

The New 'New Property'

By *Einer Elhaug*

LOST IN THE DIN of this presidential election is a remarkably interesting intellectual development. The core theme of one presidential candidate would constitute a great step forward for one of the most important liberal ideas of the 1960s. And the candidate who proposes to take that step is not Vice President Al Gore, but Gov. George W. Bush.

Led by Charles Reich, author of "The Greening of America," '60s liberals used to argue that governmental benefits had become too important to people's lives to be left to governmental whim. Instead, such benefits should be recognized as the "new property" and entitled to judicial protection, just like traditional property rights.

This idea had enormous short-run impact, culminating in the famous Goldberg vs. Kelly legal decision that important government benefits cannot be taken away without due process. But as the idea actually developed, all it did was add judges to the mix of government officials involved in making discretionary decisions about whether individuals deserved governmental benefits. It did not alter the fundamental status of beneficiaries as dependents relying on the good graces of government. Nor did the old concept of the "new property" include the important property right to manage that property interest.

Now, the Bush proposal promises to change all that by creating significant property rights in governmental benefits. In Social Security, beneficiaries would have their own investment accounts. In health care, beneficiaries would have the right to re-direct their share of Medicare funds to whatever health plans they prefer. In education, parents would have the right to take their share of federal educational funds out of demonstrably failing schools, and put them in schools chosen by parents. All these are types of property rights that would give individuals not only greater protection from the whim of governmental officials, but far greater influence over those officials. Collectively, we might call them the new "new property".

Opponents commonly adopt three rhetorical strategies:

■ They argue that such proposals drain money from public programs. But shifting the power to decide how to use funds from government officials to individuals is not the same as flushing those funds down the

toilet. The funds would continue to be spent on precisely the same public purposes. Surely the point of these public programs is to educate children, treat illness and provide retirement security — not to maximize the power of government officials. Nor would government officials have any reason to fear losing control over funds unless they believe they are doing such a bad job that individuals would prefer to choose other entities to administer the funds.

■ Opponents argue that individuals cannot be trusted to make their own decisions. This objection is neither legitimate nor plausible. In education, parents would just be empowered to make the same educational choices that Gore himself made for his own kids between public and private schools. In health care, Medicare benefi-

made by individuals rather than by government officials.

■ Opponents claim that the Bush proposals would make funds go to institutions that are not "accountable" to the public. But as you know from making consumer decisions every day, nothing makes institutions more solicitous of your views than the property right to take your money elsewhere. "The customer is always right" is the mantra of businesses who have to compete for consumer loyalty.

Does Medicare or Social Security act this way? You're lucky if they return your phone calls. Or think about the last time you offered educational input to your kid's school. Did the school start with the premise that "the parent is always right"? The fact is that mutual funds are far more responsive to investors than Social Security is

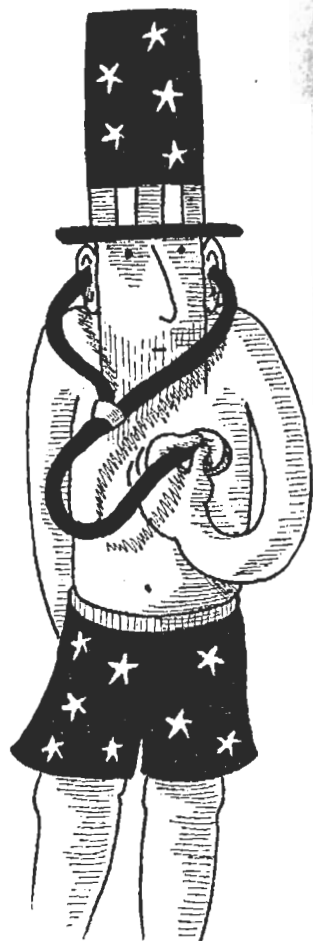
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ciaries would just have the right to make the same health-plan choices that federal employees have long been permitted to make. In Social Security, beneficiaries would just be free to make an investment decision that richer folk not only make all the time, but that any knowledgeable person would make. Ask any sophisticated investor you know: Would they invest their retirement funds exclusively in bonds that earn 1 percent to 2 percent annually? I doubt anyone would answer yes. Indeed, Gore originally did not even make that choice for the government's investment portfolio. He was an outspoken backer of the Clinton administration's proposal to invest Social Security funds in stock markets. But somehow Gore finds precisely the same investment decision too risky if it is

to beneficiaries, private insurers (even HMOs) track patient views far more closely than Medicare does, and private schools respond far more to parental opinion than public schools do.

The accountability point thus cuts the other way. Indeed, for most parents, the main benefit of vouchers is not that they would send their kids to private schools. The benefit is that the parental power to do that — to send their kids to a different public school — would make their local public school far more responsive to parental input. And those public schools that are responsive will grow at the expense of those who aren't.

We must accept the idea that we can finance great public purposes without giving government officials a monopoly over



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the disbursement of funds. Just last week, another Reich, Robert Reich, the former secretary of labor, came out in favor of another form of school vouchers. When the most liberal Cabinet secretary from the Clinton administration agrees with the central organizing principle underlying a Republican proposal, it is time for opponents to admit they are on the wrong side of history, and politely get out of the way.

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