

CHAPTER 28

The Compensatory Rights of Emerging Interests¹

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Interest groups are commonly portrayed by egalitarians of the left and right alike as obstacles to the achievement of democracy. Their defense of so-called special interests are often taken as reason enough to discredit them as self-serving opportunists who win for their constituents benefits unfairly denied to others. This distrust of interest groups is given a certain theoretical legitimacy both in reaction against pluralists' realpolitik and in appreciation of critical theorists' communicatory alternatives. Yet interest groups collectively constitute a significant component of the political decision making process. Some are as self-serving as the stereotype requires, others are more altruistic. But all are issue-oriented, and taken together they neutralize the political power of the unassociated individual.

To minimize such disempowerment of the individual, many egalitarians look to the state to limit the dominance of the powerful by establishing and protecting individual rights. The record of real states in this regard is not, however, encouraging. For without organized advocacy individuals often find supposedly individual-protecting measures being interpreted to the advantage of the powerful whom they are intended to curb. I accordingly defend an alternative approach less dependent on compliance, more sensitive to the realities of power, and based on a richly representative group-based model of democracy.

To articulate every aspect of such a model would be a task of major proportions, involving careful attention to questions of methodology as well as to levels of abstraction, perspective, and ideology. Ultimately it is the assumptions of egalitarianism that are at issue; but as an entrée to the larger project one might reexamine systematically why the once respected "separate but equal" doctrine came

to be rejected as a no longer adequate recognition of the compensatory rights of an emerging interest group. This I propose to do by (a) defending the practical need for emerging interest groups in an inclusive democracy, (b) sketching the theoretical support for such groups in the literature, and (c) relating these considerations to the political status of women considered as an emerging interest group.

A. The Practical Need for Emerging Interest Groups

The Achilles heel of monadic egalitarianism is its inability to offer an itinerary for travel from the real world of disparately empowered groups to the preferred polity where each and every abstract individual stands on a level playing field. This itinerary might be provided, however, by a proliferation of interest groups. But one dare not recommend this route without taking into account the undeniable hazards along the way.

Some interest groups, such as business corporations, political parties, and the military, are well entrenched in the legitimization lore of democratic societies. Somewhat less protected are charitable foundations and labor unions. Unions in particular used to be the libertarian's favorite example of egalitarian democracy gone awry; but in recent years their role as principal target has been reassigned to protected minorities.² "Separate but equal" having given way to affirmative action, libertarians now seek to discredit the latter in the name of a doctrinally pure egalitarianism that purports to tolerate no structural favoritism towards any group. This egalitarianism is, however, selective: rights routinely accorded to established groups are commonly deemed inappropriate for newly emerging groups. The history of the Communist Party in the United States is a case in point. So, too, was the Sierra Club's failure to achieve legal entitlement to represent the interests of the environment anywhere in the United States: personally affected individuals have legal standing to challenge environmentally harmful proposals, according to the U.S. Supreme Court; but the group does not.³ But how can isolated individuals be politically effective in a corporation-dominated society without benefit of advocacy groups that can speak and act in their collective interest? In practice, I contend, they cannot; and that, precisely, is why interest groups are needed.

An interest group, for the record, is not an arbitrary classification, though it is a social construct, namely, the constituency of an operative political organization.

This operative political organization is associated with a classification; but it is the political use of that classification that makes it an interest group. An interest group may be constituted materially by some natural trait, such as age (or nonage), race, sex, or reproductive capabilities, or by some circumstantial need that members of the group share, as, for example, by virtue of their being victims of the same crime or natural disaster. It is an interest group formally, however, only if an organization is formed to espouse the group's interests in the public sphere. These interests are typically based on special needs, so their recognition in public policy may establish rights applicable only to the group and perhaps others similarly situated. Such rights, though selective, are intended to be remedial and compensatory, hence not inegalitarian; nor will they be considered inegalitarian by anyone who perceives their recognition to be in the public interest. This perception is, of course, not always shared uniformly within and across the social spectrum, by government and by the citizenry. To see this one need only compare people's attitude towards such varied interest group constituents as children, dairy farmers, savings and loan officers, veterans of foreign wars, pregnant women, black lung sufferers, the developmentally disabled, and convicted felons. But as the United Nations Organization has come to recognize, the quality of policy decisions is inevitably improved if responsible issue-focused advocacy groups participate in the policy making process.⁴

In political theory, then, interest groups are identified with constituencies that are represented by operative political organizations. What is less often appreciated, however, is that an interest group may operate only inchoatively or imperfectly. Interest groups tend to be treated in theoretical writings, including those of the pluralists, as if a definitive list of those that really matter has already been drawn up. But, as the cataclysmic political changes of our times make manifest, this backward-looking bias favors those in power over the heretofore powerless. Rather than digress into the complex drama of ongoing Eurasian realignments, I offer a simple example: the new Da Pa Party recently organized in Israel to represent politically the interests of immigrants from the former Soviet Union. Some in Israel, including some recent immigrants, oppose the formation of this interest group as too divisive; and this may in fact be the case. But to argue in theory (practical politics aside) that this group is based on an irrelevant classification would give the groups currently sharing power a pseudo-intellectual control over

the list of social realities that merit special consideration. To assert, as Edmund Burke once did regarding his ability to represent Bristol, that perceptions of special need require no special representation is to transform the abstract individual favored by many egalitarian theorists into an impoverishing substitute for the rich egalitarianism of dynamic, as opposed to static, representative democracy. For in practice the special rights of established groups tend to be taken for granted and those of newly forming groups are deprecated. This presumptuous rejection of political diversity is no more egalitarian than is the assertion that children have a status duty to remain silent. Egalitarianism, to the contrary, should be contextual rather than abstract; and, as is the norm for an adequate theory of scientific knowledge, it should remain open to change, that is, be dynamic. But if egalitarianism is to be understood dynamically rather than statically, we must find theoretical space for the compensatory rights of emergent interest groups.

Toward this end, it is important not to associate a classification with an interest group unless it is made the basis for organized pursuit of the interests of persons so classified. In other words, the number of interest groups in a society is determined not taxonomically but politically. Not philosopher-kings but similarly situated individuals decide the existence of an interest group. So if preventing such organizations from emerging is on the egalitarian agenda, as one critic of this dynamic view contends, then the Cold War was an inexplicable waste of human resources. For if the Soviet system stood for anything, it was that the cultural diversity now achieving nation-state status deserves no special recognition. Outsiders, however, have no legitimate basis for objecting in principle to insiders' forming an interest group; the latter must decide whether or not their interests are already adequately represented. How well they then achieve their objectives in the political arena depends, however, on the outcome of collective deliberations that address their claims along with those of others. Thus, for example, the Inuit and other indigenous peoples in Canada have been insisting that they need special rights; and other Canadians—to the chagrin of monadic liberals such as former premier Pierre Trudeau—are beginning to agree.⁵

From this perspective, then, monadic liberalism is a "rational" bias only abstractly, because it systematically disregards the politics of classification. At issue here is who does the classifying and for what goals or purposes. To decree that some politically defended classification is not politically relevant is to limit the

interests that will be effectively represented in a society. Inversely, in view of the power of interests already represented in the political process, the organizing of yet another interest does not tip the balance against others unless those already favored have an indisputable claim to all their advantages for all time to come. Insofar as they do not, an emergent group may be needed to seek acknowledgment of a remedial right, a right which will cease to exist as such when the class in question no longer includes disadvantaged members. So it is, *mutatis mutandis*, with the unemployed, returning veterans, an insolvent company that employs many people and provides a needed product or service, a neglected indigenous tribe, retirees, people with renal failure, homosexuals. In the interest of what some call vertical equity, unequally situated people should be treated in appropriately unequal ways.⁶ Statutes often do this (especially those actually called "special legislation"), and authorized adjudicators decide who fits within the statutorily defined classification.

As is suggested by this common practice of selectively accommodating special situations for the sake of vertical equity, it would be inversely preferential to oppose "preferential treatment" solely on the grounds that it singles out an emerging group for special consideration. Such opposition, accordingly, does not merit a hearing if it assumes without argument that any selective preference is an instance of collusive public choice rather than principled attention to the public good.⁷ Nor is morality necessarily undermined if one and the same individual happens to be identified with more than one special interest. This might conceivably create a so-called conflict of interest for a given individual; but it might just as well provide that individual with complementary benefits, deriving, for example, from his or her family lineage, religious affiliation, pension plan, and investment portfolio. Each of us does obtain some benefits individually as a preference maximizer, say by purchasing a ticket to a concert, and others, such as employer-provided health care or familial access to a country club, without even consenting.

There are, in short, good egalitarian reasons for endorsing the political role of emerging interest groups as providing at least an interim itinerary to a more equitably participatory democracy. These practical considerations are, however, not merely concessions to realpolitik. For, without undermining egalitarian principles one can defend interest groups theoretically, as others committed to egalitarianism have done at least implicitly.

B. Theoretical Support for Emerging Interest Groups

Some social and political philosophers, echoing Rousseau, believe that mediating institutions create more problems than they solve. For, though two or more groups may cooperate for some purposes, they are just as likely to have incompatible interests. In an extreme case this could lead to armed insurrection, which is not easily shown to be unjustifiable a priori; and even within the bounds of orderly governance theorists have found good reasons for accommodating civil disobedience. Without attending to these well-known limit-testing considerations, some liberal philosophers propose maintaining the old public/private dichotomy as a framework for establishing public policy in a pluralist society.

A favored approach along these lines is to build "procedural neutrality" into a bulwark against legislating sectarian preferences. We are assured that procedural neutrality is fair on the basis of the most profound philosophical analyses of justice, in particular, that of John Rawls. There are, however, different accounts of how this fairness is to be achieved. A so-called truth-based approach would allow into public debate and policy-making only those claims that are subject to scientifically acceptable means of verification, thus excluding claims based on the mere beliefs of their proponents. A slightly less rigorous exclusionary principle would allow into public debate any beliefs about which there is consensus. And the most accommodating gatekeeper of all would exclude only those belief-based claims the content of which includes assertions about what constitutes the good life.

Each of these versions of procedural neutrality is intended to limit the range of private activities that may be subject to public coercion, and as such they are commendable. But their appeals to epistemological criteria to limit the scope of public debate are less so. Each involves a foundationalist stance, ranging from a counterfactual concept of scientific truth to a failure to distinguish between overt and tacit value judgments. But far more troublesome is their assumption that epistemological considerations might sanitize decisions about controlling people's lives. For, as such well-meaning epistemological constraints are actually applied in a political context, they limit public debate to supportive variations on the beliefs of those in power. In short, however well intended in its design, procedural neutrality so understood risks being transformed into a political caricature of itself according

to which might determine which views are even candidates for rightness in the public arena.⁸

In contrast to this group-constraining appeal to procedural fairness, other political thinkers, including pluralists, guild socialists, and anarchists, have openly encouraged mediating institutions. In the nineteenth century a number of writers sought to safeguard such institutions, but for questionable reasons. Reacting against working class demands for participatory democracy, liberals such as John Stuart Mill in England and conservatives such as Tocqueville in France favored continuation of elitist forums through mediatory institutions. In this century in the United States, John Dewey supported institutions that could influence without becoming subordinated to the political process; John Kenneth Galbraith defended labor unions as a "countervailing power" to the increasingly dominant corporations; and some conservative critics of governmental interference have favored "mediating structures" as a desirable alternative.⁹

Social contract theorists are divided over the status of groups in a just polity. For Hobbes, at least as interpreted by such intellectual progeny as Robert Nozick and David Gauthier, the human world should be viewed as made up of individuals who, however, are advised to enter into rational agreements with one another. Both Locke and Filmer, despite their differences, took the family as a basic given in society. Rousseau preferred that the general will be determined on the basis of unmediated individual input; but he accepted a multi-group polity as a fall-back position. John Rawls, though a patron of procedural fairness, recommends that individuals form associations which will collectively constitute a just "social union of social unions" (and even invites reinterpreting his theory of justice as involving an agreement among nation-states). Thus would interest groups minimize the need for a centralized state, reducing its role to distributor of social goods generated by social unions. Taken together these various contractual theories, directed primarily to questions of legitimacy, are of limited use as political strategies; but their usefulness improves if supplemented with the insights of communicatory ethics.

Hannah Arendt, for example, insisted that political power should only be based on "an opinion upon which many publicly are in agreement."¹⁰ Persuaded, however, that populism is not in the public interest if the people are ill prepared, she accepted a representational system as a reasonable alternative provided it involves

only individuals who are able to think, as Kant required, beyond their own interests.¹¹

Jürgen Habermas, emulating Arendt's stress on political communication, would correct her elitism through mediatory entities. To this end he advocates a "political public sphere," by which he means a set of institutions through which citizens can participate in the formulation and implementation of public policy. Such institutions, he argues, did serve the elite during the early, or liberal, phase of capitalism. But the chief mediating institutions of our time, he notes, are "enterprises, institutions, corporations, and semiofficial agencies" that exercise essentially governmental functions without accountability to the people. In the place of critical debate there is government by specialists and the "manipulative publicity" of the mass media.¹²

But all is not lost, Habermas insists. Private interest groups do preserve something of the democratic role once played by informal publics, in that each seeks through publicity to have its special interest recognized as a general interest. Collectively they constitute an "intraorganizational public sphere." As such they should be monitored in "the public sphere of the entire public" because they transform societal power into political power.¹³ If this is done systematically and routinely, Habermas believes, mediatory institutions may represent not the death but the rebirth of democratic process.

Iris Marion Young would amend Habermas's mediative model to include an affirmative action program for oppressed groups. To this end she argues for a "heterogeneous public," through which certain otherwise powerless social groups would be publicly recognized, funded, and included in deliberations regarding matters that affect the lives of their members. A truly social group, says Young, is based on shared practices or a way of life rather than on the contractual affiliation of a belief-based "ideological" group or a project-oriented interest group. The distinctions are not clear cut, and groups of different types might overlap or even succeed one another. What is crucial for Young, however, is that the public sector should assist only groups whose constituents are the oppressed, the others, presumably, being able to tend to their interests without assistance.¹⁴

Unlike the pluralist model of arbitrated competitors, these theoretical proposals are intentionally normative and implicitly reformist. For that reason they lack the empirical endorsement of the status quo. In its place they suggest moving

toward a more inclusive egalitarianism that is attentive to the public interest. The specific details of this itinerary cannot be shown with a yellow marker. But, given the well known difficulties associated with operationalizing the public interest, some problems sure to be encountered along the way can be identified.¹⁵

No particular group, however singularly powerful, is likely to remain totally dominant over other groups; but the hegemony of a special interest group is always a possibility, especially when it has access to means of coercion.¹⁶ Such undemocratic possibilities do not negate, however, but intensify the need for interest groups. For without such groups the socially isolated individual (however endowed with "rights" in principle or even in law) has little protection against intrusive others in positions of dominance.

Inversely, imbalance of power among interest groups would at least be ameliorated if all groups could be effectively regulated by the appropriate level of government. Even without fair regulatory constraints in place, however, a group whose ongoing activity involves dealing with government and with other groups will be somewhat constrained by the preferences of others similarly represented. Beyond this level of constraint lies the monitoring process recommended by Habermas. Even if such monitoring is not effectively in place, why should people not have a right to fuller participation in ongoing decision making processes by establishing an interest group to represent their special concerns more effectively?

Anyone with democratic convictions who recognizes the political impotence of the unorganized should concede that point. But, realistically, members of an organized group may have a disproportionate advantage over those whose interests are not adequately represented. And the more effectively interest groups influence public policy, the more completely are the interests of unaffiliated individuals disregarded by default. This flaw in representational democracy is often due to the unequal distribution of resources; but otherwise unrepresented individuals can diminish this inequity by pooling their limited resources or, as Young recommends, qualifying for public funds in order to organize.

Finally, if the political communication of groups is to be carried on in the public interest, structural and procedural context is needed; and each context will necessitate strategic and tactical considerations on the part of different groups. For example, should an interest group be functional or localized? Confinement to a particular geographical locale would seem essential if people are to control the

resources they need for their mutual well-being without subscribing either to *laissez-faire* "private" property or to state-managed "public" ownership.¹⁷ The functional group can make a special contribution even to the solution of a local problem by virtue of its familiarity with similar problems in other locales.

In short, a case can be made for the claim that interest groups are in principle in the public interest, even if not all such groups have, at a given time, the same level of political power. This case, as I have presented it, rests heavily on the assumptions that egalitarianism is a goal requiring an itinerary and that accommodating diversity marks its way. So far, however, I have systematically disregarded factors that would distinguish the interests of one group from those of another. To explore the significance of such differences, I will now consider gender as a differentiating characteristic.¹⁸

C. The Rights of Women as an Emerging Interest Group

The present reality in every Western democracy is that women and men, understood as distinguishable groups, increasingly share public responsibilities but have unequal access to positions of power. Yet attempts to justify special rights for women are disparaged as an unprincipled disregard of the egalitarian project. This rejection of women's claims to special rights would be incontrovertible if tested only against an acontextual model of abstract equality. But in a world in which men and women together are at best on the way to achieving such equality, a political commitment to unqualified egalitarianism at this time in history risks perpetuating obsolescent cultural arrangements that now need to be transcended in the public interest. For, acontextual egalitarianism is inequalitarian in practice if it disregards the historicity of the public interest by hindering a group of responsible individuals with special needs from fully participating in public life. A number of such groups come to mind; but none has been more universally hindered than women, even in Western democracies. Since it is now manifestly in the public interest to remove these hindrances in the wake of irreversible socioeconomic transformations, purportedly egalitarian opposition to compensatory rights for women relies counterfactually on the adequacy of a "separate but equal" model of male/female responsibilities. For the sake of a more inclusive egalitarianism women as an

emerging interest group have not only had to make this case in the public forum but even assume the burden of proof.

According to the traditional model, men are active both in public and in private, and women, confined to the private realm, rely on men, individually and collectively, to function as their interest group. This model, which, as Ross Poole has noted, "is one of exclusion, subordination and opposition," has been widely accepted in bourgeois societies. But, in Poole's words, "[O]nly when the public sphere has become equally available to all, and what is private has become merely a component — though an important one — of everyone's social life, will participants in both realms be in a position to relate to each other from a standpoint of equality."¹⁹ Though increasingly challenged by market demands for women workers, however, women as a group remain subordinate in both home and workplace and comparatively powerless in the political arena. The preservation of traditional public/private role assignments is a contributing factor.

Applied to the home, the public/private distinction has been used to legitimate not only economic deprivation but physical and sexual abuse.²⁰ In such a context, "home" resembles imprisonment and privacy is suspect. Accordingly, concerned sociologists recommend treating the public/private distinction as "an object of analysis not a conceptual tool."²¹ As applied to the workplace, the distinction helps rationalize social and economic inequities experienced by women who do work outside the home, especially in jobs involving so-called women's work.²² It may also rationalize "public sector" pay inequities on the grounds that these are no worse than in the "private sector," hence cultural rather than intentional so not legally discriminatory.²³ During the Communist era in eastern Europe and the Soviet Union the public/private distinction was rejected as a bourgeois invention, and many women held responsible professional positions. But their wages were seldom comparable to those of men, and they remained responsible for most domestic duties. Now, as unemployment rises, they are being pressured to give up their jobs and restrict themselves to a domestic role—a layoff which, compared to the double duty they have had to endure, they perceive as a return to normalcy.²⁴ Because the "equal employment opportunity" that was imposed on them seldom resulted in restructuring at home, their readiness to abandon professional responsibilities is understandable, at least in the short run.

This aspect of the great social experiment helps explain after the fact why

Western feminists used to accept a predominantly domestic role for women: they simply had no basis in social arrangements as they knew them to challenge the double-duty standard.²⁵ The overarching issue here, however, is that the public/private dichotomy, whether endorsed or rejected as a matter of public policy, rationalizes manifest gender bias on principles no more profound than past practice. Past practice, however, has little in common with the kinds of social roles men and women must undertake under present and foreseeable circumstances.²⁶ So, not surprisingly, women are being counseled to reconceptualize their own situations outside of the public/private straitjacket.²⁷ Some traditionalists would decry such liberatory advice as a threat to women's time-honored base of security and status in the family. This concern merits respect; but it is politically naive in its assumption that 'family' translates so easily into security and status. Bypassing divorce statistics, I might more fruitfully call attention to the common practice of exploiting the public/private distinction to further the aims of those who dominate the public.

This practice, which social anthropologists call incorporation, might more precisely be called symbolic incorporation: the symbolic transfer of a structurally unchanged private sphere (especially that of a man's wife and family) into a male-dominated public sphere. Incorporation thus understood is a largely symbolic publicizing of the private, for example, by displaying a politician's family to the voters, using a diplomat's wife for state purposes, making a policeman's wife a model of respect for law and order, glorifying an academician's wife as a dedicated cleric in the service of his latest opus.²⁸

Such symbolic incorporation is arguably being undermined by the changing role of women in politics in the last quarter century. This change does not mean, however, that those accustomed to power are now prepared to treat incorporation of the private sphere uniformly. Women are holding ever more public offices; but as they reach for high elective office, the gender role reversal this sometimes implies and publicly displays may generate down-and-dirty retaliation. In the United States, married women candidates have had to face the charge that they owe their prominence to their husbands.²⁹ In Britain, however, a woman served as prime minister for over a decade with little public attention being given to her husband, perhaps because the British have become accustomed to having a durable queen whose prince consort is in a subordinate role.³⁰ But the social subordination of a prince consort to his regal spouse in no way implies that men as a group are socially

subordinated; for there is magic at work in these matters: the ruling elite favor retaining a royal family to assure the essentially disenfranchised masses that in good times and bad they remain on close friendly terms with the very embodiment of the state.³¹ Less magical arrangements are possible, of course, in societies in which sexual equality is not even contemplated. In pre-civil war Lebanon, for example, a minimalist state merely allocated public funds to seventeen different male-dominated sectarian institutions.³² Such partitioning of power among male-dominated groups is, in turn, a microcosm of interest-group politics in male-dominated societies.

If by contrast we think of society as including at least two groups, namely, politically well represented men and comparatively unrepresented women, we are likely to be dissatisfied with the procedural neutrality approach discussed above. For example, so long as public policy and the making of it reflect primarily the interests of men, women have cause to wonder if a governmentally interpreted right to privacy, however defended, affords them any systematic assurance of being adequately protected against discriminatory public policy.³³ Tactically, this is no reason for them to disavow what protections the privacy doctrine does provide; but at the same time it is an incentive to develop a more reliable basis for defending women's interests in a social system still "tilted" towards the perceived interests of men. In constitutional terms, this alternative basis might be based on the First Amendment's protection of freedom of assembly.³⁴ As a project for political theory, it involves justifying the incorporation of women as a social group into the political system not just symbolically or procedurally but **structurally**. Feminists in particular defend structural incorporation, but with different emphases. Taking their proposals in the aggregate and generalizing, one might characterize structural incorporation as an interpretation of egalitarianism that requires procedural fairness to be (1) more inclusive of diverse interests and (2) more sensitive to the special needs they represent. Proposals focused on the former may be called process-oriented, those on the latter, program-oriented. Recognition of either might if viewed acontextually seem asymmetrical but if inherently remedial or compensatory is in the public interest and contextually egalitarian.

Process-oriented approaches to structural incorporation stress increasing the participation of women in government. Some of these approaches are factually contestable, however, because they either disregard seemingly relevant gender differences or else falsely generalize women's superior qualifications. A gender-

neutral approach along these lines argues for an androgynous mode of governance that transcends both sexual and public/private distinctions. A gender-favoring approach invokes certain female-specific traits as more suitable for public responsibility than male-specific traits. The more promising gender-conscious proposals call for some reinterpretation of the notion of equality. One such approach to procedural reform is to require sexually equal participation in a nonsexist polity: women would be entitled to hold fifty percent of all elective, appointive and bureaucratic offices. Although politically unrealistic, especially at a time when "reverse discrimination" is in such disfavor, this proposal is otherwise on target in that it addresses the underlying problem that "the very notion of the private is socially constructed and politically protected."³⁵

Program-oriented approaches tend to bracket the decision-making process while calling for egalitarian social norms that better accommodate gender differences as they work themselves out in people's lives. So-called symmetrical approaches tend to respect abstract egalitarianism to the point of ignoring or even denying differences that matter very much, especially with regard to compensatory rights. The problem of justifying pregnancy leave for working women is a case in point. If program equality is the preeminent policy goal, on what grounds can women be given time away from a job, without penalty, to bear and nurture children? One abstractly egalitarian answer (endorsed by the U.S. government) is to say that time off for birthing is sick leave; another (favored in some European countries), that men and women alike are entitled to parental leave—in either formulation, not preferential to women.

The foregoing approaches to structural incorporation tend to assume that only symmetrical equality is defensibly egalitarian. So they tend to bracket gender differences and stress benefit equivalence. Some feminists argue, however, that certain gender differences are valuable to society as a whole so taking them into account in public policy would not undermine equality. For them, in other words, equality can be asymmetrical. This approach is quite compatible with a dynamic egalitarianism that can respond to changed circumstances by establishing compensatory rights to accommodate special needs. But the supposed asymmetry should be attributed to acontextual perceptions which disregard remedial or compensatory considerations that show an apparent favoritism to be on reflection in the public interest.

Program-oriented approaches that call for asymmetrical equality can be illustrated by considering the question of breast feeding in public, since this is an activity that women with public responsibilities may need to engage in. Otherwise disparate feminist approaches agree that facilities open to the public must accommodate lactating women graciously, not grudgingly, but differ as to the justification for this position. The empowerment approach implicitly addresses the decision-making process by saying that men should not be allowed to suppress a woman's exercise of this natural function. A call for social acceptance is result equivalent but would achieve this through legal redefinition of equality rather than through political activism. A more explicitly public interest approach argues that a nursing mother is entitled to special consideration because breast-feeding benefits society as a whole.³⁶

These various program-oriented justifications are obviously not purely theoretical but suggest different, though complementary, strategies for social change. As such they point to a structural *sine qua non* in modern democratic processes: the interest group. And beyond the comparatively non-controversial breast-feeding example lie many other programs that are in varying degrees circumstantially mandated but not clearly in the egalitarian portfolio: economic validation of home making; pregnancy leave without loss of income; reliable day care; protection against sexual assault and harassment in any setting; curtailment of gender-demeaning pornography; reform of gender-biased law-enforcement agencies. Rational justifications of such programs can and should be provided. Their worthiness of public attention depends, however, not on foundationalist "neutrality" but, as with other assertions of special need, on the wisdom of standpoint.

The practical relevance of standpoint theory (which tends to be characterized as essentially epistemological) must, however, be qualified by the recognition that any political advance made in behalf of an interest group's constituents may not meet with the approval of everyone who qualifies as a member of that constituency. As scholars working in this area readily acknowledge, no standpoint is privileged to the exclusion of all others except an ideal totality of all possible standpoints. Short of this, however, some may see what remains unseen or is even vociferously denied by others even within the same group. Take, for example, a Hassidic woman who dissociates herself from the objectives of women's liberation as she

understands them. She too has a right to vote and a right not to be raped because as a woman she is included in the interest group on whose behalf suffragists and tort law reformers have engaged in political discourse. Whether she sees reason to exercise these rights has no bearing on their value to the constituency of which she is a member.

Extrapolating from this consideration of women's interests, any newly emerging interest group challenges accepted understandings of the public-private dichotomy and the purportedly neutral identification of equality with uniformity. If given a fair hearing, this call for change may result in a more equitable society. So on the social level, evolution should be emergent, at least so long as it is possible to identify and advocate the special interests of an as yet inadequately acknowledged constituency. This constituency may indeed have a cluster of interrelated interests, some of which may overlap those of other groups and justify collaboration with them. The group's emergence may also be the occasion for others with conflicting beliefs to form a group. The resulting confrontations, however historically painful, are perhaps the only way for a passive citizenry to move emotionally and politically to common ground. So the rationalism of procedural neutrality is a poor drawing room substitute for the political advocacy of, say, a Society for Working Women, a League for Harried Homemakers, a Council for Compromised Children, and an Association for Male Role Clarification, each advocating its interests no less enthusiastically than are those of veterans of foreign wars, gun collectors, and producers of yellow ribbons. Such interest group interaction might undermine the traditional public/private model; but it too could be defended by a Society for Foundationalist Paradigms.

In conclusion, the right of any interest group to defend a constituency in an organized way before a democratic public forum depends not on whether the group's beliefs can pass someone's epistemological muster but on the group's commitment to having attention to its constituents' interests recognized as being in the public interest. This recognition may upon review be granted in the form of a remedial or compensatory right which merely because it involves change may appear to those less sensitive to context as inappropriately asymmetrical. If endorsed as being in the public interest, however, it is in reality a sign that the egalitarian project is not a static encumbrance to the past but a dynamic promise of a more inclusive future.

ENDNOTES

1. Presented first at the 1991 Colorado conference of the North American Society for Social Philosophy and, in a revised form, at the 1992 Pacific Division meeting of the American Philosophical Association in Portland, Oregon, this paper as here presented is better than it was thanks to the helpful comments of Anne Donchin, Linda Nicholson, Milton Fisk, Stefan Baumrin, and two anonymous reviewers, among others.
2. Lisa Newton's perennially anthologized "Reverse Discrimination as Unjustified" (*Ethics* 83 [1973] 308-12) is typical in this respect.
3. For theoretical issues and court ruling, see Christopher D. Stone, *Should Trees Have Standing?* (Los Altos, CA: Kaufmann, 1974).
4. See Paul Lewis, "Fixing World Crises Isn't Just a Job for Diplomats," *New York Times*, 5 April 1992, Sect. E, p. 4.
5. See Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon, 1989).
6. See Charles Wolf, Jr., *Markets or Governments: Choosing Between Imperfect Alternatives* (Cambridge, MA: MIT Press, 1990; orig. 1988), p. 80.
7. *Ibid.*, pp. 36-37.
8. For the truth-based approach see Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy & Public Affairs* 16 (1987) 215-39; for the consensus-based approach see Bruce Ackermann, "Why Dialogue?" *Journal of Philosophy* 86 (1989) 5-22; and for the content-based approach see Ronald Dworkin, "Liberalism," in *Public and Private Morality* (ed. Stuart Hampshire, Cambridge: Cambridge University Press, 1978), pp. 113-43. See also John Rawls, "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (1987) 1-25; *Id.*, "The Priority of Right and Ideas of the Good," *Philosophy & Public Affairs* 17 (1988) 251-76. For concerns about political misuse, see below, n. 33.
9. Peter Berger and John Neuhaus, *To Empower People: The Role of Mediating Structures in Public Policy* (Washington, D.C.: American Enterprise Institute, 1977); John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power*, rev. ed. (Middlesex: Penguin, 1963, rpt. 1967), esp. pp. 40-43, 64-70, 125, 151-54, 181-83. This was essentially the position that French sociologist Emile Durkheim eventually adopted after having long been a supporter of centralization as the process whereby law evolves into organic solidarity. See his *Professional Ethics and Civic Morals*, tr. Cornelia Brookfield (London: Routledge & Kegan Paul, 1857) and *Socialism and Saint-Simon*, tr. Charlotte Sautler (Yellow Springs, OH: Antioch Press, 1959), ch. 8. See also Lester M. Salamon, "Of Market Failure, Voluntary Failure, and Third-Party Government: Toward a Theory of Government-Nonprofit Relations in the Modern Welfare State," in *Shifting the Debate: Public/Private Sector Relations in the Modern Welfare State*, ed. Susan A. Ostrander and Stuart Langton (New Brunswick: Transaction Books, 1987), pp. 29-49.
10. Hannah Arendt, *On Revolution* (New York: Viking, 1963), p. 71.
11. Hannah Arendt, "Truth and Politics," in *Philosophy, Politics and Society*, third series, ed. P. Laslett and W.G. Runciman, London: Oxford University Press, 1967, p. 115. It may be relevant to note that Arendt grew up in Königsberg, where Kant had lived.

12. Jürgen Habermas, *The Structural Transformation of the Public Society: An Inquiry into a Category of Bourgeois Society* (tr. Thomas Burger with the assistance of Frederick Lawrence, Cambridge, MA: MIT Press, 1989 [orig. *Strukturwandel der Öffentlichkeit*, 1962]), pp. 16, 23-26, 30-43, 131-32, 136, 141-51, 163-69, 175-76, 178. For a parallel critique of corporate control of the media and manipulation of public opinion in the American context, see Herbert I. Schiller, *Culture, Inc.: The Corporate Takeover of Public Expression* (New York: Oxford University Press, 1989).
13. Habermas, *Structural Transformation*, pp. 199-200, 208-10, 231-32.
14. Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990, esp. pp. 11-12, 85, 92, 95, 184-91, 260).
15. The literature on this subject is immense across many disciplines, most recently in legal writing. Valuable studies in philosophy and political theory include: Robert D. Holsworth, *Public Interest Liberalism and the Crisis of Affluence* (Cambridge, MA: Schenkman, 1980); Virginia Held, *The Public Interest and Individual Interests* (New York: Basic Books, 1970); *The Public Interest*, Carl Friedrich, ed. (New York: Atherton, 1962; NOMOS 5); Glendon A. Schubert, *The Public Interest: A Critique of the Theory of a Political Concept* (Glencoe: Free Press, 1960). See also Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972).
16. This very situation is exemplified by the way the Arab Ba'ith Socialist Party has dominated families in Iraq. See Sudd Joseph, "Family, Religion and State: Middle Eastern Models," in *Dialectics and Gender*, ed. Richard R. Randolph et al. (Boulder: Westview, 1988), pp. 243-51.
17. See Carol C. Gould, "Contemporary Legal Conceptions of Property and Their Implications for Democracy," in *Philosophical Issues in Human Rights*, ed. Patricia H. Werhane et al. (New York: Random House, 1986), pp. 225-34.
18. In so doing, I take seriously the longstanding assumption that dominion in the public sphere should be exercised, insofar as circumstances will permit, only by men. For, this assumption invites us to be sensitive to a sexist bias in mainstream analyses of the social sphere. See Joan B. Landes, *Women and the Public Sphere in the Age of the French Revolution* (Ithaca: Cornell University Press, 1988), esp. pp. 67-71, 117, 186, 203-04; Loranne M. G. Clark and Lynda Lange, ed., *The Sexism of Social and Political Theory* (Toronto: University of Toronto Press, 1979); Patricia Madoo Lengermann and Ruth A. Wallace, *Gender in America* (Englewood Cliffs: Prentice-Hall, 1985).
19. Ross Poole, *Morality and Modernity* (New York: Routledge, 1991), p. 156.
20. Jan Pahl, ed., *Private Violence and Public Policy* (London: Routledge & Kegan Paul, 1985), pp. 16-17, 191; Tony Faragher, "The Police Response to Violence against Women in the Home," *ibid.*, pp. 110-24; Mary Maynard, "The Response of Social Workers to Domestic Violence," *ibid.*, pp. 125-41; Val Binney et al., "Refuges and Housing for Battered Women," *ibid.*, pp. 166-79.
21. Michele Barrett and Mary McIntosh, *The Anti-Social Family* (London: Verso, 1982), pp. 56-59, 89-90.
22. Veronica Beechey, *Unequal Work* (London: Verso, 1987), esp. pp. 141-42.

23. A major public sector sex discrimination case was dismissed in 1989 on the grounds that the wages of female state employees, though demonstrably lower than those of similarly situated men, were comparable to wages females earn in similar jobs in the private sector. The federal district judge who so ruled had been active in feminist causes before her appointment to the bench. But plaintiffs failed to persuade her, as required, that the wage differences were intentional rather than merely cultural.
24. Peg Simpson, lecture, IUPUI, Indianapolis, 30 Oct. 1990; Celestine Bohlen, "East Europe's Women Struggle with New Rules, and Old Ones," *New York Times*, 25 Nov. 1990, Sect. 4, p. 1; Francine Du Plessix Gray, *Soviet Women: Walking the Tightrope*, (New York: Doubleday, 1989).
25. Mary Wollstonecraft, renowned critic of sexist ideas that underlay the French Revolution, never questioned the basic premise that women's "nature" is not only different from but significantly inferior to that of men's. See Landes, *Women and the Public Sphere*, pp. 129-38. More recently, Nancy Chodorow, in her psychosexual study *The Reproduction of Mothering* (Berkeley: University of California Press, 1978, pp. 11, 13, 174, 179, 180-81) accepts without question that "all societies are constituted around a structural split . . . between the private, domestic world of women and the public, social world of men," that is, private, "nonrelational" sphere, where men have their primary location, and a "relational" sphere, where women have their "primary social and economic location." See also Elizabeth Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon, 1988), p. 83; Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* (Oxford: Oxford University Press, 1982), pp. 49, 96, 251.
26. See K.V. Hansen, "Feminist Conceptions of Public and Private: A Critical Analysis," *Berkeley J. of Sociology* 32 (1987) 105-28; J. Siltanen and M. Stanworth, "The Politics of Private Woman and Public Man," *Theory and Society: Renewal and Critique in Social Theory* (Netherlands) 13:1 (1984) 91-118.
27. See, for example, M. P. Connelly and L. Christiansen-Ruffman, "Women's Problems: Private Troubles or Public Issues?" *Cahiers Canadiens de Sociologie* 2:2 (1977) 167-78; C. Saraceno, "Shifts in Public and Private Boundaries: Women as Mothers and Service Workers in Italian Daycare," *Feminist Studies* 10:1 (1984) 7-29.
28. Hilary Callan and Shirley Ardener, eds., *The Incorporated Wife* (London: Croom Helm, 1984), esp. pp. 8-10.
29. Geraldine Ferraro, U.S. vice-presidential running mate with Walter Mondale in 1988, was politically damaged by investigations of her husband's financial affairs. Dianne Feinstein, candidate for governor of California in 1990, was similarly subjected to such indirect attacks. See Robin toner, "California showdown," *New York Times Magazine*, 30 Sept. 1990, pp. 29-30+. In 1992, interestingly, Democrat Bill Clinton's suitability to be president was questioned because, among other things, his wife was altogether too successful professionally for the role of "first lady."
30. See Tom Nairn, *The Enchanted Glass: Britain and Its Monarchy* (London: Century Hutchinson Radius, 1988), esp. pp. 216-21; Robert Rhodes James, *Albert, Prince Consort: A Biography* (London: Hamish Hamilton, 1983).
31. Judith Williamson, *Consuming Passions: The Dynamics of Popular Culture* (London: M. Boyars, c 1986), pp. 76-77, as quoted by Nairn, *The Enchanted Glass*, p. 229. See also

- ibid.*, pp. 22, 142, 204, 208, 223; Ernest Gellner, *Words and things*, rev. ed. (Boston: Routledge & Kegan Paul, 1979).
32. Joseph, "Family, Region and State," pp. 251-56.
 33. See William A. Galston, "Neutral Dialogue and the Abortion Debate," *Report from the Institute for Philosophy & Public Policy* 10:2 (Spring 1990) 12-15. Corroborative of my warnings above about political use of procedural neutrality is the U.S. Solicitor-General's brief in the important abortion rights case, *Thornburgh v. American College of Obstetricians and Gynecologists*, U.S. No. 84-495, in which the government argues that personal liberty is constitutionally irrelevant because it is "at best intuition based in controversial moral and social theories of the good life and of an individual's situation in society"—as, for that matter, are most other constitutionally protected activities if similarly viewed out of context. See NARAL amicus brief filed in *Thornburgh* (U.S. filed 26 Sept. 1984), p. 18, n. 12. See also Genevieve Lloyd, *The Man of Reason* (London: Methuen, 1985).
 34. For a promising alternative approach see Peter S. Wenz, *Abortion Rights as Religious Freedom* (Philadelphia: Temple University Press, 1992).
 35. M. E. Hawkesworth, *Beyond Oppression: Feminist Theory and Political Strategy* (New York: Continuum, 1990), p. 189 and, in general, pp. 180-97.
 36. Christine A. Littleton, "Reconstructing Sexual Equality," *California Law Review* 75 (July 1987), pp. 1291-1301. Littleton espouses the acceptance approach. Katherine MacKinnon is a well known proponent of empowerment; and Elizabeth Wolgast argues for special rights subject to public review.