R. 3396 and S. 1740, would (1) exempt states from the Full Faith and Credit clause of the U.S. Constitution with regard to the recognition of lawful marriages, allowing states to choose not to recognize same-sex marriages licensed by other states; and (2) create a federal definition of marriage for the purpose of limiting marriage rights to other-sex couples.
- Other Nations: The Netherlands, Belgium, and Canada recognize same-sex marriage. Several other countries recognize alternatives to marriage such as “registered partnerships” (examples include Denmark, Germany, and Portugal).

**Summary of Legal bases for the Extension of Marriage Rights to Same-Sex Couples:**

- Restriction of marriage rights to other-sex couples constitutes sex (gender) discrimination; that is, if a man but not a woman may marry another woman, an act permitted for one sex is thereby not permitted for the other.
- Restriction of marriage rights constitutes sexual orientation discrimination. Thirteen states and the federal government prohibit discrimination on the basis of sexual orientation in public employment, and many of these states also prohibit discrimination in other areas such as private employment and housing. The denial of marriage rights to same-sex couples constitutes discrimination in the most private area of life – the home and family.
- Interference with individuals' choices regarding personal decisions relating to marriage and family relationships is a violation of the Fourteenth Amendment right to liberty and a violation of the right to privacy (*Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S., 833, 1992; and *Lawrence et al. v. Texas*, 539 U.S., 2003).
- The incorporation of religious beliefs about God's intentions vis-à-vis marriage violates the separation of Church and State and interferes with religious freedom.

**Domestic Partnerships and Civil Unions, a Comparison to Civil Marriage:**

As of this writing, no state recognizes same-sex marriage although Massachusetts is expected to do so by May 2004. However, some states, cities, and nongovernmental organizations do recognize Civil Unions or Domestic Partnerships. These remedies differ from marriage in important ways:

- Domestic partnerships may be offered by any organization, including private and public organizations, employers, and governmental bodies. Domestic partnerships confer only those benefits and duties controlled and designated by the offering organization. A health club, for example, might recognize same-sex partners as eligible for family discount membership rates. A university might extend reduced tuition benefits to the same-sex partners of employees on a basis equivalent to

the spouses of married employees. Domestic partnerships allow organizations to offer their members, customers, employees, or constituents with same-sex partners some benefits of marriage even in the absence of state recognition of same-sex marriage. The organization offering domestic partnership (DP) registry establishes the criteria for registration and designates which benefits shall be available to domestic partners. Currently, more than 2,000 private employers, more than 50 cities and counties, and seven states including Massachusetts, Hawai'i, and California have domestic partnership registries. Although DP recognition by one organization does not ensure recognition by any other organization, governmental domestic partnership registries can facilitate the provision of DP benefits by other organizations. For example, the existence of a municipal or state DP registry enables employers and private organizations within that governmental jurisdiction to provide benefits to registered couples without the burden of independently establishing DP criteria and evaluating registry applicants.

- Civil Unions are widely considered a “marriage alternative.” Civil Unions offer registrants a set of rights and duties equivalent to those of marriage, insofar as the governmental body recognizing the Civil Union controls and designates those rights and duties. For example, recognition of a Civil Union by a state could include the right to file joint state income taxes and exemption from state estate taxes, but not the right to file joint federal income taxes or receive federal spousal social security benefits. Whether or not Civil Unions invoke the Full Faith and Credit Clause of the U.S. Constitution is an open legal question; the enactment of mini-DOMA laws in many states implies the intent not to recognize Civil Unions, but insofar as such laws specify “marriage,” they do not prohibit states with such laws from recognizing Civil Unions.

## **Solutions and Recommendations**

**Anything short of full marriage rights for same-sex couples, with interstate and federal recognition and including all of the rights, benefits, and duties of marriage, amounts to discrimination on the basis of gender and sexual orientation, places an undue burden on public resources, interferes with religious freedom and the pursuit of happiness, and constitutes a violation of the right to privacy. We call upon:**



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1. The Federal Government to repeal the Defense of Marriage Act.
2. The Federal Government to refrain from amending the U.S. Constitution to include a definition of marriage.
3. States to pass legislation permitting same-sex marriage and remove all procedural obstacles to the issuance of marriage licenses to same-sex couples who apply.
4. States to repeal existing mini-D.O.M.A. laws and recognize same-sex marriages constituted in other states.

Until such time as full marriage rights become available to same-sex couples, we call upon:

5. The Internal Revenue Service to permit same-sex couples to file joint income tax returns and in all other matters to recognize same-sex couples on par with married heterosexual couples for the purpose of calculating tax benefits and obligations.
6. The Social Security Administration to extend social security benefits to the same-sex domestic partners of deceased or disabled individuals on par with the other-sex spouses of similarly situated individuals.
7. States and Municipalities to initiate Civil Union or Domestic Partnership registries that offer all the rights and duties afforded married other-sex couples by these governmental bodies.
8. Employers to extend benefits to the same-sex partners of employees insofar as possible. This includes rights to family leave and the extension of health insurance coverage or reimbursement of premiums paid for partners' health insurance, with coverage to allow for the additional taxes imposed on benefits received for non-spouses.
9. Elected and Appointed Officials and Citizens of the United States of America to recognize the distinction between civil and religious marriage, and to stand publicly against discrimination on the basis of gender and sexual orientation.

## Key Resources

Domestic Partnership Act of the State of New Jersey: <http://www.judiciary.state.nj.us/legis/civil/index.htm>

Lambda Legal: <http://www.lambdalegal.org>

Massachusetts Supreme Judicial Court decision regarding same-sex marriage: <http://www.state.ma.us/courts/courtsandjudges/courts/supremejudicialcourt/goodridge.html>

Vermont Civil Union legislation: <http://www.sec.state.vt.us/otherprg/civilunions/civilunionlaw.html>

## About the Author

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## **Domestic Violence in the United States: Current Research, New Directions**

by  
Alesha Durfee and Karen Rosenberg

### **The Problem**

**Domestic violence is a widespread social problem that affects women, men, children, and families. Approximately 25 percent of women and 8 percent of men in the United States have been physically or sexually assaulted by intimate partners during their lifetimes.**

Domestic violence is a pattern of behaviors where one person seeks to maintain power and control over another. It refers to acts of violence or abuse between current or former spouses, dating partners, or cohabiting partners. The definitions or types of abusive behaviors vary substantially in scope.

Legal definitions of domestic violence are generally limited to the criminal acts of battery, sexual assault, kidnapping or unlawful imprisonment, criminal harassment, or stalking. Definitions of domestic violence that are used by advocates and social service providers are comparatively broad, and generally include the acts covered by law as well as intimidation, threats, isolation, the use of social status privilege, or the use of children to maintain power and control over another person.

Social science researchers distinguish four patterns of domestic violence:

1. Situational couple violence refers to occasional acts of abuse or violence resulting from an argument.
2. Violent resistance refers to acts of self-defense.
3. Intimate terrorism refers to a chronic or ongoing pattern of abuse. It can include economic subordination, physical and social isolation, emotional and verbal abuse, and other controlling behaviors. Intimate terrorism tends to escalate in severity and it can be life threatening. Usually it is a male partner who perpetrates intimate terrorism against his female partner.
4. Mutual violent control is an unusual pattern of domestic violence in which both partners engage in intimate terrorism

## **Research Evidence**

**Determining the prevalence of domestic violence in the United States is problematic because estimates must rely on reported victimizations. The data do not accurately reflect the actual level of domestic violence within the general population.**

The actual prevalence of domestic violence is certainly higher than the estimates that are generated from various survey data sources because many victims are unable or unwilling to report abuse and violence. Policy makers and lawmakers, nonetheless, depend on the following victim-based reports:

- Each year, an estimated 158 per every 1,000 couples in the United States experience some form of domestic violence.
- Nearly two million women in the United States are likely to be victims of domestic violence annually.
- Empirical studies estimate that between 12 and 36 percent of gay men and between 17 and 25 percent of lesbian women have been abused by an intimate partner.
- An estimated 1.4 million persons are treated in hospital emergency rooms each year for intentional injuries inflicted by a spouse, former spouse, or other intimate partner.
- An estimated 7.7 percent of women and 0.3 percent of men in the United States, over the course of their lifetimes, are likely to be sexually assaulted by an intimate partner.
- In 2002, 24 percent of female homicide victims were murdered by their intimate partners.

### **The Demographics of Domestic Violence and Abuse**

Women are more likely than men to be victims of intimate partner violence and abuse. The National Violence Against Women Survey found that 44.2 per 1,000 women are physically assaulted each year, compared to 31.5 per 1,000 men.

Persons in poverty are more likely to report domestic violence and abuse experiences. Nearly 20 per 1,000 women over age 12 with annual family incomes under \$10,000 report domestic violence incidents, compared to 4.5 per 1,000 women whose incomes are \$50,000 or more.

There are some differences in the rates of reported domestic violence by race, ethnicity, and socioeconomic status. While the majority of known victims are not affluent, race and ethnic groups have differing rates of reported victimization.

Research evidence indicates that differences in rates of domestic violence may not reflect prevalence, but instead show the reticence of certain groups either to acknowledge or to report certain behaviors as abusive. Some women and men are more likely than others to disclose domestic violence when it occurs, either to family members, friends, or to physicians or the police.

Urban and rural residents report similar rates of victimization. However, the dynamics of battering, and the resources available to victims, can differ quite substantially by geography.

Victims in rural areas are more likely to be physically or geographically isolated and abusers can use seclusion to create and reinforce mental and emotional isolation to control their victims. Some researchers report that in urban areas, victims face an increased risk of torture.

### **The Known Consequences of Domestic Violence**

Domestic violence victims report a multitude of physical and psychological problems including severe physical injuries, chronic headaches, difficulties eating or sleeping, post-traumatic stress disorder, depression, low self-esteem, anxiety, suicidal ideation, and fear.

Children who have witnessed domestic violence face an increased risk for manifesting behavioral problems in school. They can be more aggressive, and manifest higher rates of problems such as bed-wetting and low school achievement. Exposure to domestic violence can have lasting consequences. Boys who witness acts of domestic violence, compared to other boys, are more likely to abuse their own partners when they become adults.

Victims who attempt to leave violent relationships face the possibility of separation violence. Violence can escalate when a victim tries to leave her abuser.

A homicide study found that 57 percent of the men who killed their wives were separated from them at the time of the murder.

Poverty can trap victims in domestic violence relationships. Some victims cannot afford to leave their abusers because they lack the adequate resources to obtain safe housing, appropriate legal assistance, or other critical needs. Domestic violence can also cause poverty for victims. Abusers can prevent victims from accessing education, job training, or employment opportunities.

Victims may become homeless when they leave their abusers. In 2001-2002, families with children comprised 41 percent of the homeless population in the United States.

Domestic violence is costly to the United States. Direct and indirect expenditures on domestic violence exceed \$5.8 billion annually. Direct costs include the dollars spent on medical and mental health care. Indirect costs include lost productivity in the labor market and in the home.

### **Existing Federal Laws**

Two federal laws address domestic violence: the Violence Against Women Act (VAWA) of 1994, and its subsequent reauthorization in 2000; and the Family Violence Option included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

VAWA was passed as part of the Violent Crime Control and Law Enforcement Act (P.L. 103-322) and was reauthorized in 2000 as part of the Victims of Trafficking and Violence Protection Act. It substantially amended laws pertaining to immigration, intrastate stalking, sexual abuse, and domestic violence cases. It also changed evidentiary rules for rape and other sexual abuse cases. VAWA created the Office on Violence Against Women to organize federal efforts to combat domestic violence.

Victims who are immigrants, or whose batterers are immigrants, may fear deportation by the U.S. Bureau of Citizenship and Immigration Services (BCIS) upon contacting the police, filing for protective orders, or seeking medical treatment for injuries. VAWA amended immigration law so that non-US citizen victims and their children can apply for immigration status, or have their deportation suspended. This does not guarantee that the victim and her children will not be deported, however. The requirements that must be met by persons

petitioning the BCIS for immigration benefits as a domestic violence victim are extensive.

The Family Violence Option, also known as the Wellstone/Murray Amendment, was passed in 1996. It encourages the states to include specific provisions to assist victims of domestic violence in their Temporary Assistance for Needy Families (TANF) plans. Provisions include screening incoming and current TANF clients for domestic violence, referring victims to other government and community resources, and exempting victims from various TANF requirements, including job search and work requirements. Unfortunately, the Family Violence Option is not routinely explained to women applying for TANF, and line workers are discouraged from assisting women to apply for the Family Violence Option.

Abusers can track victims by their social security number, especially when the victim begins employment. In 1998 the Social Security Administration adopted regulations making it less difficult for domestic violence victims to apply for new social security numbers. Nonetheless, getting a new social security number still proves challenging. Since obtaining a new number is not considered a benefit, like disability or retirement payments, applicants do not have the recourse of appealing unfavorable decisions.

Victims who continue to work can use the federal Occupational Safety and Health Act (OSHA) in attempts to protect themselves in the workplace. OSHA requires employers to provide a safe working environment for their employees, and to address any recognized hazards, including inadequate security at work.

### **State Laws and Public Policies**

Pennsylvania was the first state to make civil protection orders available to victims of domestic violence. Today court orders prohibiting contact between victims and abusers are available to victims in all the states, though the types of orders and their provisions differ from state to state.

Civil protection orders prohibit contact between the victim and the abuser. The victim initiates the legal action and can request various levels of protection, depending on specific needs. Victims can apply for protection orders *pro se*. Many jurisdictions provide in-court advocates who explain the legal process and help victims to complete the paperwork necessary to obtain protection orders.

Civil legal assistance (CLA) programs enable domestic violence victims to access many of the legal resources that are, in principle, available to them. However,

most CLA programs are extremely under-funded and are able to serve only a fraction of the population in need of assistance.

Several states have regulations that require both parents to undergo a domestic violence evaluation or the appointment of a Court Appointed Special Advocate (CASA) if either parent has alleged abuse or violence. Evaluators seek to determine custody arrangements that would be in the best interests of the child. CASA programs, like most legal assistance programs, rely heavily on volunteers.

Victims who are concerned for their safety may go into hiding from their abuser. State-run Address Confidentiality Programs (ACP) help prevent abusers from locating victims. ACPs act as a mail forwarding service for victims who need to keep their residence confidential due to threats of continued abuse. Only sixteen states currently have ACPs. Nine states have drafted ACP legislation, and seven states are considering drafting legislation.

Domestic violence victims face substantial barriers to obtaining employment, or they may be forced to take time off from or leave their jobs because of continuing violence. Victims, however, tend to be ineligible for unemployment compensation because they have voluntarily left their jobs, and because in many cases they are not “able and available” to work. Twenty-four states have passed legislation allowing domestic violence victims to receive unemployment compensation. Victims who initially qualify for unemployment, however, may become ineligible if they do not comply with mandatory job search requirements. Only five states allow victims who are unable to complete job searches due to domestic violence to continue to receive benefits. Even in those five states, the low number of claimants implies that few eligible victims apply for and receive unemployment benefits.

Some state laws or local policies mandate police officers to arrest the primary aggressor if there is probable cause to believe that a domestic violence court order has been violated or a physical or sexual assault has occurred within a specified time frame.

Mandatory or preferred arrest laws or policies were adopted in nearly all the urban jurisdictions after a single, overly-publicized study claimed lower rates of recidivism among those aggressors who had been arrested for domestic battery. Critics point out severe and dangerous problems with mandatory arrest: Violence can and often does escalate following an arrest, and abusers familiar with police policies use them to have the victim who engages in self-defense arrested.



A no contact order or stay away order is a criminal order entered by a judge in conjunction with criminal proceedings, most often as a condition of release during a bail hearing, at arraignment, or as a condition of sentencing. In most states, violators are subject to mandatory arrest. Victims have little control over the entry, removal, or provisions of these orders.

Most urban communities in the United States maintain shelters for domestic violence victims and their children. However, a critical shortage of emergency shelters persists. The typical shelter attempts to keep its location confidential and provides short-term housing. Shelters vary in the types of services they provide with some retaining on-site legal advocates or counselors who help victims secure permanent housing, employment, and a continuing safety plan. Shelter administrators nationwide report acute, permanent housing shortages, as well as an inability to meet emergency housing requests. Victims are often forced to shelter-hop while looking for affordable housing. Many domestic violence victims must choose between homelessness and returning at the end of a shelter stay to their abusers.

Education and support groups, often found in hospitals or family health clinics, provide space and time for victims to recount their experiences in abusive relationships and process their feelings in a supportive, nonjudgmental environment. Most groups integrate educational components focused on creating safety plans and teaching victims about the dynamics of domestic violence.

Run by both community and governmental agencies, crisis hotlines provide 24-hour access to trained domestic violence advocates. Volunteers or professional staff workers provide information about various dimensions of domestic violence. They help callers navigate the social services and legal system to find housing and economic resources. With an emphasis on safety planning, they provide a confidential, nonjudgmental forum for victims to plan their immediate future.

## **Recommendations and Solutions**

Over the past thirty years, researchers and advocates have designed and implemented interventions that have increased safety and options for victims of domestic violence. These interventions, however, are not available in all communities nor are they implemented equally across the United States. Substantial needs remain.

- **Increase Economic Self-Sufficiency of Victims**

All the states must follow the lead of a few and make unemployment compensation fully available to domestic violence victims who must leave work to protect themselves and their children. Communities should be encouraged to adopt living wage policies and to reward organizations that pay employees salaries and benefits that are sufficient to support families. Strategies for increasing affordable housing need to be developed in local communities.

- **Make Affordable Civil Legal Assistance Available to Domestic Violence Victims**

Funds for legal assistance programs must be increased. Domestic violence victims need legal advice and representation in divorce and child custody disputes to ensure equitable distribution of resources and safe living opportunities for themselves and their children.

- **Provide Continuous Training for Criminal Justice and Social Service Workers**

State and local programs must be established to guarantee ongoing, up-to-date education and training for workers in all the agencies that provide services to domestic violence victims. Current social science research on the dynamics of control and abuse and the social structural causes of domestic violence must be communicated effectively to service providers.

- **Evaluate Program Effectiveness**

All community-based programs that provide services for domestic violence victims should be evaluated periodically to make sure that they are delivering necessary referrals and effective services. Domestic violence victims in the general population, persons receiving community services, and program workers and administrators must be consulted in the evaluation studies.

### Key Resources

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Tjaden, P. and N. Thoennes. 2000. *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*. Washington, D.C.: U.S. Department of Justice.

### Internet Resources

National Coalition Against Domestic Violence <http://www.ncadv.org/>

U.S. Department of Justice Office on Violence Against Women  
<http://www.ojp.usdoj.gov/vawo/>

Women's Law Initiative <http://www.womenslaw.org/>

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## **Cosmetic Genital Surgery Performed upon Children**

by  
Carrie Yang Costello

### **The Problem**

**Five times every day in the United States, plastic surgeons at major hospitals perform cosmetic surgery upon the genitals of infants or young children. These operations to improve genital appearance often result in severe negative effects, including the permanent loss of sexual sensation, lifelong bladder infections, and the loss of fertility.**

When infants are born physically different from the norm, doctors quickly step in to normalize their bodies. Sometimes this is heroic and life-saving, as when an infant is born with an abnormal heart. At other times it is cosmetic, not necessary but intended to make a child's life smoother by making him or her look more "normal." For example, an infant can have an unusually formed ear that can be made more average looking via plastic surgery. When doctors perform plastic surgery on children, the potential risks and benefits must be carefully weighed. For instance, medical ethics hold that a child's vision should not be put at risk for a cosmetic procedure.

### **Research Evidence**

**Some doctors routinely put infants' well-being and potential fertility at risk by performing plastic surgery upon children's genitals.**

When an infant is born with genitalia that do not look typical, many medical professionals not only permit but, controversially, insist upon plastic surgery to make the genitals look typical. Each day, plastic surgeries are performed on infants who are born with large clitorises, small penises, or who are intersexed. They are also performed on boys who have suffered loss of the penile head as a complication of circumcision.

When doctors perform genital surgery on infants for cosmetic purposes, the aesthetic appearance of the children's genitalia may improve, but the negative effects are often substantial. The large majority of these surgeries involve surgical alteration of the male, female, or intersexed child to look like a girl with a small clitoris.

### **Micropenis**

When a boy is born with a very small penis, doctors may treat this as a deformity. Boys with micropenises are often surgically altered. Surgeons remove the testes and create the appearance of vulva. They reduce the micropenis to a smaller organ with a clitoral appearance. This is essentially a sex-change operation without the creation of a vagina. (Additional surgery to create a vagina is postponed until the child pubescens.)

When cosmetic surgeries are performed upon infants with very small penises, the operations are highly traumatic, involving pain, blood loss, risk of infection, and the dangers associated with general anesthesia. They can also result in a large number of negative side effects. The infants are at great risk of permanently losing any sexual sensation. Because they have their testes removed, they lose the opportunity to have children of their own some day. Infants and children who have had such genital surgery are also prescribed female sex hormones for their entire adult lives, with the attendant risk of cancer.

Why do doctors perform cosmetic surgeries with such drastic side effects? The claim is that having atypical genitalia, even though there is no functional impairment, presents a social emergency. For example, plastic surgeons who alter the genitalia of boys with “micropenis” state that locker-room teasing of a male with a small penis could be severe, hence justifying surgery. Essentially, this is an argument that it is better to be an infertile woman with little or no sexual sensation than to be a man with a very small penis.

When imposing such an assumption on the child, doctors take away the individual’s right to make an informed decision about his or her body, fertility and health. It is possible that an adult man with a very small penis might decide that people are so cruel to him that he would rather have a sex-change operation than suffer his condition. But it is also quite possible that an adult man would lead a full life, including a healthy sexual partnership and fathering children, with a very small penis. Childhood cosmetic genital surgery transforming the micropenis and testes into a semblance of female genitalia takes this option away from him.

### **Clitoral Reduction**

When a girl is born with a clitoris longer than 0.9 centimeters, she is labeled with clitoral hypertrophy. (When a boy is born with a larger-than-average penis, he is not labeled as having a deformity.) There is no functional problem created by having a larger than average clitoris, but some believe that a large clitoris could

appear to others to resemble a penis, leading to teasing or gender confusion. Therefore, plastic surgeons perform what are termed clitoral reductions.

When cosmetic surgery on girls with large clitorises was first introduced, the usual procedure was a clitoridectomy or clitoral amputation. Because a clitoral reduction is a less severe procedure, many surgeons consider it benign. Yet research on adult women who had clitoral reductions as infants indicates that such women typically have reduced or absent sexual sensation, which is a serious, life-long consequence of a cosmetic procedure.

Girls who are given clitoral reductions do not have the opportunity to make an informed decision about whether they wish to sacrifice sexual sensation for genital conformity.

When parents in other societies have their daughters' clitorises removed so that the girls will look normal and be marriageable, we in the United States term this "female genital mutilation," and work to have it banned. Yet similar operations are regularly performed on American babies.

### **Intersex Management**

It is not rare for an infant to be born with genitalia that are intermediate in form between male and female. The rate at which babies are born with visibly intersexed genitals, about one or two out of every thousand births, is comparable to the rate at which infants are born with Down Syndrome. When intersexed children are born, the condition is treated as a serious and shameful medical problem, and swift plastic surgical intervention is urged. In some cases, an intersexed infant may have a functional problem associated with the atypical genitalia, such as an imperforate anus. Such problems are appropriately solved with reconstructive plastic surgery. But often the supposed problem is only one of appearance, not of function.

Cosmetic genital surgery is never a medical emergency, and can always be performed later, even in situations when an infant is born intersexed. The parents of intersexed offspring can select a sex of rearing for their child without doctors performing immediate sex-assignment surgery upon birth.

This is especially important because the child may mature to identify as the other sex than the one assigned in infancy, and it is tragic when the very reproductive and sexual organs they desire have been surgically removed in infancy.

Unfortunately, such outcomes are not rare. For this reason, advocacy and support groups such as the Intersex Society of North America and Bodies Like Ours call for an end to cosmetic surgery on the genitalia of intersexed infants. They urge that the appropriate treatment should be nonsurgical gender assignment for the child, and psychological support for the family until the child matures sufficiently to be able to make an informed decision about what surgery (if any) he or she would like to have performed.

Intersexed infants are usually given cosmetic surgery to try to make them look like typical female babies, removing most hope of future sexual fulfillment, and sometimes, a chance at fertility. As in the case of sex reassignment of boys born with a micropenis, many of these intersexed children will be prescribed female hormones throughout adulthood, with the attendant risks. Furthermore, cosmetic genital surgery often does not result in the desired aesthetic appearance, leading to numerous painful surgical revisions.

### **Circumcision Accidents**

Circumcision can result in complications. A recent study showed that 1 of every 500 circumcised newborns suffered a serious side effect, including skin or bloodstream infections, bleeding, gangrene, scarring, and various surgical accidents. In cases of gangrene, or when the surgical accident results in ablation, the infant loses part of his penis. Doctors may then decide to treat the child as one born with a micropenis and remove the injured penis and normal testes to produce a semblance of female genitalia.

The protocol for sex reassignment surgery which is now used in cases of infants born with micropenis and intersexuality was developed by Dr. John Money when treating a boy who had lost a substantial section of his penis in a circumcision accident. While the penile stump still functioned, the boy's parents were understandably upset, and consulted with Dr. Money. Money performed surgery to reassign the boy, "Bruce," as a girl, "Brenda."

Dr. Money reported that the sex reassignment was completely successful, and after this famous case study, cosmetic genital surgery with the goal of making infants with atypical genital appearance look like girls with a small clitoris became commonplace.

However, the sex reassignment of Bruce to Brenda was not successful. Brenda made the decision to live life as a male at age 14, took the name David, and began

the process of reversing the effects of surgery and estrogen treatments. David's biography, *As Nature Made Him*, is a case study in the negative effects of cosmetic infant genital surgery, rather than the case study of success that Dr. Money had presented. The practice of infant cosmetic genital surgery rests on a very poor research foundation.

## Recommendations and Solutions

We call upon Congress to pass legislation prohibiting cosmetic plastic surgery upon minors if it involves risk to health or physical function, including future sexual function and fertility, unless the minor is sufficiently mature to give full informed consent to the procedure.

Such legislation should define cosmetic plastic surgery upon minors that involves risk to health or physical function, and that is performed without full and mature assent, as medical malpractice. This would give adults who suffered such medical malpractice as minors a legislative basis for suit.

We also ask legislators to urge the American Medical Association and all medical regulatory bodies in the United States to develop policies and pass resolutions addressing the standard of care for infants with atypical genital appearance. These policies and resolutions should state that no doctor should perform a cosmetic procedure upon a child's genitalia unless there is no substantial possibility that the surgery will reduce the child's future capacity to reproduce or experience sexual sensation. Cosmetic penile and clitoral surgeries and removal of ovaries, testes, or ovotestes should only be permitted after an individual is sufficiently mature to give full informed consent.

## Key Resources

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