THE COMMONS:
OUR RIGHT AND OUR RESPONSIBILITY?

Student Handout
DBQ Document Packet

Grade: 9 - 12

Lesson: The Commons: Our Right and Our Responsibility?

Number of Class Periods: 3 45-minute periods

The Healthy Commons Lesson Set was co-created by
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Document #1: The Common Good

By Claire Andre and Manuel Velasquez
Excerpted from: Andre, Claire, and Manuel Velasquez. "Issues in Ethics." Spring, 1992.
http://www.scu.edu/ethics/practicing/decision/commongood.html.
Permission Pending.

Commenting on the many economic and social problems that American society now confronts, Newsweek columnist Robert J. Samuelson recently wrote: "We face a choice between a society where people accept modest sacrifices for a common good or a more contentious society where groups selfishly protect their own benefits." Newsweek is not the only voice calling for a recognition of and commitment to the "common good." Daniel Callahan, an expert on bioethics, argues that solving the current crisis in our health care system – rapidly rising costs and dwindling access – requires replacing the current "ethic of individual rights" with an "ethic of the common good."

Appeals to the common good have also surfaced in discussions of business' social responsibilities, discussions of environmental pollution, discussions of our lack of investment in education, and discussions of the problems of crime and poverty. Everywhere, it seems, social commentators are claiming that our most fundamental social problems grow out of a widespread lack of commitment to the common good, coupled with an equally widespread pursuit of individual interests.

What exactly is "the common good," and why has it come to have such a critical place in current discussions of problems in our society? The common good is a notion that originated over two thousand years ago in the writings of Plato, Aristotle and Cicero. More recently, the contemporary ethicist, John Rawls, defined the common good as "certain general conditions that are ... equally to everyone's advantage." The Catholic religious tradition, which has a long history of struggling to define and promote the common good, defines it as "the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment." The common good, then, consists primarily of having the social systems, institutions and environments on which we all depend work in a manner that benefits all people. Examples of particular common goods or parts of the common good include an accessible and affordable public health care system, an effective system of public safety and security, peace among the nations of the world, a just legal and political system, an unpolluted natural environment, and a flourishing economic system. Because such systems, institutions and environments have such a powerful impact on the well-being of members of, society, it is no surprise that virtually every social problem in one way or another is linked to how well these systems and institutions are functioning.

As these examples suggest, the common good does not just happen. Establishing and maintaining the common good requires the cooperative efforts of some, often of many, people. Just as keeping a park free of litter depends on each user picking up after himself, so also maintaining the social conditions from which we all benefit requires the cooperative efforts of citizens. But these efforts pay off, for the common good is a good to which all members of society have access, and from whose enjoyment no one can be easily excluded. All persons for example, enjoy the benefits of clean air or an unpolluted environment, or any of our society's other common goods. In fact, something counts as a common good only to the extent that it is a good to which all have access.

It might seem that since all citizens benefit from the common good, we would all willingly respond to urgings that we each cooperate to establish and maintain the common good. But numerous observers have identified a number of obstacles that hinder us, as a society, from successfully doing so.

First, according to some philosophers, the very idea of a common good is inconsistent with a pluralistic society like ours. Different people have different ideas abut what is worthwhile or what constitutes "the good life for human beings," differences that have increased during the last few decades as the voices of more and more previously silenced groups, such as women and minorities have been heard. Given these differences, some people urge, it will be impossible for us to agree on what particular kind of social systems, institutions, and environment we will all pitch in to support. And even if we agree upon what we all valued, we would certainly disagree about the relative values things have for us. While many may agree, for example, that an affordable health system, a healthy educational system, and a clean environment are all parts of the common good, some will say that more should be invested in health than in education, while others will favor directing resources to the environment over both health and education. Such disagreements are bound to undercut our ability to evoke a sustained and widespread commitment to the common good. In the face of such pluralism, efforts to bring about the

common good can only lead to adopting or promoting the views of some, while excluding others, violating the principle of treating people equally. Moreover, such efforts would force everyone to support some specific notion of the common good, violating the freedom of those who do not share in that goal, and inevitably leading to paternalism (imposing one group's preference on others), tyranny and oppression.

A second problem encountered by proponents of the common good is what is sometimes called the "free rider problem." The benefits that a common good provides are, as we noted, available to everyone, including those who choose not to do their part to maintain the common good.

Individuals can become "free riders" by taking the benefits the common good provides while refusing to do their part to support the common good. An adequate water supply, for example, is a common good from which all people benefit. But to maintain an adequate supply of water during a drought, people must conserve water, which entails sacrifices. Some individuals may be reluctant to do their share, however, since they know that so long as enough other people conserve, they can enjoy the benefits without reducing their own consumption. If enough people become free riders in this way, the common good which depends on their support will be destroyed. Many observers believe that this is exactly what has happened to many of our common goods, such as the environment or education, where the reluctance of all persons to support efforts to maintain the health of these systems has led to their virtual collapse.

The third problem encountered by attempts to promote the common good is that of individualism. Our historical traditions place a high value on individual freedom, on personal rights, and on allowing each person to "do her own thing." Our culture views society as comprised of separate independent individuals who are free to pursue their own individual goals and interests without interference from others. In this individualistic culture it is difficult, perhaps impossible, to convince people that they should sacrifice some of their freedom, some of their personal goals, and some of their self-interest, for the sake of the "common good." Our cultural traditions, in fact, reinforce the individual who thinks that she should not have to contribute to the community's common good, but should be left free to pursue her own personal ends. Finally, appeals to the common good are confronted by the problem of an unequal sharing of burdens. Maintaining a common good often requires that particular individuals or particular groups bear costs that are much greater than those borne by others. Maintaining an unpolluted environment, for example, may require that particular firms that pollute install costly pollution control devices, undercutting profits. Making employment opportunities more equal may require that some groups, such as white males, sacrifice their own employment chances. Making the health system affordable and accessible to all may require that insurers accept lower premiums, that physicians accept lower salaries, or that those with particularly costly diseases or conditions forego the medical treatment on which their lives depend. Forcing particular groups or individuals to carry such unequal burdens "for the sake of the common good," is, at least arguably, unjust. Moreover, the prospect of having to carry such heavy and unequal burdens leads such groups and individuals to resist any attempts to secure common goods.

All of these problems pose considerable obstacles to those who call for an ethic of the common good. Still, appeals to the common good ought not to be dismissed. For they urge us to reflect on broad questions concerning the kind of society we want to become and how we are to achieve that society. They also challenge us to view ourselves as members of the same community and, while respecting and valuing the freedom of individuals to pursue their own goals, to recognize and further those goals we share in common.

Questions:

1. What is the common good?

2. What is the role of individuals in ensuring the common good?

3. Are individual rights more or less important than the collective good, according to this article?

4. What criteria does this author seem to establish for deciding between individual rights and the common good?

Document #2: Human Rights and Universal Responsibility

By Dalai Lama
Permission Pending.
Excerpted from: Dalai Lama. "Human Rights and Universal Responsibility."
Non-Governmental Organizations: The United Nations World Conference on Human Rights, Vienna, June 15, 1993. http://www.tibet.com/DL/vienna.html.

Our world is becoming smaller and ever more interdependent with the rapid growth in population and increasing contact between people and governments. In this light, it is important to reassess the rights and responsibilities of individuals, peoples and nations in relation to each other and to the planet as a whole. This World Conference of organizations and governments concerned about the rights and freedoms of people throughout the world reflects the appreciation of our interdependence.

No matter what country or continent we come from we are all basically the same human beings. We have the common human needs and concerns. We all seek happiness and try to avoid suffering regardless of our race, religion, sex or political status. Human beings, indeed all sentient beings, have the right to pursue happiness and live in peace and in freedom. As free human beings we can use our unique intelligence to try to understand ourselves and our world ....

The key to creating a better and more peaceful world is the development of love and compassion for others. This naturally means we must develop concern for our brothers and sisters who are less fortunate than we are. In this respect, the non-governmental organizations have a key role to play ....

When we demand the rights and freedoms we so cherish we should also be aware of our responsibilities. If we accept that others have an equal right to peace and happiness as ourselves do we not have a responsibility to help those in need? ...

There is a growing awareness of peoples' responsibilities to each other and to the planet we share. This is encouraging even though so much suffering continues to be inflicted based on chauvinism, race, religion, ideology and history. A new hope is emerging for the downtrodden, and people everywhere are displaying a willingness to champion and defend the rights and freedoms of their fellow human beings ....

I believe that one of the principal factors that hinder us from fully appreciating our interdependence is our undue emphasis on material development. We have become so engrossed in its pursuit that, unknowingly, we have neglected the most basic qualities of compassion, caring and cooperation. When we do not know someone or do not feel connected to an individual or group, we tend to overlook their needs. Yet, the development of human society requires that people help each other.

I, for one, strongly believe that individuals can make a difference in society. Every individual has a responsibility to help move our global family in the right direction and we must each assume
that responsibility. As a Buddhist monk, I try to develop compassion within myself, not simply as a religious practice, but on a human level as well. To encourage myself in this altruistic attitude, I sometimes find it helpful to imagine myself standing as a single individual on one side, facing a huge gathering of all other human beings on the other side. Then I ask myself, 'Whose interests are more important?" To me it is quite clear that however important I may feel I am, I am just one individual while others are infinite in number and importance.

Questions:

1. What arguments does this author use to claim that we should ensure the common good?

2. What is the role of the individual in ensuring the common good?

3. What criteria does the Dalai Lama use to reconcile his own individual rights and his responsibility as a citizen of the world?

Document #3: "The Hidden Commons"

By Jonathan Rowe
Permission Pending.
Excerpted from: Rowe, Jonathan. "The Hidden Commons"
http://www.yesmagazine.org/issues/reclaiming-the-commons/the-hidden-commons
Yes! Magazine
posted Jun 30, 2001

To say "the commons" is to evoke a puzzled pause. You mean the government? The common people? That park in Boston? In politics and the media, the concept of the commons might as well not exist. Yet the commons is more basic than both government and market. It is the vast realm that is the shared heritage of all of us that we typically use without toll or price. The atmosphere and oceans, languages and cultures, the stores of human knowledge and wisdom, the informal support systems of community, the peace and quiet that we crave, the genetic building blocks of life — these are all aspects of the commons.

Some are gifts of nature, others are the collective product of human creativity and endeavor. Some are new, such as the internet. Others are as ancient as folklore and calligraphy. But they all "belong" to all of us, if that is the word. No one has exclusive rights. We inherit them jointly, and they are more basic to our lives than either the market or the state. One can imagine life without a Commerce Department or an Amazon.com, but not without language and air fit to breathe. This implies a large responsibility. We are "temporary possessors and life renters," as Edmund Burke wrote famously, and we "should not think it amongst [our] rights to cut off the entail, or commit waste on the inheritance."

Leave the place as clean as you found it, if not cleaner, as our grandmothers used to say. But today not many are heeding. The value of the commons is beyond reckoning. Yet because there is no accepted language with which to talk about it, nor legal framework to protect it, the commons is subject to constant invasion, expropriation, and abuse. Each day brings news of yet another assault — upon our quiet, our civic spaces, the cohesion of our communities, our collective store of knowledge, the air and water that we need for life. Telecommunications firms claim the aural commons for cell phone use. Corporations claim the names of sports arenas and other civic institutions. Drug companies take ownership of university research, so that the goal becomes to produce more money instead of to advance the cause of knowledge. Even the world's water is turning into a commodity for sale. "Gushing Over Water Stocks," a CBS headline proclaims.

The result is a statistical illusion of progress — an increase of monetary transactions that hides the reality of decline in the larger matrix of well-being. The plundering of the commons has become the dominant theme in the process called, misleadingly, "growth." Growth has become a process of cannibalization. Increasingly it does not add a "good" that wasn't there before. Instead it takes a good from the commons, diminishes or degrades it, and then sells it back to us in commoditized and ersatz form. Pollute the lakes and rivers and then sell swimming pools and bottled water. Destroy the traditional village pattern of development, make people ride around in cars, then sell them treadmills for their exercise — and pills to make them calm.

The examples are without number. Meanwhile inequality increases, because more of life is pushed into the realm that requires the expenditure of money. We are left feeling badgered, stressed, financially strung out, worried about the future our grandkids will inhabit — and contending with a chronic nemesis without shape or name.

Lawyers no, serendipity yes

There have been many efforts to define the commons, but it defies precise formulation. It is simply too varied, too implicit in life process. A commons is not the same as a public program. It is not the fruits of government-funded research, for example, nor of the public schools. Such things are created through the institutions of the public sector. They have large public implications and can enhance a commons — for example, if government-funded research goes into the public domain. But they are not a commons in and of themselves.

A commons has a quality of just being there. Generally there are not formal rules to regulate the internal workings of the commons. This means, among other things, a happy scarcity of lawyers. People don't need a contract in order to breathe, a lease to sail in the ocean, an insurance policy to call a neighbor for help. They don't pay royalties to use the language or to tell fairy tales to their kids. That said, it will take new laws and lawyers to protect some commons as opposed to operating them.

A second attribute of a commons is an absence of advertising. The market is always pushing its "goods" and "services" in our faces, which might raise doubts as to whether these are really good or really serve. A commons, by contrast, is just there waiting to be used.

third attribute of a commons is serendipity. Often it is discovered. If a swimming hole exists, people will find it. Social commons arise spontaneously – the city street that becomes a jump rope arena and vending bazaar, the old sofa in the vacant lot that becomes a ghetto equivalent of the village tree. That there's no need for advertising says something about the utility of the commons compared to the products of the modern market.
A commons engages people as wholes, and this tends to produce a multiplier of benign effects, especially in terms of social cohesion and trust. Open-source software such as Linux produces an informal network of collaborators who give their time and talents freely. A neighborhood park gives rise to communities of dog walkers, chess players, basketball players, parents with kids.

As a source of energy, a commons has big advantages as well. Energy from the sun and wind is nonpolluting and available to all, in contrast to petro-chemicals, which are both dirty and dear. They generate local self sufficiency and economic development, As a source of energy, a commons has big advantages as well. In our social life there is often a social structure around a commons. On urban basketball courts the rule is simple: losers sit and winners play the next team in line. Or else there are formal rules that become incorporated into the structure of community life, as with community gardens.

The point here is not to romanticize the commons or suggest it should be everything. Markets do some things very well as do governments. The question is proportion and the need for boundaries to keep the market within the realm of its own competence. "The market economy is not everything," declared the conservative economist Wilhelm Ropke in the 1950s. "The supporters of the market economy do it the worst service by not observing its limits."

The riddle of invisibility

Before we can reclaim the commons we have to remember how to see it. This is no small task. When we breathe the air, or use language, or banter with neighbors on the front stoop, it rarely occurs to us that we are using a commons. It has become functionally invisible, and the media doesn't help. There are no news reports on the condition of the commons today, no speeches on it from the Senate chamber. The newspapers have many pages of stock market reports, but barely a word on the assets that belong to us all.

We tend to become what we choose to see. A culture that sees only the part of life transacted through money paves the way for the dominance of that part. Markets once were discrete occurrences in time and space. Now the market – referred to in the majestic singular – fills all space. It fills the home, the school, politics, media, the aural and visual environments of daily life. To reclaim the commons requires first a deliberate act of remembering, because the entire market-driven culture wants us to forget. The ultimate question, though, is how to do that reclaiming. The answer is not automatic recourse to a larger public sector; it is not the enlargement of the bureaucratic state. The state can destroy the commons as effectively as the market can, as the experience of former East Bloc countries demonstrated. Environmental destruction was as bad there as under capitalism and often worse, and the social commons withered as the state tried to occupy every inch of social space.

We need to recognize that the commons is distinct from both government and market, and requires a legal framework of its own. We need new ground rules to protect our common property, just as there are rules to protect our individual or private property. This is a crucial point. A market is not an act of nature; it does not arise spontaneously out of the ooze. Societies create markets and societies sustain them. Take away the legal and institutional structure created by government – the money system, the banking and securities laws, the protection of copyrights and patents, the defense of foreign oil production and so on – and the modern market could not exist.

The government cannot run a commons, any more than it can run a market. But it can establish rules and boundaries, just as it does for the market. The possibilities are without end. For example, we can stop the corrosive effects of highway subsidies, mall sprawl, antiquated zoning laws, and the like upon the social commons of traditional Main Streets. We can set aside more space on public airwaves for community, as opposed to corporate use, so that our airwaves function less as a medium for electronic huckstering and more as a village tree. We can establish boundaries against the noise and saturation advertising in the visual and aural environments, and we can stop the conversion of the internet into yet another huckster medium.

Steps like these would not mean government intrusion into more economic and social space. To the contrary, they would make it possible for something besides corporations to occupy this space. Regarding the natural environment, the case is especially clear. The oceans and atmosphere do not belong to government or the market. They belong to all of us, and environmental policy should reflect this fact. One way is to make corporations pay for

what they use, either as supply depot or dump. It is our property, after all. A General Electric wouldn't let people dump their trash on its property for free. Why should it get to dump its trash in our common property for free?

This approach would not replace tough pollution standards; it would supplement them. The idea has been proposed before, but from a market standpoint rather than a commons one. Peter Barnes, a founder of Working Assets, the credit card and long distance company, is proposing a Sky Trust that would receive these payments and distribute them to us owners (see page 27). This system would recognize that there's a common property right to the sky, just as there are private property rights to the factories that pollute the sky.

The new Commons sense

Of course, people are working on issues relating to the Commons already, and with some success. What's missing is a shared rationale and theme. There's a need to do with the multiple invasions of the commons what Thomas Paine did with the multiple abuses and indignities that American colonists suffered at the hand of the British — inject them with the force of a unifying idea. For decades people have been fighting separate battles, plugging holes in a thousand dikes. They've been fighting pollution of the natural and cognitive environments. They've been trying to stop the commercializing of the public schools and the corporate assaults upon their kids. They've been battling traffic, sprawl, noise, the patenting of life — so many battles that it's hard to keep track.

It is time now to declare that these are really aspects of the same battle. They are not just assertions of a vague "public interest." They are not attempts to violate property rights. They seek rather to protect a property right — a common property right.

Two centuries and some ago, people looked at the economic life around them and saw many different things. They saw factories and farms, shipping firms and theaters, and on and on. Then Adam Smith came along and said "Hey, wait a minute. These aren't just different things. They are different aspects of the same thing — a market." It was Smith's genius to give mental shape to the whole, and this idea has dominated the public imagination ever since.

Now we need to do that with the commons. We need to declare that atmospheric pollution is not just a health threat. It is a violation of common property rights — a form of taking. Sprawl is not just an inefficient use of land and energy. It depletes the social commons, which rarely thrives in a world of freeways and malls. The commercial invasion of childhood is not just a matter of obesity and hyperactivity. It involves a larger question of the narrative commons — the question of who creates the stories on which young people are weaned, and to what ends.

For decades the libertarian Right has been fighting what it calls "takings" of private property by government. Now it's time to fight the taking of what belongs to us all.

Should businesses be free to make any product or packaging they want, then Countries Around the World Hold Businesses Responsible for Product and Packaging Waste.

Jonathan Rowe is a writer and policy analyst, coauthor of the book Time Dollars, a YES! contributing editor, and a founder of the Tomales Institute (see Resource Guide).

Questions

1. What does the author mean when he says, "The riddle of invisibility"?

2. In what ways does the government value individual rights over the common good (or vice versa)?

3. How would changing from a market perspective to a commons perspective affect the balance between individu al rights and the collective responsibility to the commons?

4. What does the author offer as a way of resolving the tensions surfaced in this article?

Document #4: "Take it Back"

By Eric Lombardi
Permission Pending.
Excerpted from: EcoCycle
http://www.ecocycle.org/zero/takeback.cfm
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If manufacturers know up front that their product/packaging must be re-usable, recyclable or compostable, and that they will be charged a portion of the cost to ensure this, all sorts of eco-logically-sensitive new ideas will enter the marketplace without further government intervention.

Take It Back!

Should businesses be free to make any product or packaging they want, then sell it and walk away with no further responsibility? According to the laws in 28 nations, the answer is "no." There is one more step to add to the business equation before profits can be counted; it's called "Producer Responsibility" (PR), or "take-back" laws, and it requires companies who make or import items to be involved in the "end-of-life" phase of their products' life cycles. In almost all cases, there is a requirement to meet minimal recycling or re-use rates.

I recently attended the international "Take It Back!" conference in Los Angeles and was astounded at how many exciting Producer Responsibility activities are happening outside the USA. We heard from top experts from the European Union, Germany, Norway, Britain, China, Taiwan, Brazil, Argentina, Uruguay and other nations.

The United States stood out awkwardly as the largest first-world nation without any take-back laws. The sad joke at the end of two days was that if we in the U.S. worked really hard, we just might catch up to Brazil on this issue. Here are some global examples of "take-back" in action:

- By the year 2005, all cars made in Europe must be taken back free of charge by their producers, and 85% of the vehicle must be re-used or recycled;
- In Norway, between 70-90% of all electrical and electronic products must be recovered by their producers for re-use or recycling;
- In Argentina, a national law is pending which would designate as "hazardous waste" any packaging that isn't re-usable or recyclable;
- In Brazil, the National Solid Waste Policy (something which the USA also needs!) requires that corporations obtain an "Environmental Operating License" that includes take-back requirements;
- The European Union is establishing rules for all corporations called "Essential Requirements," which include take-back laws.

What is the goal here? And how is such government intervention in the marketplace justified? According to Paul Hawken's book, The Ecology of Commerce, 94% of the materials used in the manufacture of the average US product are thrown away before the product even reaches the shelves. Take-back laws create an incentive for producers to pay attention to the design phase of their product/packaging's life cycle. That is where the greatest concentration of creativity, control and resources exists to solve the downstream environmental problems which obsolete products and single-use packaging create. If manufacturers know up front that their product/packaging must be re-usable, recyclable or compostable, and that they will be charged a portion of the cost to ensure this, all sorts of ecologically-sensitive new ideas will enter the marketplace without further government intervention.

American corporations conducting international business will have to live by the take-back laws in these other

countries ("producers" are defined as either manufacturers or importers). The big question is whether or not those same corporations will then change their business practices back here in the USA to match their new "environmental" approach abroad. If Coca-Cola is any example, we're in trouble. Coke has been making recycled plastic bottles in Australia because they have to by law. But in the USA Coke doesn't use recycled plastic and is actually fighting against a national campaign to get them to start using recycled material back home. If they do it in Australia, why not here? We may soon be asking that question of many more companies and products in addition to Coke as the international Producer Responsibility laws take hold.

It's bad enough that our country is ignoring this positive new global trend called producer responsibility, but our role is actually turning ugly. The American Chamber of Commerce (ACC) and the American Electronics Association (AEA) are fighting against the European Union's proposed electronics take-back laws (called the WEEE Directive). The AEA and ACC have already won some "victories," such as deleting the requirement in the WEEE Directive that computers contain some recycled plastic in their construction. The issue of environmental pollution from electronic discards is a serious and growing problem, considering that lead poisoning is the leading cause of brain damage and learning disabilities in children.

There are five pounds of lead in every computer monitor, and there is lead in most of the solder points in electronic product circuit boards. By 2005, 150 million PCs will be landfilled in the USA, along with millions of other electronic products. The issue is public health, and the solution is to use less toxic materials in manufacturing and then capture them all for re-use or recycling at the end of the product's life cycle. Yet, the large American corporations are fighting to make sure that small countries like Norway don't pass common sense laws which would protect their children but cost the consumer a few pennies on their purchase.

I know that few things in life are black and white. But on this issue of whether or not manufacturers should have all or at least part of the responsibility for the final disposition of the products they make, I think the answer is a resounding "YES." I think the greatest gains ahead for the environment lie in better design of our products and packaging, which is one of the cornerstones of the Zero Waste movement. Perhaps the next big question for us in Boulder County is, "Should we pass our own local take-back laws?"

Questions:

1. What criteria do the take-back laws establish about responsibility for the commons?

2. Is the United States exhibiting a sense of individual rights or responsibilities with respect to "take-back" laws?

3. What information would you offer to help countries like the United States determine whether or not to enact "take-back" laws?

Document #5: "Ship of Fools…"

By Chris Madden
http://www.goma.demon.co.uk/eco/shipoffools.html
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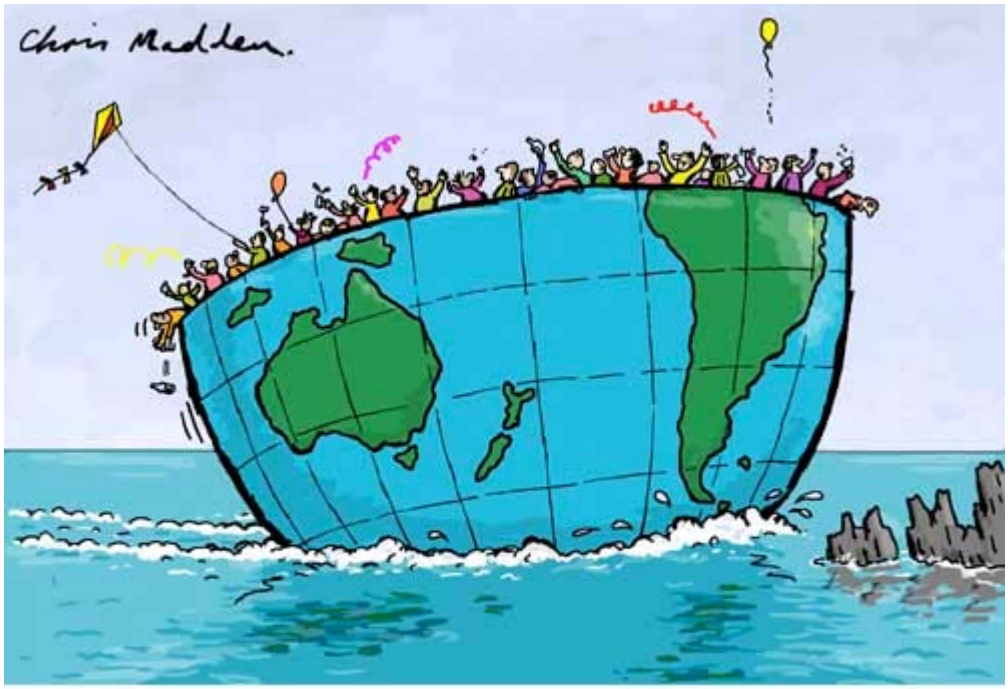

THE SHIP OF FOOLS AND THE ROCKS OF SHORT-TERM ECONOMIC PLANNING

Questions

1. Why is this a ship of fools?
2. What might these citizens need to consider about the relationship between their rights and the common good?
3. If the young people on this ship were invited to lead the change, what would you recommend they do to turn this ship around so it can head toward a healthy and sustainable future for all?

Scenarios

Directions: Use the following scenarios as test cases for the criteria you have established for helping to reconcile the conflicts that exist between individual rights and our responsibilities to tend the Commons.

The continuing tensions between individual rights and public health

Excerpted from Talking Point on public health versus civil liberties, Ronald Bayer
http://www.nature.com/embor/journal/v8/n12/full/7401134.html last accessed on 9.20.10

PUBLIC HEALTH IS A COMMONS. What criteria would you use to reconcile the conflicts that exist between our indi vidual rights and our responsibilities as citizens to tend the Commons?

Introduction

To what extent can a state legitimately restrict the liberties of its citizens in order to serve the common good? Furthermore, to what extent has the protection of the public's welfare been a pretext for governments to curtail or erode fundamental rights? These questions have formed the foundation of controversies and long-running debates about public health in the USA; conflicts that have been animated by a deep-rooted mistrust of overreaching authorities, concerns about arbitrary exercises of power, and by the anti-authoritarian ethos that is a historically prominent feature of US politics and civic culture.

Scenario 1

Motorcycle Helmets

Should we have the individual right not to wear a helmet when riding a motorcycle? Does the public's health trump our individual right to go "helmetless?"

It has long been known that wearing helmets drastically decreases a motorcyclist's risk of death or severe injury in the case of an accident. During the 1970s, pressure by the federal government in the USA led virtually all states to mandate the use of motorcycle helmets (Jones & Bayer, 2007). These statutes provoked the wrath of motorcyclists who asserted that the state deprived them of the right to cycle in the way that was most pleasurable and exciting, and that failure to use helmets posed no threat to others. In short, these laws were, they asserted, an example of overreaching state intrusion, of gross paternalism. Nevertheless, when the courts reviewed these statutes, they were almost never overturned as unconstitutional. A court in Massachusetts noted, "From the moment of the injury, society picks the person up off the highway; delivers him to a municipal hospital and municipal doctors; provides him with unemployment compensation if, after recovery, he cannot replace his lost job; and if the injury causes permanent disability many assure the responsibility for his and his family's continued sustenance. We do not understand a state of mind that permits a plaintiff to think that only he himself is concerned" (Cronin, 1980).

Scenario 2

Tobacco

Should we have the individual right to smoke? Does the public's health trump our individual right to smoke?

Recent history underscores that achievements in public health often carry a price in individual freedom. It would be convenient to think about tobacco as similar to other environmental toxins, which we simply ban when we find that they cause morbidity and mortality; however, tobacco is different. Millions consume it because of addiction, habit, desire or social convention. It is therefore impossible to consider public policy without addressing the extent to which the state might exert pressure and impose limits in the name of health..

When limits were proposed on tobacco advertising—a unique problem in the USA, where the Supreme Court has extended the protections of the First Amendment to commercial speech—they were commonly justified by the need to protect children from the seductions of tobacco. When arguments were made for radically increasing taxes on cigarettes, thus burdening consumption—especially for those with less disposable income—it was asserted that such levies were vital because of the social costs created by tobacco-associated morbidity and mortality. Finally, when increasingly restrictive measures were imposed on smoking in public settings, the central justification was that passive smoking was pathogenic and responsible for deaths associated with cancer and heart disease. It was almost never asserted that limits on advertising, increases in taxes and restrictions on public smoking were necessary to protect those who might begin to smoke or those who were smokers.

Scenario 3

Infectious Diseases

Should we have the individual right to be sick without telling anyone and without being treated? Does the public's health trump our right to privacy and to free will?

The first tensions over the scope of public health and the acceptability of its measures arose during the fight against infectious disease in the nineteenth and early twentieth centuries. They resurfaced in the last decades of the twentieth century in the wake of efforts to address chronic conditions that began to inform the pattern of morbidity and mortality in industrial societies. They reveal an enduring tension between public health and individual rights—a tension that we ignore at our own peril.

Public health surveillance for both infectious and non-infectious diseases is crucial in order to understand the patterns of diseases, and for the planning and execution of remedial action. This is true for tuberculosis, as it is true for cancer (Fairchild et al, 2007). Surveillance, to be effective, necessitates that either physicians or laboratories comply with public health mandates that clearly intrude on privacy. Only if we acknowledge this fact can we determine whether the public health benefits of surveillance justify this price.

The HIV/AIDS epidemic provided the occasion to articulate a new paradigm of public health. Given the biological, epidemiological and political factors that shaped the public policy discussion, proponents and defenders of civil liberties were able to assert that no tension existed between public health and civil liberties, that policies that protected the latter would foster the former and that policies that intruded on rights would subvert public health. What was true for HIV/AIDS was also true for public health generally.

Mandatory immunization of school children clearly intrudes on or burdens parental autonomy. Yet, both the protection of children from infectious disease and the ensuing 'herd immunity' by high-level vaccination coverage, which protects those who cannot be vaccinated, depend on such mandates. Various outbreaks of measles and pertussis (whooping cough) underscore the toll that we have to pay when we privilege parental choice; it might be a cost worth bearing but we will only know if we are forced to acknowledge the trade-offs involved.