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## ARTICLES

### SOCIAL STRUCTURE AND RESPONSIBILITY

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We now live in a world with unprecedented possibilities. Technology is quickly reaching the point at which it will be within our grasp to cure any ailment: medical, psychological, or social. Yet we are already falling behind in the curative use of our newfound abilities. With our new technologies we have it within our means to feed the world and to eradicate sicknesses common only in developing countries. However, the use of these

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abilities is governed by a social system in which market and other competitive forces provide strong disincentives for their efficient use — to improve the lots of those worst off in the world. These forces enable those who control the disposition of our new abilities to retain that power. In this article I wish to explore the possibilities of founding a sense of social responsibility upon our participation in our particular social system, exploring the nature of such a responsibility. I then turn, armed with this sense of responsibility, to a brief investigation of program areas that may help us to meet this responsibility.

Our responsibility to those excluded from the benefits of society depends upon the extent to which the success of our social systems depend upon their exclusion. That is, the more society depends upon the economic or social exclusion of a segment of the population for its success, the more society owes that success to those excluded from it.<sup>1</sup> This necessary exclusion within liberal-democratic capitalism is inherent in fundamental characteristics of our social structure: competition in general, and more particularly, the disadvantages upon which our economic system is premised, and those which it engenders.

Competition, a process almost deified today, is exclusory in nature; a mutual exclusivity of outcome characterizes it.

This means, very simply, that my success requires your failure. Our fates are negatively linked. If one of us must lose exactly as much as the other wins, as in poker, then we are talking about a “zero-sum game.” But in any [mutually exclusive outcome] arrangement, two or more individuals are trying to achieve a goal that cannot be achieved by all of them. This is the essence of competition, as several social scientists have observed.<sup>2</sup>

That is, only a few entities can succeed, because their success comes at the price of the failure of others. This is true of any competitive system. Races can only be won if there are losers who cross the finish line after the winner. We may give medals

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1. See Joel Feinberg, *Collective Responsibility*, COLLECTIVE RESPONSIBILITY 53 (Larry May & Stacey Hoffman eds., 1991) [hereinafter Feinberg] at 74, “There is a different sense of ‘responsibility,’ and an important one, in which groups can be responsible collectively and distributively for traits (including faulty traits) in the group structure and history that can be ascribed to no given individual as their cause.”

2. ALFIE KOHN, NO CONTEST 4 (1986). While it is true that not all competitions result in the extreme deprivation of those who do not “win,” in these general characterizations “failure” refers simply to a failure to achieve any mutually exclusive goal because someone else has already achieved it.

to the top three, but the majority of the racers win nothing for their hard work and pain. Some may point out that those who do not place at least have the satisfaction of knowing that they overcame the challenge and completed the course. This may offer some solace to marathon runners, most of whom choose to run without any expectation of winning. However, in our society individuals do not have any choice about whether to compete. It is "Compete or die." That is, those who refuse or fail to engage (at least nominally) in the competitive processes by which our society functions will not have their basic needs met. Nevertheless, we largely ignore the extent to which the winners depend upon the losers for their status, and even will blame them for their failures. Any competitive event yields a comparative ranking of competitors, a hierarchy of the participants. This necessitates that some are on the bottom. Those on the top depend upon those below them for their position. In a race, this means that there must be losers so that there may be a winner. In society this means that there must be the economically downtrodden, against whom the successful may measure their success.

What is not inherent in the nature of competition (although it is the style of many of our competitive events) is that little or no care is paid to the losers upon whom the winners depend for their status. That is, there is little, if any acknowledgment of the function which the losers serve in the larger competitive event. There is a distinction between "structural competition," described above and "intentional competition;" the two need not always come as a pair.<sup>3</sup> "Intentional competition" is a psychological phenomenon in which individuals or group members mentally and behaviorally compare themselves to others with whom they see themselves in competition. It is a competitive mental state. This may or may not happen within a competitive structure and it will frequently show itself in social situations we would usually think of as non-competitive. Competitors in team sports might concentrate more upon how they function within the team rather than getting motivation from a certain bloodlust for the other side. This would be an example of a competitive structure without "intentional competition." On the other hand, we can all remember parties at which one person seemed

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3. *Id.* at 3-4.

constantly to attract attention on purpose — seeing him or herself as successful only upon garnering “the most” attention, becoming “the most” popular. Here there is “intentional competition” without any structure upon which it is based. In a society such as ours, where competition is thought both necessary and valuable, and in which people are implanted with this idea at an early age — to the exclusion of contrasting ideas — we notice a high incidence of “intentional competition” even in areas where there is no structure to compliment it.<sup>4</sup>

Some may note that there are plenty of examples of competitive structures which exhibit many instances where “intentional competition” seems to be lacking. Runners may train together, egging each other on to new speeds. Team sports are constantly exchanging players, and the worst teams get the first pick next draft season. However, the motive for many of these behaviors is usually self-interested, founded still upon the desire to outdo one’s opponents, the goal which lies at the heart of the structure in which the players are involved.<sup>5</sup> Perhaps more central to our concern, however, is the manner in which our forms of competition engender disregard for the others “in the game.” This is the result of our unfortunate tendency to conclude that intentional competition is the best way to succeed within competitive structures.<sup>6</sup> We might avoid discussion of possible alternatives such as attempting to change the structure or investigating non-competitive arrangements within the competitive structure. This disregard is exacerbated when we impart the ideal of competition to our children in their school curricula and activities. The system itself entrenches these ideas with the implicit or explicit claims that if we give too much care to those below us, we will end up at their level. We might impart some ideas of individual care for our fellow human beings, and many grow up with genuine concern for those worse off. However, entrenched is the idea that if we try to make system-wide changes to better meet the needs of the poor, we jeopardize our own positions. Indeed, it is easy to see the current drive toward welfare “reform” through this lens: those in the middle think that they will be wealthier

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4. *See id.* at 5.

5. “Strip away all the assumptions about what competition is supposed to do, all the claims in its behalf that we accept and repeat reflexively. What you have left is the essence of the concept: mutually exclusive goal attainment.” *Id.* at 9.

6. *Id.* at 5.

and more like those ahead in the race, "if there weren't so much redistribution to the impoverished." We are left with many otherwise charitable individuals who ignore their consciences and neglect their senses of duty with the rationalization that society is governed by the law of the jungle. "Even if I did stoop to help, I'd be flattened by my neighbor in his or her rush to the top — so I cannot take my eyes off the prize even to help the less fortunate."

But this "intentional competition" is not a necessary condition of all competitive structures. Competition, as a comparison among competitors, can survive just as well if there is a sense of the duty owed to the losers by the winners. This duty must arise from the advantage that the winners take from the competition and from any advantage society as a whole might take from the existence of the competition. Because the competition depends, for its very existence, upon the participation and position of the losers, the winners garner their advantage only at the expense of the failure of the losers. If there were no competitors there would be no competition. That it is a competition implies that at least some of the competitors will lose. Any advantage a winner may take from a competition comes at the cost, and at least partly because, of the failure of the loser(s) ("but for" the loser there would be no winner). The loss of the loser is a necessary condition for the spoils to go to the victor. Therefore, when we participate and succeed in a competitive endeavor, we owe that success (at least partially) to the fact that there is a competitive system, made possible by the participation of those who do not succeed. Whether this creates any *moral* responsibility remains to be seen.

We perhaps have never thought of wealth in terms of poverty. How many thousands of the poor does it take to support a single millionaire? How many more thousands of impoverished has society generated to support its newly minted billionaires? We fail to recognize poverty as the sustenance of wealth. We may see the homeless and occasionally encounter the impoverished, but we never see ourselves as a cause. We are too busy, too preoccupied with ourselves, to reflect upon our collective generation of wealth as a cause of poverty.<sup>7</sup>

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7. William J. Curran III, *After 100 Years: A Disquieting Discourse of Poverty and Wealth*, 35 N.Y.L. SCH. L. REV. 1031, 1033 (1990).

This must generate *some* responsibility to those whose exclusion enable us to live in relative opulence. In owing our advantages to the participation and failure of a certain group of people, we owe it to that group to dispose of those advantages in a manner so as to help. That is, if we do have a responsibility to the needy founded upon our successes reaped in the same society in which they fail, that responsibility must be to share those successes. However, the basis for this responsibility must first get some support.

In discussing a collective responsibility for the harms visited upon the poor by our social systems and social structure, we are, in essence, examining a question of liability. I assert that there is a collective liability for poverty which generates a responsibility to ameliorate it. Joel Feinberg has given us three succinct criteria for determining the general moral (and legal) notion of individual liability, calling it "contributory fault."

First, it must be true that the responsible individual did the harmful thing in question, or at least that his action or omission made a substantial causal contribution to it. Second, the causally contributory conduct must have been in some way *faulty*. Finally, if the harmful outcome was truly "his fault," the requisite causal connection must have been directly between the faulty aspect of his conduct and the outcome.<sup>8</sup>

Basically, the responsible entity must have substantially caused the harm, that causation must be faulty (to be explained), and the faulty part of the action or inaction is what caused the harm. Less is required for strict or vicarious liability.<sup>9</sup>

Notions of collective action and group rights are already well accepted in our society. Corporations are held legally and morally responsible for harms to society such as faulty products and pollution. Many groups organize and define themselves around their claim to some distinctive right which attaches to that group. In interpreting these notions of collective action and group rights, we parallel similar notions we have when applying the same concepts to individuals. Similarly, if we can ascribe to society as a whole the conditions for contributory fault for the harms suffered by the impoverished, then we should similarly assign to society the moral responsibility for those harms. While

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8. Feinberg, *supra* note 1.

9. See *id.* 54-61.

it is difficult to say that any one individual designed and implemented the competitive structures in which we find ourselves, we can say that society has brought them about. Our group choices about which values to place above others in our democratic political systems have yielded the present competitive structure. That is, because we see ourselves as a democratic society, the people (as a collective) are the source of our social institutions. Therefore, society has substantially caused the harms suffered by the poor at the basic level of choosing certain social structures which favored this outcome (not to mention more informal aspects of these structures which serve to entrench the impoverished). Whatever "fault" may mean in this context, at the very least conduct may be said to be faulty when another means which would have caused less harm was available and rejected. That is, we can fault society for harms which could have been avoided. Even those who believe that capitalism and competition are inherently superior to other forms of social organization, cannot deny that there are other ways of organizing these same structures to produce less overall harm (we need only look to other countries with lower poverty rates but which still have relatively high standards of living). [Finally, it is exactly the implementation of a social structure which produces more harm than necessary that causes the harm.] That is, the harm is created by requiring competition for mutually exclusive resources in the manner dictated by our social structure. So society has "contributory fault" for the condition of the impoverished, and this fault generates a collective moral responsibility. "Collective" because in a democratic society the people as a collective must be responsible for their social structures. "Moral" because to impose these kind of harms when other means are available offends our moral sensibilities (and because when applied in this way, these are pre-legal notions of responsibility). "Responsibility" because it meets the criteria for "contributory fault."

Many would say that the very fact that the people as a collective chose these structures insulate them from having any fault imposed upon them. However, this criticism is without merit. The idea is that when the people speak as a collective, they can do no wrong. Not only does this fail to accord with our intuitions (that the German people elected Hitler increases, not decreases, the responsibility we which attribute for the Holocaust), but also with the lessons of history ("the people" can be a

violent mob, and we do attempt to soften their absolute power with checks in our political structures).

It is important to note, in passing, that this collective responsibility is not simply a restatement of the "maximin" principle expounded by Rawls.<sup>10</sup> (Although it may have similar effects upon society if it is ever pursued.) Rawls founded the principle of maximizing the positions of those worst off in society ("*maximum minimorum*") upon what may amount to the sentiment "there but for the grace of God go I." This, of course, vastly oversimplifies his point that the parties who are haggling over social structure in the original position do not know the positions of their constituents in the final social structure.<sup>11</sup> Because the parties are unsure of the identities, talents, and abilities of the eventual citizens for whom they are designing society, they will each avoid the risk that his or her constituent will be disadvantaged by arriving at a principle of governance which best treats the worst-off (when possible). Thus, Rawls concludes that these parties will settle on a "maximin" principle as a way of giving their constituents the most possible security once the veil is lifted and the social rankings are assigned.<sup>12</sup>

The duty which I hope to exhibit is not founded upon a similar realization that with a few adverse happenstances I may find myself in the bottom position, my neighbors scrambling over my falling body in their rush to the top. Although this is no doubt true, and constitutes another reason for a more equitable distribution of resources, it is still founded upon personal interest. It admits that there are winners and losers, but then says we must look out for the losers because we might be one of them. I am hoping that an examination of our notions of responsibility will lead to the sense that we *owe* the advantages we do have, to those who do not have them.

Most of us would admit that we should not reap the benefits of an evil enterprise. That is, in most cases it is wrong to take advantage of an immoral action. When we discover that we have, in some way, benefitted from the commission of an immoral action, we may feel guilty even though that action was not ours. This sense may diminish with distance and the extent

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10. Nor, for that matter, is it a simple expression of Pareto-optimality.

11. See JOHN RAWLS, A THEORY OF JUSTICE 154-155 (1971).

12. *Id.*



to which our benefits are causally removed from the actual wrong action. For example, we might feel one way when offered a car stereo, which obviously has just been taken from a nearby car, on the street. However, clean it up, put it in a box, and sell it in a store, and we feel better about our purchase — even if we do still feel a pang of guilt if and when we realize it was stolen. Even though our *sense* of guilt might diminish with distance, most would agree that our actual guilt is practically the same in both instances (where we had reason to suspect that the store was selling stolen goods). The idea here is that as long as we have knowledge of the existence of a victim (even if we do not know who the victim is), then when we take advantage, we bear some of the responsibility for that victimization — even if it is only by providing a market for his or her stolen property.

Society is in a similar position. We have knowledge of the victims. In our cities we see them every day. Our advantages come as a result of their victimization. The fact that we get our advantages from participation in our social system rather than causing their disadvantages directly amounts to no more than the difference between buying the stolen radio in a store rather than on the street. Although it is perhaps understandable that we feel less responsible than if we were causing their disadvantages directly, it is not therefore justifiable that we act less responsibly. Because we get our advantages from participation in a competitive social system which excludes a portion of the population, we have a certain collective responsibility to the poor founded upon our collective advantage-taking of the system. This also helps to explain why many find it hard to do anything meaningful about it: there is a collective action problem standing in the way of meaningful redistribution. It is not just the problem, mentioned above, that we fear charity will enable others to “get a leg up” on us. It is also the sense that because this is a system-wide problem, there is nothing we can do about it as individuals. While this isn’t entirely true, it is the case that it is much more difficult to make a positive impact when acting on an individual level. This, in turn, can become frustrating to any future attempts to improve the lots of those worse off than oneself.

What is needed, therefore, is a robust notion of collective responsibility which will operate not only on the system-wide

level, but will also lend individuals a sense of their responsibilities as participants in that system. It must be fundamentally a collective responsibility because of the nature of the problem. Although we may gain individual advantage from our social systems which disadvantage others, the fundamental unit of those systems is the group. That statement might appear controversial at first blush. In our society which pretends to hold individualism so dear, we are usually taught that the individual is the fundamental unit of society. I am not arguing against this notion as such; but, in terms of a duty to aid those who are worse off, it is all our responsibility as a group. This is so because in a democratic society, it is the people as a group whose actions result in the exclusion of the impoverished. It can only be that group acting in concert which keeps our social systems in place. Nevertheless, we cannot turn our individual backs upon this notion of collective responsibility. It is not a panacea into which we can dump all of our social duties and shirk the individual components of those duties.

While collective responsibility must be the basic unit of duty for the purposes of assigning that duty to society (and to avoid any collective action problem), it cannot be completely irreducible to any individual responsibilities. Collective responsibilities do imply individual responsibilities, but they are not identical. I do not wish to claim, as have some,<sup>13</sup> that all collective responsibility reduces to aggregated individual responsibilities. Rather, there is a distinction between the nature of the collective responsibility to the downtrodden and that of individual responsibilities. At the individual level, the responsibility may be nothing more than to work to improve the lot of our fellow citizens, and to pursue a society which does the same. This is founded upon our individual advantage-taking of a system which depends upon social and economic exclusion. But at the collective level, society has a responsibility to ensure that no one fails to get his or her needs (understood broadly) met, and to move towards a more equitable distribution of resources. At the very least, (as argued above) this collective responsibility derives

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13. E.g. H.D. Lewis and R.S. Downie. See COLLECTIVE RESPONSIBILITY 17-33, 47-51 (Larry May & Stacey Hoffman, eds., 1991).

from the fact that improvement is possible but heretofore rejected. This responsibility cannot be reduced directly to individual duties. However, meeting it can only become possible when individuals fulfill their "share" of the responsibility.

The problem with this analysis is acceptance and implementation. While there are group psychologies which detail ways in which members of a group think and act almost as one, it is exceedingly difficult to direct this action at a productive end. Unled group actions tend to be reactive in nature. There is a particular set of conditions which lead, for example, to a riot. It is also instructive to note that undirected group action tends to be destructive — it is the negative, destructive element of "rebellion."<sup>14</sup> However, when there is a social goal that is the responsibility of the collective to pursue, the group as a whole can be responsible for failure to provide a suitable leader to direct the performance of the group's duty. As Feinberg notes:

No individual person can be blamed for not being a hero or a saint (what a strange "fault" that would be!), but a whole people can be blamed for not producing a hero when the times require it, especially when the failure can be charged to some discernible element in the group's "way of life" that militates against heroism.<sup>15</sup>

While I am not so sure that we can never blame an individual for failing to be a hero (mightn't we blame our President or Congress members for so failing "when the times require it?"), it is important to note that the people as a whole are made more blameworthy when the "way of life" discourages the kind of heroism that is needed to combat the social ills. This, as noted above, is certainly the case in our society where the socialization of competition and concerns about losing one's place in the social structure discourage action towards meeting our responsibility to those less fortunate.

While competition may be a general form of the "way of life" which gives rise to these ills, in our society much more specificity is possible when it comes to the causes of social exclusion and poverty. Competition may be our "mode" of life, but it is the form this mode takes in the economic realm, capitalism, which is a more direct cause of our social ills. "Capitalism can be

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14. See HANNAH ARENDT, ON REVOLUTION 21-58 (1990).

15. Feinberg, *supra* note 1, 53, 73.

thought of as the heart of competitiveness in American society.<sup>16</sup> No doubt, there is much to be thankful for in capitalism. There are many benefits we enjoy in our society which probably would be impossible without it. I shall neither defend nor attack capitalism from its alternatives. However, there is much to decry in the way it operates on society and causes the stark social contrasts we see around us every day.

There are at least two basic areas in which we can locate the disadvantages of any economic system we wish to criticize: There are the unavoidable by-products which the system produces; and there are the necessary conditions upon which the system is based. Put simply: the side-effects and the preconditions. There may be significant crossover between these areas. Indeed the economic system may function by bolstering the very preconditions we recognize as disadvantageous. However, for our purposes it is helpful to separate these two in order to paint a more accurate picture of the ills of capitalism.

One of the central premises of our capitalist system is the condition of "scarcity." That is, capitalism claims to represent a solution to the problem of scarcity.<sup>17</sup> Capitalism is supposed to be the most efficient way of dealing with this condition. Indeed, this condition is often cited by those who wish to defend our economic system against the attacks by the adherents of other systems. However, what this term means is far from clear in our society which has such an abundance of wealth.

By "scarcity," most of us mean that goods are in short supply: there isn't enough of something to go around. While there often is no clear-cut understanding of what constitutes "enough," the simple fact is that there is more than sufficient food to sustain everyone on the planet. The same is true of land and renewable energy. The important question, then, is why the staples of life are so egregiously maldistributed — why, for example, the United

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16. KOHN, *supra* note 2, at 70.

17. See Lewis D. Solomon, *Local Currency: A Legal and Policy Analysis*, 5-WTR KAN. J.L. & PUB. POL'Y 59, 67 (1996).

The roots of our job dilemma are based in a production-focused society. In the past it seemed to make sense to think of economic production as the de facto goal of society; to think of an ever-increasing fraction of overall human activity being treated as commodities in the mainstream, formal economy; to assume that the individual's primary relationship to society is through a job; to have social thinking dominated by the concept of scarcity, competition, and money exchange.

States, with a little more than 5 percent of the world's population, uses something like 40 percent of the world's resources. What appears to be a problem of scarcity usually turns out, on closer inspection, to be a problem of distribution.<sup>18</sup>

The upshot of this realization is that a characteristic upon which the economic system is based is perverted in our society to justify the inequitable distribution of resources. How does this come about? First, and perhaps foremost, is the fact that the term "scarcity" does not mean the same thing to economists as it does to the rest of the population.<sup>19</sup>

Generally, when the term is used to bolster capitalism, economists are talking about either that in certain circumstances the choice of one product or commodity precludes the choice of another, or the presumption that, as a matter of human social nature, people will never be satisfied with the amount they have — no matter how much that is.<sup>20</sup> When we hear the word used in casual conversation, however, we usually think that the speaker is talking about a condition in which there are not enough resources to meet the needs of every individual. This latter condition certainly is no longer the case in the United States (if it ever was), and may not even be true of

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18. KOHN, *supra* note 2, at 72 (internal footnote omitted.)

19. See Blake D. Morant, *Contracts Limiting Liability: A Paradox with Tacit Solutions*, 69 TUL. L. REV. 715, 779 n. 202 (1994),

The terms "scarce" or "scarcity" connote different definitions among various individuals. Some scholars have defined the term scarcity as a condition whereby an item's supply is sufficiently limited so that there is not enough to satisfy all needs or desires. See DAVID W. BARNES & LYNN A. STOUT, *CASES AND MATERIALS ON LAW AND ECONOMICS* 4 (1992). While Judge Posner acknowledges a definition of "scarcity" in terms of limitation of supply, he also indicates that scarcity may be defined in terms of the perceived value of an item, i.e., willingness to pay for a particular item. See [RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 12, 57 (4th ed. 1992)]; see also Laurence H. Winer, *The Signal Cable Sends-Part I: Why Can't Cable Be More Like Broadcasting?*, 46 MD. L. REV. 212, 233 (1987) (identifying "scarcity" as "a perceived, inherent physical limitation" on the availability of a resource).

This state of affairs: when an important systemic term means one thing to the experts and another to the general population, is probably the root cause enabling such an easy perversion. That is, it becomes much easier to convince society as a whole of the value of our particular economic system when such claims are based upon a condition which means one thing to the public (a condition which in their definition does not hold), and another thing to those who are making the argument. In essence there is a rhetorical deception perpetrated against the citizens by those in whose interests the system is maintained.

20. See KOHN, *supra* note 2, at 73.

the world taken as whole.<sup>21</sup> One problem with the economic definitions is that the first condition (one which, when taken as a premise, no system will alleviate) may give rise to the second. That is, if we are in a situation where the choice of one commodity precludes the choice of another, people will always be faced with what is just beyond their reach, making satisfaction of all "needs" (natural and artificial) next to impossible. This point is made more clear by its application to the competitive system.

When we combine the competitive aspects of capitalism with the condition of scarcity (economists' first sense — the choice of one good precludes another), we end up with the familiar problem of the unequal playing field: The fact that choosing certain commodities will preclude the choice of others leads individuals to try to maximize their opportunities for choice. The more choices one has, the less likely one will find oneself in the position of having to choose between mutually exclusive commodities. In a competitive system, however, the only way of accomplishing this maximization of choice is essentially to take away the choices of another. Because certain circumstances will arise where the choice of one good will preclude the choice of another, and since we are in a competitive economic system, the drive to maximize one's own choices necessarily entails minimizing the choices of others. Because one choice may exclude another, and there are a limited number of those mutually exclusive choices ("scarcity"), the most effective way to maximize one's choices is to take away those of another. Yet the more choices one already has, the more power one has to maximize future choices; the fewer choices one starts with, the harder it is to avoid losing one's choices to others.

"Whoever has more resources is far more likely to win a contest, thus giving her even more resources for the next contest, and so on until the opponent is utterly vanquished or someone steps in to stop the competition."<sup>22</sup>

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21. This addresses natural needs. Certainly there are many needs which are created by our social structure which are not being met. Indeed, one valid way of characterizing my general criticism of our competitive society is that it creates needs which it does not have the power to meet. *See id.* Even as we identify and attempt to meet these new-found needs, others are created. This problem will be treated with more specificity herein.

22. KOHN, *supra* note 2, at 72.

One of the upshots of our particular brand of competitive capitalism is that it is not marked by fair competition. People do not start out on the same starting line; some start miles ahead of others. Yet, we still see ourselves as in competition with each member of society for "scarce" resources. As a result, we have strong structural disincentives from trying to rearrange our institutions so that individuals may at least start from similar points. Included here is the point made above: that we are unwilling to help those far below for fear that others, in closer proximity to us, will surpass us. Furthermore, this point helps to explain why it is so difficult for our system to arrive at a more equitable distribution, or for the winners of one generation to be the losers of another. Generally, those on the bottom in one generation will be on the bottom the next, at least without the intervention of an extraordinary amount of luck.<sup>23</sup> While it is true that certain segments of the population are able to better their condition through slow and steady improvements across generations, they are still doing so (for the most part) at the expense not of those above them, but of those below them. Hence: "the rich get richer and the poor get poorer."

This condition, in turn, necessitates limitless expansion of the economic system; another hallmark of our system: the drive for growth. As the gap widens a larger economy is needed in order to meet the needs (to the extent that they are being met at all) of those on the bottom (as well as the increasing demand of

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23. Some might bristle at the suggestion that it is only luck which separates the "haves" from the "have-nots," preferring to believe that with a little hard work and 'gumption,' anyone can become a millionaire. This belief is patently flawed. There are plenty of examples of individuals who make it big without a significant amount of intelligence or business acumen. While there is an even greater number of examples of people of intelligence well above the norm, and the appropriate applicative ability, who nevertheless languish in poverty simply because they never get the genuine opportunity to apply themselves to personal improvement. In fact, this "work ethic solution" is so counter-empirical that I would venture to claim that it is a prime example of radical self-deception in the face of what is perceived to be an intractable problem. As Curran somewhat derisively put this position:

Capitalism's generation of poverty motivates us. It inculcates life's hard lessons, sustains institutions, and supports principles. Thus, we believe that poverty can be avoided, that hard work and determination will always benefit the poor, and that wealth will reward them and poverty will discipline them. Poverty, we well know, can be defeated by every able individual in this, the world's richest, most democratic and open nation.

*Supra* note 7, at 1034. Just as Job's friends denied reality in claiming that only the evil are punished and the good are always rewarded, adherents to this false belief are denying reality in claiming essentially that everyone who deserves to be rich will be.

consumers — discussed shortly). However, the products of that expansion are still subject to competition. Therefore, the majority of the growth goes to those who are in the best position to “win” the competition for the products of expansion, the gap is widened, and even more growth is necessary. This set of conditions seems to indicate that the second sense of “scarcity” used by economists (that people will never be satisfied with what they have) is actually a result of competition, not a justification for it.

Capitalism’s driving force is the quest for profits; its alleged success at satisfying human needs is merely a fortuitous by-product. This goal requires the continuous — indeed, constantly expanding — consumption of goods, and these goods will be purchased only if they are desired. The advertising industry exists to create this desire, to produce a continual dissatisfaction with what we currently have and to tell us of the fulfillment that purchasing yet another product will bring. We must be “educated” as to the desirability of low-calorie TV dinners, cordless telephones, and this year’s model of video recorders.<sup>24</sup>

So growth is driven not only by the need to provide resources over which to compete, but also the competition itself is the cause of ever-increasing demand in order to perpetuate the system. Given these conditions, it is no wonder that those who are the biggest losers in the competition may also be the most disaffected.

Our ubiquitous advertising media serves to create similar levels of perceived need among the poor as well as the rich. That is, since the goal of the media is to create as much desire for the product as possible, and since no one is entirely insulated from its reach, the poor receive, for the most part, the same impact of advertising as do the rich. The poor obviously, however, cannot satisfy the artificial needs as well as the rich. Therefore, they are more likely to perceive a deficiency in their place in society and yet are in the worst position to rectify it. “A competitive economic system offers itself as the best way to deal with scarcity (here defined as the inability of consumers to get enough) while quietly *promoting* scarcity. The result is the perpetuation of the system and, not incidentally, the encouragement of intentional competition.”<sup>25</sup>

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24. KOHN, *supra* note 2, at 73-74.

25. *Id.* at 74 (emphasis in original).



A further problem exists in that capitalism is self-conscious enough of its effects to take advantage of these conditions. Rich and poor alike admit that the race isn't fair and that the advantaged are the ones with the choice and power to drive the economy. As a result, goods and services are aimed primarily at the advantaged. Services for the poor simply are not as profitable as they are for the rich; and why should they be? When one aims services (transportation, communication, cultural, commercial, etc.) at the rich, one services fewer individuals, each of whom can pay handsomely for the service. When one services the poor, one must serve a much greater number of individuals each of whom can barely pay a tiny fraction of what the rich would pay. That is, there is less overhead in providing services to the rich since one doesn't actually have to provide as much service. The more competitive the market is, the more this characteristic is felt. For example: As transportation was deregulated, the carriers offered fewer and fewer routes to poorer and less traveled rural areas; as banks compete for corporate large-sum deposits, they offer higher interest rates, for which they pay by increasing fees on small depositors.<sup>26</sup>

Furthermore, it is often noted that our capitalist economy requires a certain level of unemployment. This tends to be justified by the claim that in a perfectly competitive economy, the labor force is fluid so that it may both be the subject of competition among employers, and so that members may compete among themselves for the best jobs. Therefore, there will, at any given snapshot of the economy, always be a certain number of workers "in transition" or waiting for the best offer.<sup>27</sup> This, of course, raises serious difficulties. Even if these were the actual characteristics of unemployment, we should still question a system which depends upon people not developing ties to their place of livelihood, and which requires the lack of security of livelihood that comes from even fluid unemployment. Even if one is relatively sure of finding a new position in a month or two, we are seriously jeopardizing the values of family and sustenance when people are required to experience even these gaps in their livelihood. Second, these, as we well know, are not the actual characteristics of unemployment. It is alarming how long

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26. *Id.* at 76.

27. See generally, L. Kelso & M. Adler, *The Capitalist Manifesto*, (1958).

certain groups of people go unemployed in this country.<sup>28</sup> The labor force is not fluid and open to perfect competition. Rather, as technology increases, and the quality of education in poorer areas decreases from their already appalling levels, more and more people on the bottom rungs of the ladder are finding themselves “unemployable:” unqualified for anything but the most menial of positions, which themselves are in shorter supply due to automation. “These unemployed people lack the mobility to claim suburban jobs, and they lack the skills and education to enter the burgeoning new service occupations. Their schools and housing are deteriorating, and the slums may thus be expanding geographically.”<sup>29</sup>

Now this is not the fault of capitalism *per se* (without technology there would be no dearth of menial jobs — although the poor would still be performing the jobs few others want). But the fault of our capitalism, which fails to adapt to the changing world and to our abilities, makes certain jobs obsolete, and most others require a significant degree of specialized education.

These factors should be further evidence of the responsibility society has toward those who are not succeeding. Because most of these disadvantages are necessary conditions of our capitalist system (for example, required unemployment), our embracing of, and participation in, the capitalist economy must carry the responsibility to ameliorate the positions of those who are disadvantaged as a result of these necessary conditions. That is, when society chooses to pursue this course, we become responsible for its ill effects. Given that there are required conditions for capitalism which entail poverty, we in society are responsible for that poverty.

How do these conditions impact upon our responsibility to the less fortunate? For one, it makes it increasingly difficult to find the kind of heroism in leadership that may be necessary in order to effect full recognition of these responsibilities. As the competition becomes more fierce, and technology and globalization decentralize production, market competitors exert more and

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28. See Sonia Nazario, *Grim Picture Painted for State's Black Men Facing Grim Situation*, L.A. TIMES, Dec. 11, 1993, at A1.

29. Paul H. Brietzke, *Urban Development and Human Development*, 25 IND. L. REV. 741, 751 (1991) (footnote omitted.)

more pressure on politicians to refrain from regulation, or to embark upon any other limitation of competition.

Decentralization also has political consequences and none is more revealing than the recent use of "public entrepreneurship" to describe qualities that were formerly called political (or policy) leadership or, less flatteringly, machine politics. This change in nomenclature marks a resurgence in the influence that a 1920s-style business managerialism exerts on politics: the most pressing urban need is usually considered to be the establishment of a good "business climate" through the nominally supply-side policies that operate on the demand side by appealing to corporations in their capacity as consumers of public resources. Instead of winning re-election merely by licensing elaborate planning and redistribution schemes, municipal politicians feel an increased dependence; their bargaining and logrolling opportunities have been eroded by recent economic changes and changes in federal policies.<sup>30</sup>

This situation is already apparent in almost every city in the United States. The first sound bite municipal politicians mutter, mantra-like, in the morning is the need to improve the "business climate." There has been sustained growth for a significant period, the Dow's closing at a record high is barely newsworthy, U.S. businesses are now more competitive than perhaps ever before, and still our local politicians put business interests before those of their own constituents. This situation is fueled by cutbacks in Federal funding to municipalities which lead local politicians to conclude that the only viable source of funds is from an infusion of competitive capital.<sup>31</sup> What they fail to realize is that this capital is doing little to cure the urban social ills, which increase as attention is diverted away from them. Indeed, many local officials will consistently gamble with offers of special incentives to lure businesses. The money or potential revenue with which they gamble is the very resource which would be used to aid the impoverished.<sup>32</sup>

All of this makes it increasingly difficult to develop any serious movement to recognize the collective responsibilities we have to the poor. That is, if there is going to be a heroic voice in support of the recognition of such responsibilities, it is most

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30. *Id.* at 747 (footnote omitted).

31. *See id.*, at 749.

32. *See id.* at 749.

likely to come from outside the political arena, since the pressure on politicians to "toe the line of capitalism" is now even greater than before. However, if the voice comes from outside the political arena, it will have the added difficulties of locating a forum and audience because all ears are trained on the politicians and businesses. This is a problem of implementation and, as such, is beyond the scope of this paper. Suffice it to say that the heroic voice need not be unitary. Although it will probably begin with one individual or a small number of people, the difficulties it will have to overcome will necessitate its quick expansion and crescendo. The best way to get the rest of society to recognize its collective duty is to have enough voices making essentially the same complaint so that the advantaged can no longer hide their heads in the sand.

It is a legitimate question for this paper, however, to ask what it is that these voices should be calling for. I have expounded upon the responsibilities generated by, and the deleterious effects of, competition in general, and capitalism in particular. But what are the alternatives and what is the best way out of the conundrum in which our society finds itself? I cannot answer this question with any significant degree of policy specificity. I can, however, speculate as to the general facets of any socially responsible redux.

Perhaps of prime importance will be revamping a sense of individual uniqueness and worth. Individualism has not been the cause of our ills. Rather it has been the increasing sacrifices of our individual spheres to economic and social pressures which has contributed to the internalization of "intentional competition." While it may appear, with a casual glance at our society, there is a surplus of cacophonous calls for individual rights (at least this is the complaint of some right-leaning Congress members), there is such a loud call, and it is so conflicted, precisely because of the incursions of society (hence the misplaced call for individual responsibility among many politicians). That is, many of the rights which we feel are protected by government or Constitution in our society, are given up "by choice" when we go to earn a livelihood, or in order to get our needs met if we are impoverished. We have conditioned the exercise of our rights so that they are in opposition to the ways in which our needs are met by this society. Free speech rights are sacrificed at work; reproductive rights are sacrificed for welfare; dignity and integrity

are sacrificed for an education.<sup>33</sup>

The basis of any possible revitalization of society must begin with a revitalization of the individual. At first that might sound like an empty platitude. It cannot be necessary to revitalize the value of the individual — a fundamental tenet in our society. However, it is this value which is being lost in our society as it is presently constructed. To value the individual cannot simply mean to protect a limited sphere of rights against government incursion, while leaving these rights, and other central aspects of our personalities, open to the interference of and determination by non-governmental outside influences. To be an individual implies a certain uniqueness that these limited rights protections cannot capture. To be certain, these protected rights are exercised in somewhat different ways by different people. However, this range of choices in how to exercise one's rights is constantly shrinking on two sides. On the one side our options for exercising these rights are shrinking as a result of government's failure to prohibit other outside sources from placing limits on our range of choices. On the other side our options are limited by advertising, and other forces of market socialization which seek to convince us that a particular choice or set of choices is in our own best interest.

In turn, we increasingly see ourselves as little more than a product of society. Our self definition and self esteem are linked by competitive forces to what we believe others see in us. This competitive society, and its "intentional competition" lead us to define ourselves by our competitive ranking. We are not socially ranked as we would be in an aristocracy: nobility, gentry, etc. However, we do tend to see ourselves relatively, by how well we are doing in the competition. We must effect a shift in the locus of evaluation. In society, as it is presently constituted, we evaluate ourselves in comparison to others. "I am richer than X, but poorer than Y." We look at others using the values society teaches us and find our place in the social ranking. Instead we must move to a social structure whereby we set our own goals for ourselves based upon what we want to accomplish in life and upon a realistic estimation of our natural talents and abilities to reach those goals. Then we evaluate ourselves not in relation to

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33. See Charles A. Reich, *The Individual Sector*, 100 YALE L. J. 1409, 1417-23 (1991).

other individuals but by judging our own performance in the pursuit of our self-appointed goals.

Currently, our method of coming to conclusions about issues like personal worth and talent, for all of our lip service to individualism, is inter-individualistic. We make judgments across individuals, grouping them and ranking them. This is not individualism at all. Any sense of individualism we get from it becomes mere isolation upon examination. We react to the competition in which we find ourselves, building barriers and isolating ourselves while calling it individualism. It is not individualism, however, because we are still reacting to the presence, opinions, and evaluations of others. A truly individualistic method of evaluating people would be intra-individualistic, whereby people are judged against their own potentials and goals.

There are two further disadvantages of the current scheme, in comparing ourselves to others, which are related to those detailed above. We are deceived into thinking that our rung on the ladder is, essentially "who we are." We use the behavior and attitudes of others to ascertain what they think of us. Because we are used to comparing individuals, we think that comparisons made between ourselves and others made by third parties are going to be reliable. We shackle ourselves with the evaluations we see others making of us. Even though we are still in "the game," a certain futility develops whereby the competition becomes simply to stay in place and avoid falling, rather than to make any significant advances up the ladder. This self deception is compounded by our blindness to our "natural" talents and unique personal desires. This blindness stems from the need to conform to the personal definitions which society offers us among our limited range of choices. Whereas I might have the natural talent and the actual desire to become a philosopher, society (through the "intentional competition" of "the game," parental pressures, etc.) operates to exclude that option from my list of choices and conditions me into thinking that I would be best off as a lawyer. That is, I would make one life choice if I were educated and reared in a nurturing environment, emphasizing the uniqueness of each individual and the importance of determining for oneself one's talents. But in competitive society I make the other choice.

Rawls points out the extent to which self-esteem and the ability to determine one's own life plan, and to see that plan valued by others through positive feedback are linked.

We may define self-respect (or self-esteem) as having two aspects. First of all . . . it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions.<sup>34</sup>

Rawls places prime importance on the necessity of society to develop institutions which allowed individuals to determine their own plans of life, in accord with their natural talents, and to pursue those plans to the best of their abilities.<sup>35</sup> If we hope to be in the position to attack poverty and other social ills, we must engender this emphasis on unique characteristics by building it into our educational systems.

Kohn also realized the centrality of self-esteem.

As a concept, self-esteem is extremely useful for those trying to understand why people act as they do. As a reality, the importance of high self-esteem simply cannot be overstated. It might be thought of as the *sine qua non* of the healthy personality. It suggests a respect for and faith in ourselves that is not easily shaken, an abiding and deep-seated acceptance of our own worth. Ideally, self-esteem is not only high but unconditional; it does not depend on approval from others, and it does not crumble even when we do things that we later regret. It is a core, a foundation upon which life is constructed.<sup>36</sup>

Given this importance, it is a wonder we do not do more to build a robust sense of self-esteem in our educational system.

These considerations must inform our goals in education: to develop a system which will permit pupils to discover their natural talents, allow them to develop an individualized life plan, and aid them in discovering the best means of pursuing that plan. This, we hope, will engender a less neurotic, more confident populace who will be better able to reach a level of satisfaction on their own, without the need for constant competition,

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34. RAWLS, *supra* note 10, at 440.

35. See generally, *id.* 440-446.

36. KOHN, *supra* note 2, at 98-99.

or frequent intervention. Of course, the curriculum will not neglect the importance of basic skills, both logical and social. Indeed, it is necessary to enable students to make realistic estimations of their needs in the pursuit of their goals. But with self-esteem, a natural result of the security arising from a confidence in one's abilities and purposes, individuals will strive to meet their needs as a matter of course. There would be substantially less need to rely heavily on others, and to fulfill one's needs at the expense of others.

One likely by-product of this educational system is the cure for what capitalists diagnose as the problem with all other economic systems: laziness. Laziness arises from a lack of appreciation for the value of what one is doing. If one is assigned a task which is perceived to be of minuscule contribution to the goal of the group; and, furthermore, if one does not particularly enjoy that task, one will become lazy as a result of the boredom from performing a task in which one takes no interest. This is a familiar picture painted of Communism by laissez-faire capitalists. People are given tasks which contribute to the larger economy in very small ways, and are remunerated independently of performance. Because an individual slow-down, or a deficiency in the quality of the contribution of one individual will go unnoticed, everyone slacks off. The result is a stagnant economy which does not provide enough for the needs of all.<sup>37</sup> But with an educational system which encourages individual choice, and a social system which allows each individual to pursue his or her own, individual, unique life plan, people will not become lazy to the detriment of the economy. They will not become lazy because they will not become bored. People will not become bored because, by definition, they are doing something in which they are interested.

Of course, this idea is vulnerable to the criticism that it is too simplistically idealistic and doesn't consider the possible social costs of its institution. While I think that the social costs of refraining from pursuing such a system far outweigh any which may arise as a result of the system, there are a couple of questions which must be answered to give the idea the air of practicality.

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37. See generally KELSO, *supra* note 27.



It might be claimed that too many people will want to pursue similar life plans. This will then result in social collapse as many important jobs will fail to get done. With this there are a number of problems. Such a critic doesn't have a very charitable view of individual uniqueness to think that too many will want to do the same thing. As education encourages individualism and uniqueness, more and more differentiation will result, leading to sufficient distribution of the jobs that are socially necessary. Furthermore, the relative scarcity (lay sense) of individuals to fill certain key positions need not go ignored in the schools. There would be plenty of individuals for whom socially useful tasks are simply a means of permitting them to follow their true life-goals which may not be of any significant social utility. For most of them, if society provides a choice among socially desirable tasks which will be sufficiently remunerated and provide enough leisure time to pursue their true goals, they will be more than happy. Another far from fantastic possibility is that there would be plenty of people whose life plan centers around developing systems to make it easier for others to follow their plans. These engineers would take on the task of automating the least desirable and most necessary of functions as quickly as possible. This doesn't seem to be that far fetched when we look at how quickly more and more of the manufacturing and production is being accomplished automatically.

There may be the further qualm, that certain people may just wish to spend their time lazing about and watching television. I find this hard to support. Such a malaise is undoubtedly a characteristic of our present social system. Individuals are encouraged to become consummate consumers without necessarily getting any encouragement to contribute anything back to society. Furthermore, when there is no system to nurture natural talents and interests, stagnation is a natural result. A system of universal education which has as its goal to identify and foster the pursuit of unique life-goals and natural talents would not result in individuals who seek unproductive lives. Productivity itself will be measured in relation to the life-goals one sets for oneself. These goals are by definition ones which the individual desires to attain. Therefore, individuals will want to be productive in moving toward their life-goals.

Of course the biggest problem will be in moving from our competitive-pervasive system to the self-esteem system. While,

again, I will not detail exactly how this will be accomplished, it will undoubtedly be necessary to undertake some form of redistribution in order to enable each individual to pursue his or her plan. Hopefully, this will be a gradual process. The education to encourage individualization must come first so that people are less attached to familial advantages and will be more amenable to redistribution. Such a redistribution may sound draconian from our perspective, but if future generations have been raised so as to measure their personal worth by what they accomplish rather than how much they inherit, they will be less attached to unnecessarily large amounts of wealth. Furthermore, the redistribution will only be needed to the extent that it is necessary in order to provide everyone with the ability to pursue his or her life-plans.

We have seen that competition has some characteristic disadvantages which lead us to conclude that there is a collective as well as personal responsibility to those whom competition leaves behind. Furthermore, competition as it manifests itself in our capitalistic system has led to particular economic and social woes which capitalism, because of its very nature, is unable to combat. Therefore we have the responsibility to temper our competitive social institutions with other systems which correct for the disadvantages and inculcate a robust sense of individuality, not dependent upon relative social position. This is not to argue for the complete casting off of all of our present social edifices and economic systems. Rather, it is to note the importance of building social systems which will generate a recognition of our responsibilities toward each other. If we are secure in our own selves with who we are and where we are going, we will be much more likely to desire that security in others. This, in turn, will give rise to a sense of social responsibility which does not infringe upon anyone's individuality, and yet will ensure that every individual's needs are met.