

interpretation

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May & Sept. 1986 Volume 14 Numbers 2 & 3

- 155 Joseph Cropsey The Dramatic End of Plato's Socrates
177 Charles Griswold, Jr. Philosophy, Education, and Courage in Plato's *Laches*
195 Thomas J. Lewis Refutative Rhetoric as True Rhetoric in the *Gorgias*
211 Thomas F. Curley III How to Read the *Consolation of Philosophy*
265 Joseph Masciulli The Armed Founder versus the Catonic Hero:
Machiavelli and Rousseau on Popular Leadership
281 William Mathie Reason and Rhetoric in Hobbes's *Leviathan*
299 Peter Emberley Rousseau versus the Savoyard Vicar: the Profession
of Faith Considered
331 Mackubin Thomas Owens, Jr. Alexander Hamilton on Natural Rights and Prudence
353 Peter Simpson Autonomous Morality and the Idea of the Noble

Review Essays

- 371 Ernest L. Fortin Faith and Reason in Contemporary Perspective
Apropos of a Recent Book
389 Joseph J. Carpino On Eco's *The Name of the Rose*
415 Nino Langiulli Affirmative Action, Liberalism, and Teleology: on
Nicholas Capaldi's *Out of Order*
431 Robert R. Sullivan The Most Recent Thinking of Jürgen Habermas

Book Reviews

- 441 Will Morrissey *Jerusalem versus Athens* by Paul Eidelberg
448 *How Does the Constitution Secure Rights?* edited by
Robert A. Goldwin & William A. Schambra

Short Notices

- 455 Will Morrissey *Freedom of Expression* by Francis Canavan
456 Joan Stambaugh *Philosophical Apprenticeships* by
Hans-Georg Gadamer

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Volume 14 numbers 2 & 3

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Affirmative Action, Liberalism, and Teleology

On Nicholas Capaldi's *Out of Order*

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Out of Order: Affirmative Action and the Crisis of Doctrinaire Liberalism.
By Nicholas Capaldi. (Buffalo, N.Y.: Prometheus Books, 1985. 201 pp.:
\$17.95.)

I

This is a philosophical book about a contemporary political affair, namely, the policy of affirmative action, the federally-dictated preferential treatment of certain groups in American society. The title of the book, *Out of Order*, adumbrates its themes which are, bluntly speaking, that the policy of affirmative action is legally out of order, morally pernicious, and logically incoherent and that the ideological environment of the policy, i.e., doctrinaire liberalism, is a swamp.

The book is philosophical rather than political, and this in many respects. It is first, theoretical, addressing itself primarily to the understanding of the reader and only incidentally to any action to be taken. With its many distinctions and carefully wrought arguments, it conveys the importance of offering and maintaining reasons for any belief. Indeed, it displays the arguments *for* affirmative action in clear ordinary English as well as in the now unfashionable symbolic notation (pp. 188–91). But it is philosophical, most of all, because it is an inquiry into the principles and suppositions of the doctrine which houses the policy.

[B]eneath the maelstrom of statistics and court decisions [concerning the policy of affirmative action], we shall discover a fundamental debate about the structure of the social world, the nature of man, and a conflict of values (p. 1).

The task, as I see it, is to unearth our present dominant social philosophy [doctrinaire liberalism], to recognize it as such, to recognize the extent to which it colors our judgments and evaluations, to understand its history, to note its peculiar development in our society, and gradually to unfold the distortions to which it is subject (p. 4).

Because the book is concerned with so controversial a topic, a comment about the reader to whom it is addressed is in order. Such a reader must, of course, be someone who is still open to discussion on the issue, but among these the book has in mind, more specifically, those liberals who would not dismiss its author out of hand as a racist and a sexist simply for raising doubts and offering objections concerning a policy which has taken on the cast, among its advocates, of a sacred action (p. 101). Indeed, it is one of the themes of the book that through

the theory and practice of affirmative action, liberalism betrays its very own principle—that of liberty itself by employing a concept of “group entitlement,” by believing in power as the sole and central fact of political life, and by engaging in manipulative activism with a patently elitist posture. In all these ways the advocates of affirmative action think and act in ways which are fundamentally in conflict with representative democracy but which are unmistakably evocative of fascism. Professor Capaldi consciously and unhesitatingly draws the comparison between liberalism and fascism (Chapter 7), yet interprets the crisis of liberalism not in terms of its affinity to fascism but rather as a debate among meritocratic, elitist, and egalitarian liberals (pp. 21–25).

There is a terminological demon which haunts the book and that is the use of the term “teleology” to name the theoretical position of liberalism for which we have the following “working definition.”

Liberalism consists of a basic psychological theory and derivative theories of social structure, politics, and history. The theory of liberalism in general and its basic psychological component can be defined as *teleological*. A theory is teleological if it seeks to explain any act, event or process as the outcome of goal-directed behavior (p. 19).

Capaldi seems to comply with a fairly recent convention in the use of the terms “teleology” and “teleological,” but it is *not* the correct name and description for the theory of liberal doctrine. Failure to locate the demon and to call it by its proper name can only make its exorcism more difficult. This will become clearer in the course of the review. For now we will continue with the author’s criticism of affirmative action in terms of his own usage.

When Professor Capaldi attacks the proponents of affirmative action for having a “teleological” view, it is because he finds that view fundamental to their objections to discrimination (itself the universal excuse for affirmative action). Discrimination, they say, does not permit the oppressed groups to achieve their “full potential” (p. 120), to “fulfill [their] true natures” (p. 90), or to accomplish their “innate built-in ends” (p. 90). Affirmative action, they insist, is the remedy for such blockages, especially when the discrimination has been covert. It is the remedy that will *permit* (if not ensure) the oppressed to “achieve their potential.”

The proponents use the same sort of language in response to those who will inevitably be disadvantaged by a policy which gives hyperadvantages to the previously oppressed. But the terminology is curiously inverted in the arguments which are offered to mollify the victims of affirmative action. The following are examples:

1. Nobody deserves anything anyway, even by virtue of their abilities or qualifications. Professor Capaldi quotes two affirmative action “theorists,” John Rawls and Richard Wasserstrom.

[Rawls] No one deserves his greater natural capacity nor merits a more favorable starting place in society (p. 191).

[Wasserstrom] Since individuals do not deserve having had any of these things [home environment, class, schooling] vis-à-vis other individuals, they do not, for the most part, deserve their qualifications, and since they do not deserve their abilities, they do not in any strong sense deserve to be admitted because of their abilities (p. 191).

(Reflection upon the foregoing quotations can only make the reader dizzy with the high level of abstraction with which these theorists discuss questions of ethics and politics. They might remind him of Tom Wolfe's description of Le Courbusier in *From Bauhaus to Our House*, p. 27, whereby they too might be likened to

the logician who flies higher and higher in ever-decreasing concentric circles until, with one last, utterly inevitable induction he disappears up his own fundamental aperture and emerges in the fourth dimension as a needle-thin umber bird).

2. Affirmative action is truly for the benefit of the whole of society, inasmuch as it *really* redresses past injustices and only *appears* to treat unjustly those who are temporarily inconvenienced by it (pp. 134–35).

3. In the long run the *τέλος* (reviewer's word, not Capaldi's) of history will guarantee the equilibrium of an organic society in which it is realized that "no individual can be fulfilled and secure in that fulfillment as long as others are not" (pp. 21, 135).

Thus, briefly, we have what Capaldi calls the "teleological" character of the apologetics of affirmative action, a notion of "*τέλος*" built into "fulfillment" and "social benefit." He seems not to question this usage as when he asserts unambiguously that the apologists of affirmative action are saddled with an untenable combination of teleology and determinism (pp. 2, 127) and speaks of drives, needs, and desires having to be fulfilled (pp. 20, 125). In fact he uses "teleology" as an umbrella term to cover certain features of the thought of Hobbes (p. 182, n. 10), Bentham (p. 170), Mill (indirectly; pp. 179, 190), and even Hegel (pp. 170–71). Even when he explains, without taking exception to it, that what liberals mean by "rational" (as in "rational animal") is the calculating and maximizing of self-interest (p. 83), he is clearly echoing Hobbes, Bentham, and Mill whose views of humanity and society could hardly be called teleological. But more of this later: for now an exposition, not a criticism.

II

The book is composed of three parts, though this is not evident either visually or typographically. The author tells us so on page four. The eight-chapter structure, however, *is* evident both from the table of contents and the format. There is an introduction and a section of endnotes, both of which are important for an appreciation of the book as a whole. The index is useful and the dedication to Sidney Hook is significant, inasmuch as Hook is an opponent of affirmative ac-

tion, yet a devotee of liberty. Epigrams mark the beginning of each chapter bearing its message mythically and cryptically.

The first chapter, which is entitled “From Jim Crow to Reverse Discrimination,” contains a historical and sociological treatment of the events which preceded the institution of the policy of affirmative action. The discussion centers upon Blacks and the schools. Professor Capaldi chose Blacks as the paradigm case of oppressed groups, rather than women or Hispanics, for example, because liberals declare that the most evident case of oppression is that of Blacks. Also, to the ordinary person or average reader, the case of Blacks is the most apparent. Finally, liberal intellectuals regard Blacks as having a superior moral stature (p. 3). Thus Capaldi wishes to examine the arguments for affirmative action as they apply to the strongest and most evident case.

Schools are discussed because in the minds of the advocates of affirmative action, “the school” is the most important institution to control in order to combat racism and to promote and achieve an integrated society.

Capaldi alludes, of course, to the fact of slavery, *and* to Supreme Court decisions, to acts of Congress—familiar episodes in the story of discrimination. He does so in order to illustrate the shifts that took place between 1964 and 1968 in the rhetoric about the oppression of Blacks. The words were changing and so too were the actions of liberals. But the hidden agenda, according to Capaldi, was to increase the power of government and carry out projects of social engineering so as to alter permanently in America the power structure to the advantage of self-appointed elitists (p. 23).

An example of such shifting (shuckin’ and jivin’ in Black street vernacular) would be that of eliminating *segregated* schools to implementing integrated, nay *fully* integrated schools, nay, nay, *ideally* integrated schools. A new hypothesis was formulated—that of *covert* oppression. The hypothesis was then tested by studying student performance. The hypothesis was reformulated to say that such performance is a result of conditions beyond student control. An appeal to statistics concerning results was considered enough to establish the hypothesis. The same set of statistics establishes, of course, the existence of hidden variables which are then taken to be the causes of the differences in results.

Further appeal is made to the metaphor of “the shackled runner,” an image employed by President Lyndon Johnson in a 1964 speech. The metaphor is intended to persuade the hearer that, in the race for life, liberty, and the pursuit of happiness Blacks, having shed the chains of overt oppression, need—in order to overcome the *effects* of bondage and in order to participate fairly in the race—certain advantages. Such advantages and realignments which are intended to close the unfair gap are *duties* of the government. The Supreme Court is the special agency to carry out the realignments needed to correct past government alignments which were unfair (p. 19).

In this context Capaldi examines the case of Jackie Robinson’s entry into organized baseball (where discrimination was official policy) through the *action* of

Branch Rickey, the owner of the Brooklyn Dodgers. He does so in order to prove the *essential* differences between this case and that of the government's policy of affirmative action.

The aim of the second chapter called "Twisting the Law," is to show how a whole set of governmental happenings—laws, executive orders, the words and actions of the federal bureaucracy (especially, the Department of Health, Education, and Welfare and the Equal Employment Opportunity Commission), and the decisions and opinions of the federal judiciary—all contributed to the drama of affirmative action. Capaldi concludes that the entire drama is produced by an historical hallucination wherein affirmative action is imagined as the remedy for the results of slavery. He places before the reader a compelling assemblage of facts and arguments which leave little doubt that the law has been "twisted."

For example, the Civil Rights Act of 1968 forbids *actual* discrimination. It does not order the termination of the *effects* of past discrimination. The law is meant to foster *equal opportunity*, not preference or racial balance. The expression "affirmative action" is not found in the Civil Rights Act of 1964. Rather it occurs in the usage of the executive branch of government, i.e., in Executive Order #11246 of 1965 and it is extended to women in Executive Order #11375 of 1967. But it was not the President who defined the expression. This was done by the bureaucrats in the Department of Labor who issued Order #4 in 1968, and guidelines in 1970 and 1971. The expression is defined in terms of minority "needs," of "goals and timetables" and of "underutilization." The term "quotas" is *not* used by these bureaucrats, but its concept and intention becomes parasitic on the term "underutilization" which, in turn, is defined and determined by statistical survey. Quotas, declares Capaldi, are "the ultimate logic of affirmative action" (p. 30).

The proponents of the policy regarded it as the proper evolution of equal employment law. *Genuine* equality of opportunity requires those tasks that are necessary to close the economic and the professional gaps between Blacks and Whites in order to achieve an *ideally* integrated society. The sense of the terms "genuine" and "ideally" is established and confirmed in statistics and percentages.

Capaldi assures the reader that he is not resistant to the change the notion of evolution implies. He denies, however, that the change must be in that direction which is defined by liberal ideology. He does not challenge the contention that in Anglo-Saxon jurisprudence, law evolves. The evolution, he says, should be understood from a conservative point of view whereby law is based on "a vast reservoir of precedents" not on a "logical or metaphysical system of first principles about universal human nature" from which applications are deduced (p. 32). He believes that liberals view judicial discretion *not* as applying the inherited wisdom of the past *to* the present but as adjusting the past and present toward a utopian future. When they acknowledge the importance of "legislative intent," they choose to interpret it as a tool for the future. A corollary of their view is that the

law is truly and properly formed in the courts and in the bureaucracy, not in the legislature. The relevant cases that Capaldi adduces both for the theoretical issue of the formation of law itself and for the practical policy of affirmative action are Swann (1971), Griggs (1971), De Funis (1974), Bakke (1978), and Weber (1979).

When the reader reflects on Capaldi's account of both the larger problem of the formation of law and the more specific problem of affirmative action, he is reminded of the even deeper problem of meaning itself. If the meaning of the law is whatever the courts and the bureaucracy say it is, then it is not unreasonable to infer that the meaning of any word is what whoever is in charge says it is. The reflection ends with a vision of Wonderland in the presence of the King of Hearts and "the oldest rule in the book."

In chapters three, four, and five—the second part of the book—Professor Capaldi considers the paradox of the contemporary university as perpetrator and victim of its demise by virtue of the policy of affirmative action, a paradox which is not so curious as it may seem. Free-floating ideas have a way of landing where they will. Taking responsibility for the consequences of ideas is not a thing some academic folk believe to be part of the game or the job. "Philosophers" among them will even justify not doing so with the sophistic argument about actions not following *necessarily* from ideas, slipping into the discussion a question of logical necessity where it is not at issue.

At any event Capaldi offers the reader a valuable analysis of four competing conceptions of the university. Each conception has its advocates who then create factions. Without listing all of the conceptions, it is not difficult to understand how two of them—(1) the university as social instrument and (2) the university as the agency of disinterested research—could generate the factions and the paradox. Capaldi appears to favor the research model, as he calls it, but conceives of it in a contrast which relies on his debatable version of teleology. He says that "[t]he disinterested pursuit of knowledge is unintelligible to doctrinaire liberals . . . It is anti-teleological . . . It is anti-deterministic" (p. 54). The problem here is that the disinterested pursuit of knowledge is contraposed to teleology and teleology is apposed to determinism.

But the thrust of these chapters on the university is that the contemporary American university has abjectly submitted itself to the federal government (p. 65) and that social scientists, in their conversion from being pursuers of knowledge to being solvers of social problems, have had a key role in that submission. The university has chosen to yield its freedom for funding, while the social sciences, in their bid for the prestige and fundability of the natural sciences, move in the direction of manipulative rhetoric, of social engineering, and of an academic priesthood.

The modern American university, in short, has been subverted by empire builders in the administration who confuse their national ambition with the existence of a national purpose, by enthusiasts of liberal-culture, and by teleological social science (p. 69).

We hasten to add that natural scientists have not been innocent in the subjection and subversion.

The history of the federal funding of the university shows, Capaldi reminds us, that even when it *seems* right, as in the G.I. Bill, it invites federal control. That history describes the courtship and marriage of professional educators and the federal bureaucracy, a union, which gave birth to what Capaldi calls, “the academic-bureaucratic complex”—a complex which without much fuss or objection became “comparable in scope and importance to the military-industrial complex” (p. 60). The path to federal intrusion and tinkering was made ever so smooth by this dubious marriage of convenience.

The reader is invited to view the tragedy of liberal Frankensteins creating the monster (affirmative action) that savages the laboratory wherein it is created. The pathos of this spectacle, which Capaldi prefers to call a tragedy—part of which is the unspoken tragedy of affirmative action—is that too many Blacks by virtue of liberal paternalism fail to develop the necessary skills for the politics of parliamentary democracy (p. 153). The liberal Frankensteins, however, such as Clark Kerr and Derek Bok, seem to escape the destruction they either create or enhance (pp. 79, 82). In their speech and in their deeds they can be collated with those abstract intellectuals who resemble Tom Wolfe’s umber bird.

The advocates of affirmative action deny, of course, that the doctrine and the policy entail the radical *equalization* of persons and the *transformation* of the structure and content of the university. When faced with the incoherence of the doctrine and the impracticability of the policy, they simply redefine the terms of the doctrine and the rules of action (p. 106). They regard the objections and concerns of their opponents as belonging to the fallacy of the slippery slope, confusing, in their turn, the logic of the speculative order with the way things happen in the practical order. The objections and concerns are not fallacious because the practical order is *not* one of ideas following *necessarily* from each other but one of events following *probably* from each other. The slope is slippery in the practical order and almost everybody knows it, especially the advocates of affirmative action (cf. p. 102).

The fifth chapter ends with a *libertarian* recommendation. The reader is invited to imagine the possibility of quality control of the medical profession through a truly free market system rather than through the profession itself or, heaven forbid, the government. Anyone who wishes to practice medicine should be permitted to do so. The mode of preparation would be by means of a sort of medieval guild apprenticeship. For the patient or consumer, it would be a matter of *caveat emptor*. Capaldi expects his recommendation to be greeted with scorn by liberal power-brokers. Their interest, he insists, is not medical skill or innovation, nor in increasing medical service by and for Blacks. It lies with achieving an *ideally* integrated society so that no statistical or invidious comparisons can be made. They want, in short, to rearrange and manipulate people according to an abstract model, which they regard as a sacrament.

The sixth chapter which opens the third part of the book and is entitled "The Illogic of Affirmative Action" is regarded by Professor Capaldi himself as "the philosophic heart of the book" (p. 5). His intention is to deflect the rhetoric of affirmative action so as to expose the structure and purpose of the argument which contains four "key" concepts: (1) discrimination, (2) potential, (3) the distribution of talent, and (4) compensation. The isolation and analysis of these concepts constitute the structure of his counter-arguments.

Discrimination is distinguished from prejudice in that the former is a social policy of exclusion against individuals who belong to certain groups whereas the latter is a psychological tendency of some people to regard other people according to a preconceived model. Prejudice, in turn, is distinguished from prudential judgments, hasty generalization, and from the fallacies of composition or division. The existence of prejudice, Capaldi assures us, is not evidence of discrimination. It is neither a necessary nor a sufficient condition for discrimination. He adds, however, that those who oppose the policy of affirmative action do not deny the existence of prejudice.

Discrimination, as far as United States history is concerned, issues from laws which prevented Blacks from voting and which segregated them from Whites in schools, restaurants, hotels, lavatories, theaters and modes of transportation. The proponents of affirmative action begin with the *fact* of actual discrimination and then construct a concept of discrimination so abstract that it takes on the look of a myth which is then used as a rhetorical device for promoting the realignment of society as a whole. Redressing injustices is merely the occasion for the more mystical delights of human reconstruction. The transition from actual discrimination to mythic discrimination is accomplished by conceptual shifts from "discrimination" to "discrimination and its effects" to the more expansive "perception of a negative impact." Once the last concept is let loose and accepted, the proponents of affirmative action have the *rhetorical* high ground.

But the policy of affirmative action requires discrimination to be the sole or major cause of impairment of the capacity to compete and that "discrimination" means all practices—private or public, past, present or future, actual or perceived to be actual—that hinder "full participation." This requirement, according to Capaldi, is not demonstrable, since many other causes can be cited for such impairment.

The second "key" concept shows that the affirmative action argument assumes that someone is a victim of discrimination if and *merely* if he has not been allowed to develop his full potential. Capaldi urges the reader that such a correlation between "discrimination" and "potential" is so all-embracing that it is applicable not only to Blacks but to nearly every individual or group. The point of the correlation is that its "logic" entails the total reordering of society (p. 124). Capaldi doubts the coherence of the notion of "potential" as it is used in the argument. He can imagine an indefinite number of "potentials" for an individual and at the same time eliminate a host of others. There might be "potentials" which conflict with one another such that the development of some preclude the devel-

opment of others. The concept of “potential” is forced into such an untenable relationship with the doctrine of “causal determinism” that whatever residual notions of “individual liberty” and “responsibility” remain in the argument tend to evaporate (pp. 125–28).

The third “key” concept in the argument for affirmative action is that of “distribution of talent.” Two assumptions reside in the use of this concept, (1) the “potential” of Blacks is equivalent to that of Whites and (2) the distribution of talent is proportionately equal to the percentage of Blacks and Whites in the whole population. The reader is warned, however, about a shift in the use of the notion of talent.

The argument begins with an acknowledgment that the talents in question are those which are relevant in competitive technological society and ends with the promotion of talents that are relevant to another kind of society which is noncompetitive and nontechnological. The shift is performed through a sermon to change the fundamental views and modes of conduct that are characteristic of Western society. Although Capaldi does not give examples of the fundamental views and action he is thinking about, he does seem to have in mind the sort of things that the sermonizers have called snidely “the work ethic” or “Western manners.” The shift, he stresses, entails a different conception of affirmative action. It is not a policy intended to allow Blacks into the game but one intended to change the game (p. 129).

If, however, “talent” means what is generally understood and agreed upon, then there can be no empirical evidence, Capaldi asserts, for the presumed distribution of talent. He rejects the notions of racial intelligence and of group superiority, arguing that intelligence and other talents are properties of individuals, not of groups. The demand for evidence of a correlation between discrimination and distribution of talent is met with a response which is transparently circular, i.e., unequal distribution of talent is due to discrimination but the evidence of discrimination is unequal distribution of talent. The fact is, he says, that no one knows, short of actual achievement, how talent is distributed. The advocates of affirmative action do not offer independent measurement of talent prior to discrimination. They do not even clarify the notion of “talent” so that it may be grasped independently of the notion of discrimination. But they do fall back on the rhetorical tactic of charging their critics with racism. They insist either on the belief that objective criteria are not prognosticators of professional success or upon the belief that there are no objective criteria. They remain supremely convinced that, had there been no discrimination, distribution of talent and achievement would be racially balanced—a conviction which is a matter of blind faith. Other explanations, if they occur to these advocates at all, are dismissed peremptorily.

The concept of “compensation” as employed by them is shown by Capaldi to be as hazy and inapplicable as that of “discrimination.” What they must do, in order that compensation be made to victims of discrimination, is (1) name the person or persons at fault, and (2) demonstrate that it was discrimination that

caused or led to the inability to compete. (Although Capaldi does not mention it at this point, he would surely add a third condition, viz., (3) they must identify the persons to be compensated.) Because these advocates use the notion of “discrimination” as a theoretical term rather than as the description of an actual state of affairs, i.e., because they use it to denominate an infinite series of unintentional social forces, they disqualify themselves from a coherent use of the term “compensation” (p. 134).

Since the *coherent* and *proper* use of these four concepts is essential for the validity and soundness of the argument for the policy of affirmative action, and since the advocates of this policy do not use these concepts coherently and properly, then the argument is devoid of the essential components for validity and soundness (pp. 188–91).

The penultimate chapter which is concerned with the politics of affirmative action contains several controversial claims. They are not so because they are arbitrary or merely polemical. Every claim is the result of a tightly reasoned and reasonable argument. The controversy stems from the fact that the claims are contrary to the predominant opinions in the predominantly liberal intellectual establishments. Among these claims are (1) liberal state activism which created the policy of affirmative action erodes the democratic process, (2) liberal state activism in the name of eliminating oppression—a frequently prefabricated oppression (pp. 144–48), which is then used as a pretext for further bureaucratic proliferation and more state activism—is fascist in theory and practice, and (3) fascism is essentially and historically a movement of the left not the right (pp. 156–57). A not so incidental feature of Capaldi’s discussion of state activism is the conception of the nature and role of law used to justify the activism. He names the two schools of thought which dominate the law schools and prevail in the interpretation of law, i.e., positivism and the so-called American realism. Capaldi says that despite their minor differences, both schools proceed from the same principles, namely, the *denial* that law is based on moral grounds and the *affirmation* of a more restricted notion of law whereby it is conceived of “scientifically” and from a presumably value-free perspective. Although he chose not to, Capaldi might have added an ironic touch to his argument by quoting a *locus classicus* for such a view of law, Hans Kelsen’s *General Theory of Law and State*, for example, which states it glibly and confidently:

As used in these investigations, the concept of law has no moral connotation whatsoever. It designates a specific technique of social organization. The problem of law, as a scientific problem, is a problem of social technique, not a problem of morals . . . To free the concept of law from the idea of justice is difficult because both are constantly confused in nonscientific political thought as well as in general speech (Kelsen, p. 5).

Not only can such a conception of law not say anything important about law, but it is hardly scientific. For it would be committed to such a view of facts that

the proponent of this view would have to hold that such statements as "He stole the book" is not a fact or a description. He would say that it is a value judgment, expressed in the word "stole," plus a fact, i.e., "He took the book." The word "stole" signifies someone's (or "society's") disapproval superimposed upon the "fact" of taking the book.

Not to use the proposition "He stole the book" for such an event or state of affairs is not to describe that event. Not to understand the proposition as a statement of fact is not to understand the proposition. To claim that the proposition "He stole the book" cannot be used to assert a fact is so perversely ideological that anyone who says so cannot be trusted to recognize facts nor to be scientific about anything, let alone law.

It is this positivistic view of law which stresses will and sanction (Law is whatsoever the sovereign wills or commands) coupled with the so-called legal realist's view (that law is not what the legislators frame but what the judges decide) that causes Capaldi to declare that it comes as no surprise that the lawyers in the department of Health, Education and Welfare and in the Equal Employment Opportunity Commission did what they did with affirmative action (i.e., push people around) (p. 150). The corridors of the law are not insulated against the echoes of barbarism. The overall strategy did depend, of course, on there being enough federal judges who subscribed to liberal social doctrine. Since the view that law is an extension of social science has become prevalent, Capaldi asks for the principles on which the judges decide. He answers that they do in fact anticipate the consequences of their decisions in the form required by social scientists. Law becomes, he sadly concludes, "an instrument of social engineering for achieving communal ends insofar as they are elicited by the social scientists" (p. 150). It is court activism and the pretext of performing scientific social activity which are the tell-tale signs of doctrinaire liberalism's affair with fascism.

In his final chapter Capaldi distinguishes the kinds of liberalism differently from the way he does in his first chapter. The later distinction is historical as one between classical liberalism and modern liberalism. He means by "classical liberalism" no reference to *ancient* views of freedom but rather the views found in the Whig party in England after 1832 and as expressed in the thought of Jeremy Bentham. In order to achieve the greatest amount of pleasure for the greatest number of people, certain conditions must be met. For the classical liberal, these conditions are called *rights*. The modern liberal calls them *needs*. The shift in concept has rhetorical advantages, according to Capaldi, inasmuch as the modern liberal appears to assert a scientific or empirical claim rather than a value judgment. The concept of "need," moreover, designates something basic and has, therefore, polemical power. Anyone who questions or denies a need can be called insensitive or malicious. If the satisfaction of a need does not lead to anticipated results, the proponent of the need cannot be blamed, since a need is but a necessary condition not a sufficient condition of anticipated results. Need, however, need not be recognized by those who have them. Thus the occasion for

“consciousness-raising” is contrived in order that the populace be educated as to its “true” needs. The activist state is ready with relish to assume the task of education and thereby increases its bureaucratic growth in a geometric progression (p. 172).

Capaldi locates the conceptual shift from classical liberalism to modern liberalism through a concomitant geographical shift from England to the United States where it took root in the thought and policies of Woodrow Wilson and flowered in the “New Deal” of Franklin Roosevelt. Capaldi might have added that it bore fruit in the “Great Society” of Lyndon Johnson and was brought to harvest during the “regimes” of Richard Nixon and Jimmy Carter. It was in those last two “regimes” that the millennialist character of modern liberalism betrayed itself, since the policy of affirmative action confirmed the transformation of the concept of freedom through equality of opportunity into a collectivist notion of security through equality of result. Inspired by their purity of heart and their pity, the modern liberals wish to “realign society,” as Capaldi puts it, i.e., to transform human beings into something they have never been, by means of the creative power of the state. Since the church could not bring about the kingdom of heaven on time and in time, its missionary spirit will achieve greater success in the realistic temple of the state with the university as its sanctuary.

Classical liberalism, Capaldi reminds the reader, cannot resist or oppose the preferential policies of the modern liberals, especially within the universities, because it shares their basic premises and their basic philosophical orientation. And so Capaldi eases his book toward a conclusion with a variation on one of his themes—the crisis of liberalism. His final words, although brief, proffer the alternative to the “impossible dream” of liberalism.

Our tradition is epitomized in Anglo-Saxon jurisprudence, a tradition of multiple precedents—not a deductive set of first principles. It is a tradition that evolves out of the past, not one that progresses to a mythical future. It is a tradition of individualism, not collectivism. We must not confuse this individualism with the classical *liberal-utilitarian interpretation* [reviewer’s emphasis] of it. Individualism means that *human beings are autonomous moral agents* [reviewer’s emphasis] responsible for their choices and living according to self-imposed rules. This individualism is the result of older and stronger currents of thought. It existed as an ideal in the Renaissance as well as in the Reformation. It even has medieval roots in the dispute about whether the active intellect was found in an individual soul or a group. But most relevant for our purposes, it has deep roots in the Anglo-Saxon tradition of common law. The great danger to this tradition is some utopian metaphysical vision that fosters paternalism by making the state the judge of what the individual is (p. 179).

III

If it be so that doctrinaire liberalism is the *dominant* ideology both in the universities and in the communications industry, and there is no counter-evidence for this not being so, then Professor Capaldi has written not only a soundly ar-

gued book but a courageous one. For the domains in which he lives and moves and has his being are the domains of the university and of publishing—domains which have their own holy ikons and naturally their own priesthood. For in attacking a holy ikon, he has acted heretically and sacrilegiously. The “priests,” not the gods, are sure to be angry. May his own guardians protect him! In the meantime some friendly criticism will neither wrong him nor harm him.

To regard the utilitarian doctrine of human nature and of morality as a species of teleological doctrine is, at least, misleading and, at most, false. Throughout the book, Capaldi calls the theory which is used to justify affirmative action policy—teleology. Yet on the last page of the text and in an endnote, he calls the theory “liberal-utilitarianism,” the more precise and accurate name for his demon. Why, then does he insist on the name, teleology? The answer might lie in his Humean predilections. But the better answer lies in the recent convention among analytic philosophers in their discussions of ethics. It is the convention which is found in textbooks of ethics which distinguish and classify moral doctrines as either teleological or deontological. Such anachronistic or “Whiggish” labels are not much more instructive than to call Plato a rationalist and idealist or Aristotle an empiricist and realist. Our complaint is not with the use of labels as such but with the use of unnecessary, inappropriate, or imprecise labels. An example of a textbook which classifies utilitarian ethics as teleological is William Frankena’s *Ethics* (1963), pp. 13, 29. Another is Jacques Thiroux’s *Ethics* (1977), p. 28, where the distinction is used alternatively with that between consequentialist and nonconsequentialist theories of ethics. A consequentialist theory is equivalent to a teleological theory, while a nonconsequentialist theory is equivalent to a deontological theory. Still another textbook to accept the convention is Tom Beauchamp’s *Philosophical Ethics* (1982), p. 73. The use of these classifications has the result of regarding not only the modern positions of Hobbes, Hume, Bentham and Mill but also the ancient position of Epicurus as teleological—hedonism as well as egoism are taken as kinds of teleologism. Thus Hobbes, Hume, Bentham, Mill and Epicurus share the same bed, as far as ethics is concerned, with Plato, Aristotle, and Aquinas.

One of the problems with this convention is the confusion between a consequence and an end. A consequence is an effect of an action, an end is a cause. Furthermore, an end is not a purpose, despite the fact that the words “end” and “purpose” are frequently used synonymously. All sorts of things have ends—knives, trees, computers. Purposes, however belong to intelligent agents by which they perform actions. Purposes are motives which direct and move agents. The end of a tree is to grow, take nourishment and reproduce. The tree executes no purpose in reproducing whereas human agents may use a tree for many purposes—for landscaping, to make furniture, to hide behind, etc. Ends exist independently of human beings willing them; purposes stem from their being willed. The term “purpose,” however, *is* synonymous with the term “intention.” Many authors, Capaldi included, use the term “end” to mean “purpose” or “intention.”

Another problem with the convention comes from the intention to classify ac-

counts of ethics on the *presumption* that the fact-value distinction is *gründlich*, i.e., *radically* true. As a result ethical theories at the presumably “deepest” level are supposed to be distinguished on the basis of whether or not the moral order is connected to the natural order (or whether or not the “ought” is divorced from the “is”). Those moral accounts which are related to the rest of nature or some part of nature are deemed teleological; those which are not are deemed deontological. The convention is either somewhat careless about the distinction or makes it too exclusively or dualistically.

By way of contrast, another recent textbook, *Great Traditions in Ethics* (1980) by Ethel Albert, Theodore Denise, and Sheldon Peterfreund, restricts the description “teleological” to Plato and Aristotle alone (pp. 10, 30). Very shrewdly these authors do not even apply it to Aquinas. And they certainly avoid using it for the positions of Hobbes, Hume, Bentham, and Mill. Such avoidance saves them from having to explain how a teleological ethics can be accommodated to the *mechanistic* beliefs of those thinkers as regards nature in general and human nature in particular.

The point of this exercise in textbook canvassing is to suggest that (1) Capaldi is not alone in regarding utilitarianism as a teleological doctrine, (2) to do so is a mistake, (3) his demon is utilitarianism not teleology, and (4) utilitarianism—through its teaching that morality consists in the moral agent’s maximizing pleasure for the maximum number of people and especially Mill’s version of that teaching whereby it is the agent’s *duty* to do so—is the proper philosophical base of doctrinaire liberalism and its policy of affirmative action.

Edmund Burke’s caution about such a doctrine did not occur to Bentham or Mill nor has it dawned on contemporary utilitarians. It is a caution worth noting as regards the matter of affirmative action.

The great inlet by which a colour for oppression has entered the world, is by one man’s pretending to determine concerning the happiness of another, and by claiming a right to use what means he thinks proper in order to bring him a sense of it. It is the ordinary and trite sophism of oppression.

It may very well be Mill’s effort to transform individual psychological hedonism into a universal ethical hedonism by means of the “deontological” concept of *duty* (“the pure idea of duty”) that is the fulcrum which sits upon the utilitarian base. In America that fulcrum has also been supplied by the Puritan tradition on ethics and worldly success. Louis Auchincloss’ wry comment on the Puritan ethic in our time—the subject of his latest novel—is appropriate.

In American culture, the Puritan tradition is to desire not only to do right by a certain moral standard, but to see to it that everyone *else* does (*Daily News*, 1/5/86).

In this respect, it is interesting and instructive to compare Capaldi’s account of affirmative action and liberalism with Michael Sandel’s in *Liberalism and the Limits of Justice* (1982). What is instructive in the comparison is that while both are in agreement about liberalism and its product—the policy of affirmative

action—Sandel's treatment is devoted to a criticism of liberalism, especially as found in the sophisticated arguments of John Rawls whereas Capaldi gives his attention to the arguments for but mostly against affirmative action. What is of interest in the comparison is that they disagree profoundly about the philosophical ground of liberalism—Sandel finding it to be more deeply rooted in deontology, while Capaldi locates it in teleology.

Sandel distinguishes two senses of deontology: (1) a moral sense wherein it is opposed to consequentialism and (2) a foundational sense wherein it is opposed to teleology (Sandel, p. 3). For Sandel, utilitarians are liberals but *not* liberals in the foundational sense. The "truest" liberal is a deontologist—a kind of Kantian. For Capaldi, utilitarians are liberals *and* they are liberals in what Sandel calls the foundational sense; i.e., for Capaldi utilitarians are teleologists.

Their disagreement would extend, at this deeper level, to Sandel's prescription for what he takes to be liberalism's unruly voluntarism (a view of the human will which holds it to be so free as not to be subject to reason)—a rediscovery of the limiting ground of the teleological order (Sandel, pp. 175–177). Such a prescription and corrective would involve, naturally, a rediscovery of a concept of reason which acts as a limit to and a guide for the will, not to speak of a concept of nature as having an order distinct from and prior to—but not independent of—human reason, human passions, and human will.

In this vein we must attend to an assertion made twice at the *center* of Professor Capaldi's powerfully reasoned text—an assertion which can only be disconcerting to the sympathetic reader. In the first place it may offer to the advocates of affirmative action a weapon against him. In the second place it puts him in the same boat at engine room level with the liberals whom he otherwise opposes. And in the third place it may count against another of his deeply held convictions.

That assertion is that "human beings do not have natures; rather each and every one of us has a multiplicity of conflicting desires" (p. 91). Yet on the last page of the text, he asserts with equal conviction ". . . human beings are autonomous moral agents, responsible for their choices and living according to self-imposed rules" (p. 179).

If it be true that human beings have no natures, but only a multiplicity of conflicting desires with nothing to sort out the multiplicity or the conflict, then the advocates of affirmative action will claim that Professor Capaldi can have no firm objection to having people manipulated either by the courts or by the social engineers. Human beings, by not having natures, are as infinitely malleable as they are unlimitedly autonomous. Here we should remember that when John Dewey (whose notion of human nature is strikingly like Capaldi's) said that man is primordially "a formless void of impulses" (*Human Nature and Conduct*, p. 125), he also said that "any impulse may become organized into almost any disposition according to the way it interacts with surroundings" (*Human Nature and Conduct*, p. 95). For Capaldi, Dewey, *and* liberals, human beings can be done to as much as they can do. And if this is so, then the human world has to take the

form of one autonomous will against another, one bundle of conflicting desires against another, and one batch of self-imposed rules against another. The advocates of affirmative action will call Professor Capaldi's appeal to reason a sham or even an instrument of his will, impulse, or desire to hold on to his position of privilege and to keep others from achieving the objects of their desires, their impulses or their autonomous wills, and living according to their own self-imposed rules.

If human beings have no nature, and if Sandel is right about the deepest level of liberalism and Capaldi wrong about it, then the sympathetic reader will worry that Capaldi has placed himself in the same deontological boat with the liberals, especially the doctrinaire liberals he so deeply opposes in the political matters. To say that human beings have no nature, no natural ends, only a multiplicity of conflicting desires, is to remain silent about what the principle of construction or selection might be either of ends or desires and whether or not that principle is distinct from choice itself. The deontological boat has an engine, but it does not seem to have a rudder or a port. Deontological liberal-utilitarianism may not collapse automatically into nihilism, but it is surely congenial, as are the advocates of affirmative action, to creating and shifting meanings, to twisting the law, to affirming relativism, to scorning the disinterested pursuit of knowledge, to rejecting the notion and fact of merit (and thereby accepting radical egalitarianism), to recognizing no limits on the power of the individual or the state to construct, reconstruct, or deconstruct the world, and to remaining silent or not worrying about acts of destruction committed by a tyrannical pursuit of duty in behalf of the duty and pleasure of others.

Finally the sympathetic reader will wonder and worry about whether or not Professor Capaldi's strong conviction that "human beings *are* [reviewer's emphasis] autonomous moral agents, responsible for their choices and living according to self-imposed rules" is too heavily taxed by his equally strong conviction that human beings have no natures but do have a multiplicity of conflicting desires. It is difficult to understand what that autonomy might be.

Even if he should escape the charge that he seems to make *autonomy* (or freedom) into the *nature* of human beings, an autonomy which they do not choose but which is theirs by virtue of being human, he might be persuaded to accept the suggestion that the way to confront affirmative action policy and its liberalistic roots is *not* "to challenge the idea that human beings have a nature to be fulfilled" (p. 90). He might then challenge even more forcefully than he does the idea that human beings have desires, all of which must be fulfilled. He might be persuaded, moreover, to accept the suggestion that if human beings have a multiplicity of conflicting desires, then it must be reason which enables them to judge and determine the multiplicity and the conflict and that it is freedom which enables them to make a selection. Such a combination of reason and freedom may just be what the nature or end of human beings *is*.