

Political Legitimacy and the Public Agenda

Elections serve two useful purposes: in deciding who shall govern, they affirm political legitimacy and they define national priorities. With the recent election now behind us, it is reasonable, therefore, to examine the public agenda and what it holds for the future.

If the public agenda embodies a coherent value system, it serves as a mirror for political legitimacy. Political legitimacy is essential to any system of government. While there are various ways that it may be achieved, democratic systems have the virtue of a transparent consent of the governed¹. Though shaping an electoral majority is essential to achieving political legitimacy in a democratic society, how the national agenda is defined is equally important. In fact, unless a leader can link election priorities to a society's constitutional norms and historical values, then popularity alone is an insufficient basis to govern². Our purpose here is thus to examine the question of political legitimacy not in terms of political leaders, electoral majorities, or even electoral strategies, but rather in terms of the underlying issues that surround the shape and execution of national priorities. In short, we review the public agenda as an instrument of political legitimacy.

The Social Contract Revisited

Political parties serve to both elect candidates and set national priorities. These priorities represent a renewable social contract³. A basic requirement of a coherent social contract is that there are clear distinctions between the economic and social functions of government as well as clear divisions between the role of government and the role of private sector institutions⁴. In practice, however, these distinctions are rarely made clear, with the result that electoral contests turn as much on the qualities of a leader as on the values that he or she represents.

To see how vague the formulation of a social contract truly is, one need only undertake a casual reading of both the Republican and Democratic 2004 election platform statements⁵. Platform declarations typically affirm the values of freedom, decency, virtue, justice, and the future and seek to wrap them in a series of concrete actions. Yet political platforms usually fail to define clearly how these goals are to be met or with what means

¹ We ignore here voter participation rates and the choice of voting systems, important though those questions are to a broader definition of political legitimacy. Another way of framing the question is that if an election meets a test of fairness, however defined, it also satisfies the requirement of political legitimacy.

² There are increasing signs of the importance of political legitimacy beyond election results. See, for example, Robert W. Tucker and David C. Hendrickson, "The Sources of American Legitimacy", *Foreign Affairs*, 83:6 (November/December 2004), pp. 18-32.

³ Jean-Jacques Rousseau. *On the Social Contract*. (New York: Penguin Classics, 1972), translated by G.D. Cole (1913). Rousseau's original essay was published in 1762 and asserted the consent of the governed as the means to political legitimacy, in contrast to the divine right of kings that was still strongly defended in France at the time.

⁴ One way to keep the distinction between the economic and social functions of government is to consider an economic function as one that affects the level, composition, and/or the distribution of goods and services, while a strict definition of the social functions of government is that it has no immediate effects on any of these economic measures.

⁵ <http://www.gop.com/media/2004platform.pdf> and <http://www.democrats.org/platform/>

and over what time horizon. As a result, even though an election can produce a statement of national priorities, political parties and their leaders often fail to resolve the question of what roles should be played by government and what roles should be played by private institutions. And it is not for this reason alone that so many elections turn more on the perceived leadership qualities of candidates instead of the platform that they are pledged to implement.

There is a reason why we find such a gap between political leaders and the public agenda. It is the complexity of public policy, and which must turn inevitably on contingent decisions that elections can rarely frame in a coherent manner⁶. Complexity reflects risk and uncertainty. How individuals perceive risk, and whether government actions increase or decrease its level, is the ultimate reason why the public agenda is so difficult to frame. It also is a reason why one should think about those public functions in terms of whether government can better manage the associated risks or whether decentralized market institutions are better equipped to do. We will pursue this theme once we have framed the social and economic functions of government.

On the Social Functions of Government

As we have noted, a coherent social contract requires clear distinctions between the economic and social functions of government. Consider first the social functions of government. What do we mean by the social functions of government and are they necessary to political legitimacy? By social function, we mean government decisions that define individual rights and responsibilities under the constitution. Examples of rights include freedom of the press, ownership of firearms, and privacy, among others. In turn, responsibilities extend to the administration of justice (including, but not limited to the question of capital punishment), to measures to end social discrimination based on race, ethnicity, gender, and sexual preference, and to other modes of social behavior (as in the role of religion in public education as symbolized by the role of school prayer, and in terms of women's rights and responsibilities involving abortion). Because these issues do not have an immediate economic equivalent, they sometimes are classified as part of "culture wars"⁷. The fact that they have come to be so categorized also speaks to the often absolutist positions put forth on these issues, on the corresponding expectations regarding their interpretation under the constitution, and the subsequent adoption of various types of supporting legislation.

Table 1 provides an indicative profile of rights and responsibilities under the constitution as defined through conservative and liberal lenses. These issues are far from resolved, depending on not just the political balance in an election, but also the enduring

⁶ There is an analogy here to economic reasoning. Economists generally posit maximizing behavior by consumers and producers. In a world of perfect information, tractable solutions can be readily derived. The problem is what to do in the presence of imperfect information. In some instances, it may be sufficient to engage in "satisficing" behavior, as the late Nobel economist Herbert Simon once suggested, but ultimately the calculus turns on the costs of information relative to the gains in clarity of alternative choices.

⁷ As an example, see Albert R. Hunt, "The Culture Wars Still Rage", *The Wall Street Journal*, December 16, 2004, p. A17

sentiments of voters. The relevant question is who can lay greater claim to a consistent interpretation to the constitution. Since the language of the constitution is at times vague and inconsistent, this sets the battleground for political parties to make this determination

through electoral contests. Who frames the issues more clearly thus lays greater claim to political legitimacy, even if the original language may be inconsistent with accepted values over time.

Table 1
Constitutional Rights and Responsibilities
Contested Terrain and the Social Functions of Government

Conservative	Liberal	Conservative	Liberal
Freedom of the Press		Freedom of Religion	
Although protections are needed against arbitrary censorship by government, these rights may be limited by national security considerations.	Protections are needed against arbitrary censorship by government, even in periods of national security crises.	Short of establishing state religion, allow religious affiliation to be affirmed through school prayer and in terms of government funding for faith-based initiatives. Conservatives also have supported charter schools that are based on explicit religious teaching.	Draw clear boundaries between religion and the constitution, including restrictions on school prayer and in avoiding any use of public funding for explicitly religious organizations. Liberals have generally opposed religious-based charter schools on the principle of separation of church and state.
Discrimination		Right to Privacy	
a. Racial. Republicans led the way to end slavery through Lincoln's leadership in the Civil War. Since then, conservatives have upheld laws against discrimination, but have opposed the use of affirmative action and school busing to achieve racial desegregation.	a. Racial. Democrats were generally in favor of slavery during the Civil War. Since then, they shifted to a vigorous effort to end racial discrimination, notably through the 1954 Brown v. Board of Education school desegregation case, and the Civil Rights Acts of 1964 and 1965. Liberals have generally supported affirmative action and until recently, the use of busing to achieve school desegregation.	a. Based on the fourth amendment, uphold the right to privacy and against unreasonable searches, with due allowances for threats to national security, as framed in the Patriot Act, and the RICO act.	a. Guarantees to privacy under the fourth amendment should be strengthened. Opposition to household searches without warrants should be upheld by the courts, and limits to such searches as authorized by the Patriot Act should be set through judicial review.
b. Sexual. Conservatives have opposed sexual discrimination, but have upheld laws and practices that support traditional women's roles as parent and homemaker. This included opposition to the 19th amendment that extended voting rights to women.	b. Sexual. Liberals supported women's right to vote, as approved by the 18th amendment, and have supported through affirmative action efforts to expand the role of women in government and business. This included early support for the 19th amendment that gave women voting rights under the constitution.	b. The right to privacy does not extend to taking the life of an unborn child, as defined in the 1973 Roe v. Wade decision. Not only late term, but all abortion should be outlawed.	b. Roe v. Wade affirms the freedom of choice by a woman to terminate a pregnancy and should not be restricted.
c. Gender. Conservatives have generally opposed efforts to broaden civil rights protections for homosexual unions. This includes efforts to endorse a constitutional amendment defining marriage as a union between a man and a woman, and to deny social protections to other social unions.	c. Gender. Liberals have generally supported efforts to broaden civil rights protections for homosexual unions. This includes efforts to oppose any constitutional amendment that would define the state of marriage. Some would extend identical rights to homosexual unions as those defined by traditional marriage statutes.	Right to Bear Arms	
d. Age. Conservatives generally did not favor extension of voting rights to those 18 years of age, but have since embraced the 26th amendment. Conservatives also have opposed restrictions involving mandatory early retirement and related forms of discrimination against elderly persons.	d. Age. Liberals favored extension of voting rights as adopted by the 26th amendment. While some initially favored mandatory retirement as a means of generating employment, they have since shifted this position in support of unlimited rights to work.	As defined in the Second Amendment, allow citizens unrestricted access to firearms, with due allowance for gun registration. Allow assault weapons to be owned by citizens. Conservatives argue that the right to bear arms also decreases crime.	While acknowledging the right to bear arms, impose restrictions on the right to carry weapons where there is clear evidence of criminal consequences. Liberals argue that the right to bear arms increases criminal violence, especially assault weapons
		Capital Punishment	
		Upholding Supreme Court decision declaring that capital punishment is not cruel and unusual. Precedents are based on the fifth, sixth, and eighth amendments.	Critical of Supreme Court decision regarding capital punishment based on the risk of error in evidence used to produce convictions and the impossibility of reversal for error.

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Interpreting the constitution to frame standards of public morality is evident in every national election. Yet in some instances, the results have been inconsistent over time, while in others, largely flawed. The inconsistency arises in terms of whether the constitution serves as an instrument to expand individual rights or to define individual responsibilities. Liberals generally look to the constitution to expand individual rights while conservatives look to the constitution to expand individual responsibilities. Several examples serve to illustrate the point.

The first of these is the legacy of slavery and social discrimination. Even though the Declaration of Independence asserted the right to freedom for all men, section 2 of article one of the constitution made reference to the apportionment of voting rights to the states in recognition of the existence of slavery. The Civil War of 1861-65 put constitutional slavery to the test. The Union victory resulted in the abolition of slavery through the thirteenth amendment, and the extension of voting rights to African-Americans through the fifteenth amendment, it took over a century to translate these constitutional guarantees into legislative reality, notably through the Civil Rights Acts of 1964 and 1965. And, although these laws reduced racial discrimination in voting, housing, and

employment, they did not eliminate it. The underlying question is to what extent do recent legislative standards, as in affirmative action, require further strengthening, or should they be abolished because they have become counter-productive⁸.

Another area of controversy over social discrimination is voting rights. As we have noted, civil rights legislation in the 1960s sought to extend voting rights to minorities, particularly in the South, where Blacks had long been unable to vote because of such restrictions as poll taxes and other measures. Yet the struggle for these rights, though traceable to the 13th, and 15th amendments, took on greater force with the extension of voting rights to women in the 19th amendment, and which was subsequently extended to citizens effective at age 18 by the 26th amendment.

Defining constitutional rights also extends to other points of controversy, notably the right to privacy. One flashpoint issue is abortion. Long outlawed in many states, advocates of abortion rights pointed to high rates of child and maternal mortality. With the Supreme Court 1973 decision *Roe v. Wade*, which guaranteed a woman's right to an abortion, abortion rates rose, even as infant and maternal mortality rates fell. However, the legalization of abortion set off a storm of opposition among conservatives who saw this as nothing less than a form of murder. While some change has occurred with the adoption of the partial birth, or late term abortion, legislation, for conservatives, nothing less than a wholesale overturn of *Roe v. Wade* would meet the test of decency, and the battle is joined with each election, much as it was in 2004.

Another issue is school prayer and the role of religion in public life. Liberals have advocated that school prayers, which have been largely Christian, are inconsistent with the diversity of American society and of the constitutional separation of church and state. Conservatives contend that society is facing moral bankruptcy and only an assertion of religious belief in public life can affirm the decency that citizens seek to realize. Among conservatives, this trend has become more pronounced in recent years, starting with Jimmy Carter's evangelical conversion, George H.W. Bush's 1000 points of light, and more pointedly in recent years with George W. Bush's "faith-based" initiatives. Under George W. Bush, government actively seeks out religious-based institutions that are engaged in constructive social work and seeks to provide funding for their operations rather than rely on traditional public social welfare programs. This appeals to the conservative vision of affirming public morality through a connection of religion in public life. Liberals find this a dangerous trend that contradicts the separation of church and state.

From the flawed category of constitutional provisions, prohibition offers some sobering lessons. Enshrined in the 18th amendment in 1919, and revoked by the 21st amendment in 1933, prohibition reflected a fundamentalist belief that American society was being degraded by excessive consumption of alcohol. When the 18th amendment was adopted,

⁸ John McWhorter, in *Losing the Race* (New York: The Free Press, 2000), argues that affirmative action has de-legitimized the social integrity of Black Americans and that alternative means must be sought to achievement in society. This position has been echoed a May 2004 address to the NAACP by comedian Bill Cosby. See: <http://www.americanrhetoric.com/speeches/billcosbypoundcakespeech.htm>

prohibition spawned organized crime and made more than a few bootleg traffickers immensely wealthy. Yet the adoption and subsequent repeal by constitutional amendments on the consumption of alcohol conferred few lessons on later struggles involving other issues.

One of these is the “war” on drugs. Begun under the Nixon administration, the war on drugs has sought to interdict supply while promoting abstinence and education on drug abuse. Few would deny that drug abuse is a problem, but because the prohibition amendment failed, successive administrations, both Democrat and Republican, have waged campaigns against drug abuse in one form or another.

Does Political Legitimacy Depend on Constitutional Rights?

Our brief review of the political culture wars over constitutional rights raises the basic question of whether political legitimacy depends on their resolution? The short answer is “yes”, but within flexible limits that political debate and judicial interpretation must inevitably address. Here is a short test on the constitutional divide: Does any proposed legislative action and/or constitutional amendment expand the rights of participation to those otherwise denied either by previous constitutional amendments, by previous legislative and/or executive decisions? If it does not do so, what is the constitutional basis for such restrictions, i.e., how are citizen rights and responsibilities otherwise framed and under what criteria?

What are the alternatives to relying on government to define such social functions? Ironically, conservatives traditionally have not relied on government to define moral standards. They have looked elsewhere, be that in terms of organized religion, the family as a unit of social life, or social and business organizations. It has only been with the expansion of government in society that conservatives have rethought this strategy, and have sought to use government as fulfilling socially conservative functions. For liberals, the opposite holds true. Liberals have found private sector institutions but imperfect guides to a just society. They point out that it took not just a civil war, but several constitutional amendments and the use of government to reduce discrimination against African-Americans and other minorities. And it was not just in terms of civil rights, but also that social practices came close to abrogating or limiting individual rights, be they those for women to vote or to choose whether to have a child or not, but also in the untoward effects of unlimited access to guns by individual citizens. Such actions stand in contradistinction to actions designed to affect economic behavior, as in decisions affecting consumption, saving, investment, inflation, unemployment, growth, and trade.

In the strictest sense, a social function is one that has no immediate economic consequence, where the economic functions that we will discuss suggest just the opposite. In practice, it is not easy to make this distinction, and given sufficient time, much of what is cast as a social function of government does produce some measureable economic consequence.

One way of asserting political legitimacy is that the structure of government and its representatives reflect the larger values of society. And while society may like to think of

itself as the embodiment of decency, virtue, and justice, government leaders rarely display these qualities any better than those who elect them. This said, one basic question is whether government, however flawed in its expressions of social virtue, should adopt policies that perform a social function. But more to the point, our concern here is in the context in which government seeks to impart a social function by defining rules that have a bearing on the moral conduct of individuals and families

Pundits often classify the social functions of government as form of culture war. Liberals generally see government as enhancing the rights of individuals, and thus affording an expansion of individual freedom. They base this claim not just in matters such as first amendment rights involving speech and assembly. The claim also extends to matters affecting the role of religion, and in rights to

Conservatives have often railed against the social functions of government. They contend that an expanding welfare state undermines responsibility at the individual and family level. In contrast, liberals argue that a welfare state is not the cause but the result of social fragmentation, and that it serves to restore social cohesion. In staking out these positions, neither conservatives nor liberals succeed in making a clear distinction between the economic and social functions of government. Failing to make this distinction makes it difficult to make informed judgments on issues, with the results that elections turn more often than not on personalities, and presumed defects in the moral integrity of candidates rather than on the more difficult questions of what the proper functions of government should be in both the economic and social spheres.

Political parties periodically come to recognize the dangers of mixing the economic and social functions of government. As they do so, it usually produces a redefinition of the public agenda. We may now be looking at such a watershed, if for no other reason than the social functions of government have become one of the most partisan divides in recent electoral contests. However, no one should expect that elections force a fundamental reshaping of the functions of government beyond some particular event. It is for this reason that voters express the contradictory statements that politics is a noble profession while railing against the perpetual immorality of those who are engaged in its practice. This is not as it should be. Only if the body politic finds a way to separate the economic and social functions of government are we likely to move beyond the deep divisions that are now before us.

The Public Agenda

In the United States, recent elections have turned largely on five basic themes. We examine them here in the following order: 1. Economic policy and the role of government; 2. International trade and global interdependence; 3. Multilateralism versus unilateralism in the conduct of foreign policy; 4. Culture wars and the role of religion in public life; 5. Campaign finance and political accountability. While this list is far from exhaustive, and none is mutually exclusive, all five address much of the content of recent national elections.

On economic policy and the role of government, we have a paradox. It used to be that

Democrats were associated with deficit spending, a tradition that dates back to the New Deal of FDR, the New Frontier of JFK, and the New Society of LBJ. Such spending was used largely in support of a redistributive economic agenda, and pro-growth macroeconomic stabilization. However, from the administrations of Ronald Reagan and now George W. Bush, this has all changed. Republicans now willingly embrace deficit spending, even if many insist that in the end, the goal is a reduction in the role of government⁹. This new approach has come to be known as big government conservatism. It marks a significant departure from old conservative small-government Republicans.

Big government conservatism is a masterful strategy. It avoids some of the basic issues of economic policy and the role of government as neither Republicans nor Democrats currently are debating what is the time frame in which an optimal size of government is to be determined, let alone what that optimal size should be¹⁰. What is clear is that big government conservatism serves as a counterpoint to a shift in the Democratic Party from the legacy of New Deal liberalism to a more modest role in government.

When Bill Clinton was elected in 1992, he campaigned for a social contract that came to be known as New Democrat, or what we will call market liberalism. New Democrat liberalism meant a recognition that there were limits to what government intervention could accomplish to reduce poverty and to guarantee a social safety net. It also meant that sustainable measures to achieve economic growth must of necessity involve an increasing role of the private sector and that government cannot run perpetual deficits. All of these themes were central to traditional small-government Republicans, and they were essential to establishing governing coalitions with a Republican majority Congress in each of Clinton's two administrations. Indeed, much of Newt Gingrich's Republican Contract with America embodies many of the directions that the Clinton administration pursued during the 1990s¹¹.

How did the New Democratic vision work? Co-opting Republicans in Congress, Clinton presided over the first major overhaul in social welfare programs since the New Deal of the 1930s. He also embraced a downsizing of government, particularly in military spending following the collapse of the Soviet Union¹². Third, he sought to contain the

⁹ It is instructive to note that most state and local governments have constitutions that require balanced budgets, with any shortfalls to be justified as capital expenditures subject to approval through public electoral referenda. The notion of capital budgeting, in which recurrent expenditures are to be financed on a pay as you go basis and in which capital budgeting can be financed through borrowing, is something that has never entered the grammar of federal government rules. The late Robert Eisner, of Northwestern University, argued long for using capital budgeting rules to determine federal government spending, something that since his passing has not yet returned to public discourse, even though the issue is as pertinent today as it was when he was one of its most forceful advocates.

¹⁰ Risk, and perceptions of risk, is one way of rethinking this issue, but we will keep this somewhat aside in the present context.

¹¹ <http://house.gov/house/Contract/CONTRACT.html>

¹² The "peace dividend" that surrounded the collapse of the Soviet Union had bipartisan support at the time, as both Republicans and Democrats engaged in a selective reduction in defense spending, including future Vice-President Dick Cheney, though now thought of as an ardent pro-defense buildup neoconservative.

expansion of medical expenses through managed health care, in an effort to bring market incentives into the choice of health care decisions. And fourth, he offered a vision of political legitimacy based on the notion that if deficit spending became necessary, it should be adopted within a clear terminal horizon, and with the notion that in times of prosperity, government should run a surplus to offset the deficits in economic recessions.¹³ While the managed health care proposal failed in its ambitions, success did come in other areas, not the least of which was the emergence of budget surpluses as a sign of fiscal responsibility.

The strategy of fiscal responsibility worked well for the boom years of the 1990s. And, even though the economy was slowing down by 2000, Clinton was able to leave his otherwise scandal-ridden administration with an unprecedented projection of a multi-trillion budget surplus. At a time today when the fear is of unbridled government deficits, Clinton presided over an era of good feeling in which one had the luxury of deciding how fast to pay down the public debt.

Although fiscal responsibility should have been an issue with which New Democrats could define the future, it was only weakly framed in the election of 2004. Fiscal responsibility was thus largely ignored with consequences that are only now beginning to show up in the economic and political landscape, not the least of which is the fall in the international value of the dollar.¹⁴

What upset the fiscal responsibility agenda was not just the narrow election of 2000. It was also the events of 9/11, and the re-emergence of the politics of fear. Fear enabled George W. Bush to proceed with a campaign commitment to massive tax cuts to offset a recession, but also to expand public sector spending, especially on the military as terrorism replaced the old Cold War agenda. And Bush did so in ways that not only satisfied traditional conservative impulses, as in an expanded budget for national defense, but also an acceleration of “faith-based” social initiatives that gave emphasis to a greater role of religion in public life. The Patriot Act promised the same level of protection to domestic security.

¹³ This is an overlooked prescription put forth in John Maynard Keynes’ 1936 treatise, *The Economics of Employment, Interest, and Money*. The larger lesson of Keynes was the necessity of discretionary government deficit spending in face of an economic depression, and it is this prescription that has largely been associated, rightly or wrongly, with Keynesian economics

¹⁴ Since 2002, the dollar has gone from €1=\$.85 to €1=\$1.30, with forecasts predicting €1=\$1.50 by the summer of 2005. The decline in the dollar reflects the simple fact that foreign central banks and individual investors have become increasingly skeptical of the health of the U.S. economy as it confronts nearly unprecedented twin budget and trade deficits. Nowhere has this become clearer than by the relative silence by the U.S. Treasury Department, and by statements by Federal Reserve Chair Alan Greenspan that the dollar is likely to fall for some time to come as long as both the budget and trade deficits persist. In a worst case scenario, the dollar is abandoned for the euro and the yen as the world’s principle reserve currency, in which case the U.S. will no longer be able to run the large current account deficits that it has done since the late 1960s. One question here is whether George Soros is shorting the dollar against the euro, much as he had so successfully against the British pound in the early 1990s. Soros has been well known for his opposition to US international policy, as expressed in his book, *The Bubble of American Supremacy*, (New York: Perseus Books), and which first appeared as an essay in the December 2003 issue of *The Atlantic Monthly*.

Despite the politics of fear, Bush co-opted Democrats by embracing two of their long-standing goals, namely, federal funding for prescription drug benefits and for a substantial expansion of spending for education, as embodied in the No Child Left Behind Act. In this sense, Bush pre-empted the old Democratic tradition of social spending but gave it a conservative twist. In the process, Bush departed from fiscally conservative Republicans in establishing what has come to be known as big government conservatism.

Big government conservatism has driven a stake into the New Democratic vision. It represents a distorted mirror of old Democratic liberalism, and illustrates how confusing the political landscape has become in terms of political affiliations. More to the point, it also has undermined the Democratic claim to political legitimacy through fiscal responsibility. In contrast, Bush claims political legitimacy not just in the electoral majority of the 2004 election. He also does so with the assertion that he is defending the country against a major international terrorist threat¹⁵. Under those circumstances, deficit spending may be necessary, skewed though the reality of that threat has come to be seen¹⁶. In short, the politics of fear trump the politics of compassion, with “passionate conservatism” cast over a scattered Democratic consensus¹⁷.

What does the debate over fiscal responsibility and political legitimacy have to do with the future? The short answer is “everything”. Democrats are not going to be able to go back to the traditional welfare state model of FDR in the reconstruction of a public agenda. They are going to have to pick up the pieces from the fiscal responsibility agenda of Bill Clinton and transform that position into a positive vision of the future, especially among the more conservative red states in the 2004 election. Since fiscal responsibility is an issue on which many Republican fiscal conservatives and New Democrats can agree, the question is how to reframe the role of the public sector¹⁸.

¹⁵ Making the 2001 tax cuts permanent also undermines the notion of being in a war against terrorism. At other times, even though government ran deficits, tax rates rarely fell, as citizens were called on to make a fiscal sacrifice above and beyond those that were giving their lives on the battlefield.

¹⁶ As the debate over the role of intelligence in deciding whether it was legitimate to extend the war against Al Qaeda to Iraq unfolded, in 2003-2004 it has become increasingly clear that Saddam Hussein did not have sufficient weapons of mass destruction, or significant support of Al Qaeda to justify a U.S. invasion. In the fearful climate of 2001-2002, few in Congress were prepared to challenge the intelligence that was being gathered, which today has come to be seen are largely flawed. Most would agree that Saddam Hussein was a cruel and despotic dictator who had done terrible things to his own population, to the Iranians in the war of 1980-85, and in terms of his invasion of Kuwait in 1990. These were sufficient grounds to consider a basis for his removal, but it turns out that his support of international terrorism could not be counted among them.

¹⁷ John Kerry’s economic agenda was that we should finance a reduction in taxes for middle income Americans with a restoration in tax rates on upper income Americans echoed traditional wars of redistribution, an issue that did not sell well in the face of perceived terrorist threats to security. It also reflected the fact that many no longer considered government to be a principal instrument for determining questions of economic justice, and that something other than the traditional “social safety net” would have to be defined in response to whether markets are fair or not.

¹⁸ As an example, see Peter G. Peterson, *Running on Empty*. (New York: Farrar, Straus and Giroux 2004), in which he argues that health care spending and social security entitlements are threatening to bankrupt the

Separating the Economic and Social Functions of the Public Sector

One way of framing the public sector role is to decide what are the priority areas in which public sector spending is essential, make a clear distinction between the economic and social functions, and at the same time, define under what circumstances deficit spending is legitimate.

Both liberals and conservative seek to infuse public sector intervention with a moral agenda. They do so not generally in terms of the economic functions of the public sector but in terms of its social function. One might ask why should government embody a social agenda, especially when it becomes defined in terms of abortion rights, the institution of marriage, and the role of religion, among others. These questions have largely been cast as “culture wars” in which partisan divisions run deep, with each side claiming absolute moral authority of its position on these issues. This was not always the case. In fact, if there is one way to reconstruct political legitimacy across the spectrum, it is going to have to find a way to separate the social and economic functions of the public sector. The question is how can this be done?

Justification for public sector intervention turns largely on what economists traditionally characterize as “market failure”, i.e., transactions where markets fail to deliver both efficient market solutions, let alone serve as a measure of distributive justice¹⁹.

Market failure can generate both positive and negative consequences. In both instances, it arises when there are unaccounted effects on third parties of a transaction, buyers and sellers being the first two parties, and everyone else being a third party. On the negative side one can cite the presence of environmental pollution and global warming as examples of where markets for energy fail to include the social costs of production and consumption. Hence, the rationale for public sector intervention to adjust the price of energy to reflect these external costs. While the laws of thermodynamics preclude the elimination of these negative effects, it does suggest that either regulation or taxation of these externalities is an economically justifiable response. Yet the willingness of a society to embrace such standards, be they in terms of higher vehicle fuel efficiency standards, or in taxes on energy consumption, are not likely to be well received in an economy where gas guzzling SUV’s have become a badge of success.

Other countries, notably most of those in Western Europe, generally tax energy at rates far greater than those in the U.S. They do so partly because these countries are far less self-sufficient in energy, but also because they recognize that higher energy intensity

U.S. government and that the time to address this issue is now rather than when the current generation of baby boomers moves into retirement.

¹⁹ In 1971 Lester Thurow argued that the distribution of income is a pure public good, and thus offered public sector intervention on income distribution as a way to respond to a form of market failure. The argument did not gain hold, largely because it was not linked to a demonstrable set of consequences, such as the effects on the level of per capita income from different levels of inequality in its distribution. See, “The Income Distribution as a Pure Public Good”, *Quarterly Journal of Economics* 85:2 (May), pp. 327-36.

from cheap energy pricing creates greater environmental pollution. Logic suggests that the U.S. should do likewise, either through direct energy taxes, but also through adoption of some version of the 1997 Kyoto Accords on global warming.

And what is the record on environmental conservation? The U.S. Senate refused to ratify the 1997 Kyoto Accords during the Clinton administration and the Bush administration has flat out rejected their adoption while promoting accelerated drilling in natural wildlife preserves to reduce growing U.S. dependence on imported energy. This strategy, which is a replay of the Nixon administration energy independence policy of the early 1970s, may produce some additional discoveries, but it does not account for the underlying problem of environmental pollution and the attendant risks of global warming that accelerated consumption of hydrocarbons may create²⁰. How, then to address such negative effects of energy markets?

One approach is to bring back into focus the work of the Intergovernmental Panel on Climate Change²¹. The purpose of this panel is to sort out science from fiction as to whether recent evidence on global warming is a consequence of industrial policy or is simply part of a larger pattern of cyclical climate change, and once determined, to decide what should be done. To the extent that global warming is accelerated by energy consumption, the question then is to calibrate the effects of such change on standards of living. Apart from effects on biodiversity and regional patterns of weather, the key question is whether living standards will rise, fall, or remain unaffected by global warming.

Thus far, little attention has been given to measuring the economic consequences of global warming. It is one that needs to be addressed within the larger public agenda, and it requires that one translate the findings of research into terms that ordinary citizens can readily understand and to which they can adopt rational responses²². That alone would be a higher level of discussion than a simple declaration of energy independence through greater drilling in natural wildlife reserves. If on the basis of scientific evidence citizens perceive that their living standards will be lower as a result of global warming, then the willingness to embrace more rigorous standards on environmental pollution represents

²⁰ Even as the Watergate scandal of 1972 unfolded, Richard Nixon faced an OPEC oil embargo from the October war of 1973 and in response to which chose to embrace a policy of energy independence. It culminated with the adoption of the Energy Reorganization Act of October 11, 1974 by interim President Gerald Ford, and which evolved further with the creation of the Energy Department in 1977.

²¹ The Intergovernmental Panel on Climate Change is a collaborative project established by the World Meteorological Organization and the United Nations Environmental Program that began in 1988. Further information is available at <http://www.ipcc.ch/>

²² One might add that Al Gore's commitment to environmental quality lost some credibility with statements such as one suggesting the banning of the internal combustion engine: "When we seek to artificially enhance our capacity to acquire what we need from the earth, we do so at the direct expense of the earth's ability to provide naturally what we are seeking. We frequently ignore the impact of our technological alchemy on natural processes. When we manufacture millions of internal combustion engines and automate the conversion of oxygen to CO₂, we interfere with the earth's ability to cleanse itself of the impurities that are normally removed from the atmosphere" from *Earth in the Balance*, Penguin Books, 1993, p. 207

one step toward a positive vision of the future. The challenge is to engage that process in an objective and meaningful fashion, and one that will not go down the path of partisan ideological battles rather than through scientific inquiry.

On the positive side, the issue is to decide how much support for education and health is reasonable to provide, and how should such support be financed. On education, it is clear that debates over public support for education must turn away from questions of distributive justice, just as it is equally clear that those debates must also not be driven to a stalemate by the question of sectarian education. Historically, the United States has relied traditionally on a decentralized approach to education, leaving to the states and local governments most of the responsibility for its provision. This is as it should be. Yet in adopting the No Child Left Behind act, both Republicans and Democrats have handed an increasing degree of control to the Federal government in deciding what schools will succeed and which will not.

It is not a far leap to imagine a centralized model of education, such as exists in France, in which one imagines just what curriculum subject will be taught at what hour, all in the name of no child being left behind. The risk, then, of an expanded level of public support for education is that it increases the bureaucratization of public life and makes education subject to periodic waves of “reform” of some fad-driven individuals, while local teachers and administrators risk loss of funds if they do not or can not comply. What then, should be the public sector role, especially by the federal government, in determining the right level of support for education?

One principle stands clear, namely, outcomes driven standards and the effects of these outcomes on other members of society. In this respect, the no child left behind initiative is a plus in that it seeks to address the question of student failure. What is missing in all of this is the failure to assign responsibility to parents as well as schools for the outcomes they produce. Schools cannot serve as surrogate family institutions, much as ever more pressed single and two-earner families seek economic success. At heart is the notion of the extent to which education at any given level produces the kinds of social benefits to justify such level of support. Most debates today revolve around sub-program issues rather than this overall question, with the result that while no child left behind serves as today’s mantra, one can be sure that it will be displaced by some new fanciful notion tomorrow.

The public sector size role also turns on whether the nature of market failure lies in the provision of consumption goods or in the production of capital goods. If market failure occurs in the provision of consumption goods, then public sector intervention may be justified, but not through public sector deficits. It is only in terms of capital goods where deficit spending could be justified, a distinction that is largely absent in discussions of the public sector since this accounting convention does not exist anywhere in the federal budget rules.

One additional issue in the public sector debate is the question of moral hazard. Economists note that if a presumed market failure can be said to exist, it does not

necessarily follow that public sector intervention can improve the level of social welfare. The reason why this may be so is that once public sector support for the provision of a good has been established, those who may provide such goods have little incentive to manage their costs, thereby creating an endless sinkhole in which the positive effects of public sector intervention are more than offset by the negative costs of public sector intervention in the endless pursuit of its existence. More than a few governments have come to ruin for a failure to take moral hazard into account in the decision to determine what limits are appropriate to a given level of support²³.

Education and health are traditional areas in which markets have often been seen to fail since they produce external effects. Yet these traditional areas of Democratic support now require that one define more clearly in which sense public sector intervention is essential, and how is such intervention to be financed.

Private markets exist for education and health, to be sure, so the question is how to define a rational limit to the mix of public and private institutions. The traditional Democratic argument in behalf of education has been that it provides expanded opportunities for individuals to make economic and social advances that would not otherwise be affordable. The problem with this argument is that it is based on income redistribution and social justice rather than on the classic notion of positive externalities, and it invites unlimited public sector funding without any rational boundaries.

If, for example, the effects of public support for education were purely in terms of distributive justice, one could argue that the solution would be to impose a progressive tax and then allow individuals to make a free choice of what to spend the proceeds on, be that education, health, or food. Obviously, government does not make this choice, and it does not do so partly because the fundamental basis of public sector intervention lies as much with the external positive effects as it does with the notion of distributive justice.

The Republican approach to education has been to emphasize accountability in exchange for additional funding, while at the same time emphasizing the role of performance contracting to charter schools and vouchers, ignoring the sometimes sectarian nature of the mission of such private sector institutions. Yet if Democrats are to provide a response, it should not be framed as a negative response to the adverse effects of sectarian education. Rather, it should be based on a clear measure of the public sector role in expanding the spillover benefits that education brings to society, a rationale long advanced by economists, but largely ignored in public sector discourse²⁴.

²³ Adam Smith, in the *Wealth of Nations* (1776), noted that it is appropriate for government to support education. What he did not take into account is the corrosive effects of public sector subsidies, even as he railed against the inefficiencies of a mercantile economic order in which he lives.

²⁴ Burton Weisbrod made the case for public support of education based on externalities in his book, *External Benefits of Public Education* (Princeton, N.J.: Princeton University Press, Industrial Relations Section, 1964). Public discourse on educational policy today generally ignores the externalities argument and instead frames the issue in terms of distributive justice, or in terms of educational outcomes.

Globalization and International Trade

International trade is another paradox of public sector debate. In the late 19th century, it was the Republican party that stood for protectionism, while Democrats favored international trade²⁵. Yet in the aftermath of the Great Depression, the Second World War, and the postwar era, Democrats have become tagged as reluctant internationalists while it is Republicans who are known as champions of international trade. There are, of course, exceptions to this characterization, notably Bill Clinton's New Democratic embrace of NAFTA and his commitment to the transformation of GATT into the WTO and its role as promoter of the expansion of international trade and investment, just as one can point to George W. Bush's decision to impose "temporary" tariffs on imported steel early in 2001 until threats of retaliatory sanctions forced him to end them in December of 2003.

Expansion of international trade was given some lip service, but not so much that it would precipitate a fall in support from vulnerable industries where organized labor was key. This was first well articulated in FDR's New Deal, and then after a postwar hiatus during the Eisenhower administration, re-articulated with JFK and the New Frontier. Kennedy's tax cut of 1961 was designed to bring the economy out of its slow growth mode. This took place at a time when the Vietnam war was not yet eating into the budget that it did when Lyndon Johnson became President in 1963, and at a time when inflationary pressures were equally less pressing. Although Richard Nixon was quoted as stating "We are all Keynesians now", it was clear that ever expanding budget deficits could not create sustainable economic growth if the ratio of public sector debt to the Gross Domestic Product would rise unchecked, and debt service would claim an ever larger share of public sector spending.

Nixon used Daniel Patrick Moynihan to preside over the first steps in stemming welfare state spending, even though budget deficits continued to prevail²⁶. George McGovern was defeated soundly in 1972 partly because with an unchecked welfare program, "Demogrants", it was increasingly clear that government spending was getting out of control. This is in part why Jimmy Carter was able to succeed Gerald Ford's transitional administration in 1977 as he combined the conservatism of a southerner with the emerging fiscal responsibility wing of the Democrats. But Carter was sidelined as energy prices and the quagmire of the Iran hostage crisis showed a United States both crippled and incapable of deliberate and constructive action (never mind the SALT agreements at this point since no one was talking about the collapse of the Soviet Union).

²⁵ William McKinley ran on a Republican party platform of protectionism and succeeded in raising tariffs on behalf of his home state of Ohio, The McKinley tariff of 1896 that was adopted anticipated some of the protectionism of the early 20th century.

²⁶ Daniel Patrick Moynihan, *Maximum Feasible Misunderstanding: Community Action in the War on Poverty*. (New York: The Free Press, 1969).

In the end, there is no end to the debate over competing visions of the state. Conservatives can look to the provisions in the U.S. constitution that sought to protect individual rights against the aggrandizement of power as embodied in the British monarchy of the 18th century. Measures that expand the public sphere are looked upon with suspicion as creating a reduction in individual liberty, opportunities for corruption, and an inefficient allocation of scarce resources. Liberals point to the defects of the social contract in which outcomes may be unfair, and seek interventionist strategies to correct for such inequities. They tend to ignore the impact on individual rights that expanded public sector intervention represents and argue that society is diminished by the inherent unfairness of market prices and the role of risk. Ultimately, crafting mutual understanding of a politically legitimate role for the state depends on how individual and society perceive various forms of risk. Unfortunately, most forms of public discourse are not framed in terms of perceptions and attitudes toward risk. Until such time as risk is better understood in public discourse, society will fall back on ideological conceptions of justice that may or may not have any bearing on the question of political legitimacy.

**A Reading List on
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