

# Why Neutrality?

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Professor Stewart's article is designed to convince us that the modern regulatory state can be made consistent with the requirements of liberalism. Given this objective, it seems odd that he defines liberalism in a way that makes any kind of governmental activity indefensible. Liberalism, he claims, requires the government insofar as it can, consistent with its basic functions, to be neutral regarding its citizens' value choices; governmental action, including regulation, must avoid, to the extent possible, choosing among its citizens' different "conceptions of the good."<sup>1</sup> Yet if liberalism actually requires this kind of government value neutrality, then neither the United States nor any other country has had, or could ever have, a liberal government. Part I of this Comment will demonstrate that no government action can be value neutral. All of Professor Stewart's efforts to portray the regulatory state as value neutral can disguise, but cannot eliminate, governmental value choices.

Many defenders of liberalism would respond to such an attack on the ideal of neutrality simply by denying that liberalism necessarily renders government impotent to make value choices and implement social change.<sup>2</sup> Bentham, for example, was a liberal thinker not afraid to use government power to implement certain values at the expense of others.<sup>3</sup> But this kind of defense of liberalism seems unacceptable to Professor Stewart. For him governmental activity—in particular, governmental regulation—can be justified only if it does not require the government to use its coercive powers "in a partisan manner to advance some citizens' particular conception of the good."<sup>4</sup> In Part II of this Comment, I speculate on the reasons for Professor Stewart's decision to ground governmental regulatory power on the implausible claim that it can be made consistent with the ideal of a neutral government. I argue that he has attempted to justify the welfare state in these terms in order to persuade those on the Right who share his ideal of governmental neutrality to support governmental regulation. By framing his article in this way, however, he has neglected even to address

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1. Stewart, *Regulation in a Liberal State: The Role of Non-Commodity Values*, 92 YALE L.J. 1537, 1539 (1983).

2. See J. DEWEY, LIBERALISM AND SOCIAL ACTION 15 (1963).

3. See J. BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (Anchor ed. 1963).

4. Stewart, *supra* note 1, at 1540.

the concerns of other critics of the regulatory state—those on the Left who criticize the welfare state not for its advocacy of values but for the way in which those value judgments are made.

## I

In his article, Professor Stewart postulates governmental neutrality as an essential ingredient of liberalism. Although he rejects the position that liberalism requires moral skepticism and thereby allows the state to make some value choices, he restricts these choices to those that appear neutral and noncontroversial.<sup>5</sup> He assigns the liberal state only such tasks as instilling “respect for the moral values of citizens’ rights” and nurturing “competing conceptions of the good.”<sup>6</sup> These values seem either to enhance every individual’s ability to pursue her own goals or, at worst, to thwart her desires only in nonproblematic ways (no crime allowed).<sup>7</sup> Moreover, Professor Stewart insists that government has no business preferring some of its citizens to others by (for example) redistributing private wealth.<sup>8</sup> The only governmental position that appears to be acceptable is its pursuit either of values common to everyone or of no specific values at all. Professor Stewart thus advocates governmental reliance on what he calls “non-commodity values” on the ground that such values are needed to prevent governmental favoritism: A government that pursues only commodity values would favor some of its citizens’ values over others. Professor Stewart even defines and defends his four specific non-commodity values in wholly apolitical terms; each value appears not to advance any particular vision of the good and to make the government neutral regarding its citizens’ basic choices in life.<sup>9</sup>

Professor Stewart’s insistence on governmental neutrality is not—and could not be—based on an historical analysis of American government as a passive observer in the creation of American Society. Louis Hartz, who most dramatically sought to label America as the quintessential liberal society,<sup>10</sup> demonstrated in his historical work the active effort by govern-

5. *Id.* at 1540.

6. *Id.* at 1539. The neutral impact of this kind of state action can be contrasted with government action justified by an appeal to the public interest. Such an appeal is more threatening because it can so readily be used to conceal the government’s adoption of one set of private values at the expense of another. Indeed, liberal criticism of the concept of the public good is as old as the works of Locke and Hume. J. LOCKE, *A Letter Concerning Toleration*, in 5 WORKS OF JOHN LOCKE 43–45 (London, 1824); D. Hume, *That Politics May be Reduced to a Science*, in HUME’S MORAL AND POLITICAL PHILOSOPHY 295 (H. Aiken ed. 1948).

7. Stewart, *supra* note 1, at 1540–41.

8. *Id.*

9. *Id.* at 1567–69. For a description of Professor Stewart’s “non-commodity” values, see *infra* 1595–96.

10. L. HARTZ, *THE LIBERAL TRADITION IN AMERICA* (1955).

ment from the time of the American Revolution onwards to foster some values at the expense of others.<sup>11</sup> Hartz's account, which focuses on the involvement of state and local government in fostering specific commercial ventures, ends in 1860, but it could easily be updated with hundreds of later examples. Such examples range from the municipal financing of railroads later in the nineteenth century<sup>12</sup> to Detroit's recent condemnation of the Poletown neighborhood to provide a plant site for General Motors.<sup>13</sup> The picture is no different at the national level. Both Hamilton and Jefferson sought to foster a liberal society, as did the judges and other government officials who regularly used governmental power to deter the formation of labor unions.<sup>14</sup> Professor Stewart does not dispute this history—indeed, he cites some of it himself.<sup>15</sup>

Professor Stewart's insistence on the link between neutrality and liberalism rests not on an historical analysis but on his unusual reading of major liberal thinkers. John Stuart Mill can serve as an example. Mill assigned to government an active role in the creation of the values of its citizens. Believing that "all the follies, all the vices, all the negligences, indolences, and supineness of mankind"<sup>16</sup> could destroy the foundation of the social order, Mill argued that the "most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves."<sup>17</sup> Far from thinking, as did Kant, that a liberal constitution could permit even a population of devils to cooperate peacefully,<sup>18</sup> Mill sought, as did Aristotle, to have the government act affirmatively to create the kind of citizenry necessary to perpetuate a just society.<sup>19</sup> Moreover, while conceding in his *Principles of Political Economy* that a laissez-faire government was the general rule, Mill propounded a substantial list of "exceptions" that required a liberal government to adopt an extensive positive program.<sup>20</sup> For example, he recog-

11. L. HARTZ, *ECONOMIC POLICY AND DEMOCRATIC THOUGHT: PENNSYLVANIA, 1776-1860*, at 3 (1948); see also O. HANDLIN & M. HANDLIN, *COMMONWEALTH* (1947) (same proposition in context of Massachusetts).

12. See Fairman, *Reconstruction and Reform 1864-1888*, in 6 *HISTORY OF THE SUPREME COURT OF THE UNITED STATES 1010-17* (P. Freund ed. 1971).

13. *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981).

14. See, e.g., *Truax v. Corrigan*, 257 U.S. 312 (1921); Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-41*, 62 *MINN. L. REV.* 265, 269-70 (1978).

15. Stewart, *supra* note 1, at 1543-45.

16. J. MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 22 (C. Shields ed. 1958) (1st ed. London 1848).

17. *Id.* at 25.

18. I. KANT, *Perpetual Peace, A Philosophical Sketch*, in *KANT'S POLITICAL WRITINGS* 112-13 (H. Reiss ed. 1970).

19. ARISTOTLE, *POLITICS* 173-205 (H. Rackham trans. 1959); Barker, *Introduction to ARISTOTLE, POLITICS* (E. Barker trans. 1946).

20. 2 J. MILL, *PRINCIPLES OF POLITICAL ECONOMY*, 953-980 (W. Asley ed. 1976) (1st ed. London 1848).

nized that the rules of property and contract could not be derived simply from the wishes of private individuals; they had to be the product of public policy. Government had to choose a position on issues such as the enforceability of wage contracts with low salaries, or of contracts, even for marriage, that purported to last in perpetuity.<sup>21</sup> Furthermore, in addition to a governmental role in education, Mill urged close governmental supervision of corporations and of utility companies<sup>22</sup> and a broader government welfare program than the one that now exists in the United States.<sup>23</sup>

Such a government agenda is not easily understood as being neutral regarding individual conceptions of the good. Yet Professor Stewart tries to make this kind of governmental action consistent with neutrality by advancing the following liberal canon: The principle of neutrality does not bar government activity as long as such activity is limited to "securing individuals' private and political liberties, underwriting private agreements and associations, and providing other nurturing social services (such as education) and other collective goods (such as healthy environments)."<sup>24</sup> The key concepts in this proposition are "rights" and "appropriate background conditions." By manipulating these two concepts, Professor Stewart is able to present all governmental value choices as merely exercises of neutrality.

Consider first the concept of "rights." Professor Stewart suggests that the welfare state can be considered value neutral because there might be a

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Governments do not limit their concern with contracts to a simple enforcement. They take upon themselves to determine what contracts are fit to be enforced. It is not enough that one person, not being either cheated or compelled, makes a promise to another. There are promises by which it is not for the public good that persons should have the power of binding themselves. To say nothing of engagements to do something contrary to law, there are engagements which the law refuses to enforce, for reasons connected with the interest of the promiser, or with the general policy of the state. A contract by which a person sells himself to another as a slave, would be declared void by the tribunals of this and of most other european countries. There are few nations whose laws enforce a contract for what is looked upon as prostitution, or any matrimonial engagement of which the conditions vary in any respect from those which the law has thought fit to prescribe. But when once it is admitted that there are any engagements which for reasons of expediency the law ought not to enforce, the same question is necessarily opened with respect to all engagements. Whether, for example, the law should enforce a contract to labour, when the wages are too low, or the hours of work too severe: whether it should enforce a contract by which a person binds himself to remain, for more than a very limited period, in the service of a given individual: whether a contract of marriage, entered into for life, should continue to be enforced against the deliberate will of the persons, or of either of the persons, who entered into it. Every question which can possibly arise as to the policy of contracts, and of the relations which they establish among human beings, is a question for the legislator; and one which he cannot escape from considering, and in some way or other deciding.

*Id.* at 389; *see also id.* at 386-90, 518, 585-87.

22. *Id.* at 582-85.

23. *Id.* at 590.

24. Stewart, *supra* note 1, at 1539.

right to a minimum income.<sup>25</sup> C. B. MacPherson relies on a similar kind of invention of rights to reach a more radical position: He portrays democratic socialism as simply an outgrowth of the need to protect liberal property rights.<sup>26</sup> Professor MacPherson accomplishes this result by redefining property rights to include “the right to share in political power, and, even beyond that, a right to a kind of society or set of power relations which will enable the individual to live a fully human life.”<sup>27</sup> Since neither Professor Stewart nor Professor MacPherson feels bound by current law in his definition of rights, each has unlimited scope to label any governmental value choice a protection of a “right” and thus a mere extension of liberal neutrality.

But surely it has been clear since Wesley Hohfeld and Robert Hale that every creation and interpretation of a right is itself a value choice.<sup>28</sup> Even if property rights were derived from natural law and not from the state, the interpretation of what a property right is can never be value neutral. Whether a court allows Alice to use her land in a way that blocks the sunlight that operates Barbara’s adjacent solar heating system or, alternatively, grants Barbara an easement over Alice’s land so that Barbara can warm her house, the court’s interpretation of property rights is a value choice.<sup>29</sup> As long as government is to be the source of interpretation and enforcement of rights—and every liberal thinker assigns it that task<sup>30</sup>—government can never be value neutral. The concept of rights, far from solving the problem of government value neutrality, simply restates it: No liberal government can be neutral because it exercises the power to decide what rights are.<sup>31</sup>

Professor Stewart’s second concept—that the liberal state can properly act to create the “background conditions” that allow each person to pursue his own vision of the good—similarly allows government to make

25. *Id.* at 1568.

26. C. MACPHERSON, *A Political Theory of Property*, in *DEMOCRATIC THEORY: ESSAYS IN RETRIEVAL* 120 (1973).

27. *Id.* at 136.

28. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 *YALE L.J.* 710 (1917); Hale, *Force and the State: A Comparison of “Political” and “Economic” Compulsion*, 35 *COLUM. L. REV.* 149 (1935); Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 *POL. SCI. Q.* 470 (1923). For an excellent discussion of the importance of Hohfeld’s insights, see Singer, *The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld*, 1982 *WIS. L. REV.* 975 (1982).

29. This hypothetical is based on *Prah v. Maretti*, 321 N.W.2d 182 (Wis. 1982) in which the Wisconsin Supreme Court overturned the lower court’s determination that the plaintiff had failed to state a claim.

30. Kennedy, *The Structure of Blackstone’s Commentaries*, 28 *BUFFALO L. REV.* 205, 258-61, 294-300, 354-62 (1979).

31. In one part of his essay, Professor Stewart seems to recognize that value choices are involved in assigning rights in a modern regulatory context; he therefore rejects any reliance on the concept of rights for most of current regulatory decisionmaking. Stewart, *supra* note 1, at 1557-60. But the same element of choice is equally present in those situations in which he relies on a rights analysis.

value choices under the guise of neutrality. Professor Stewart, following Mill, argues that an adequate conception of liberalism must stress the importance of equipping and encouraging people to examine their own ideas critically, providing them the means to pursue the goals thus developed, inviting them to engage actively in the collective management of their common affairs, and promoting diversity of cultures and political views. He labels these goals "non-commodity values," and he defends them on the ground that they are background conditions necessary for free individual choice. Liberalism, as Stewart presents it, seems part of the classical republican or civic virtue tradition within Western political thought.<sup>32</sup>

Professor Stewart fails to recognize, however, that almost any governmental action can be defended on the ground that it is designed to create these background conditions. Once one accepts the impact of social reality on the formation of ideas,<sup>33</sup> all of social life can be understood as affecting a person's ability to choose her own conception of the good. Accordingly, all of social life is open to reconstruction under the guise of presenting a better opportunity for individual choice. Professor Stewart recognizes that a policy promoting some of these values affects the nature of individual choice,<sup>34</sup> but he neglects to add that *all* governmental action—including its support of the market economy itself—has the same effect. But surely the government's creation of a society that affects the nature of individual choice is not neutral; it is instead, as Aristotle claimed, the very essence of politics.<sup>35</sup>

## II

I hope that enough has now been said to show that Professor Stewart, far from making government neutral, has simply chosen to camouflage his value choices in the language of rights and of background conditions that enhance the opportunity for individual choice. The interesting question as far as I am concerned is why he feels the need for this camouflage. My own guess is that Professor Stewart seeks to present his value choices as being neutral because he is more of an Eisenhower Republican than he is a classical republican.

The characteristic feature of an Eisenhower Republican, I believe, is his conviction that the arguments he must confront to justify his politics

32. For a general treatment of the tradition from the era of Machiavelli, see J. POCOCK, *THE MACHIAVELLIAN MOMENT* (1975).

33. The nature of this impact is analyzed in classic works dealing with the sociology of knowledge. See, e.g., K. MANNHEIM, *IDEOLOGY AND UTOPIA* (1936); P. BERGER & T. LUCKMAN, *THE SOCIAL CONSTRUCTION OF REALITY* (1967).

34. Stewart, *supra* note 1, at 1568-69.

35. ARISTOTLE, *supra* note 19.

come from the Right. He sees himself as a (relative) progressive and fears that the Right might force him out of the Republican party. The viability of his progressive stance depends on his ability to convince the powerful, even persuasive, voices of the Right of his legitimacy. He therefore uses the language of the Right, seeking to show that a proper reading of even that language allows him to be an appropriate representative of their common cause.

This stance, it seems to me, pervades Professor Stewart's Article. He adopts the right-wing goal of a valueless, passive government—one that exists only to let private interests pursue their objectives—and tries to show that, even in these terms, the regulatory state can be justified. He seeks to persuade us that even a liberal of a Lockean persuasion would today be a regulator. In pursuing this effort, all of his arguments are designed to convince the Right that he is more neutral than it is. For example, he spends a good deal of time criticizing the absolutely ridiculous position that the only values worthy of respect are those that are reflected in market transactions. This is a position advanced only by a small, right-wing fringe, if by anyone. Now it should be said that Professor Stewart's arguments against this right-wing fringe, as far as they go, are good ones. The imposition of a market-value approach *is* the "paternalistic" imposition of one set of values at the expense of others.<sup>36</sup> The "enforcement-of-private-deals" theory of regulation *is* indeterminate; contract law (as John Stuart Mill well recognized) has always had to decide which deals should be enforced and which should not.<sup>37</sup> The appeal to efficiency in administrative law *is* subject to a now well-developed critique of law-and-economics that has been articulated in other contexts. Professor Stewart, in short, succeeds in demonstrating that conceptions of regulation normally embraced by the Right do not accomplish their avowed end of promoting government neutrality. The problem is that insistence on appealing to the Right traps him into an equally unpersuasive reliance on neutrality and prevents him from advancing the cause of so-called non-commodity values on their own merits.

Indeed, by concentrating only on the arguments of the Right, Professor Stewart never feels compelled even to address those of us who think that government neutrality is a chimera, and for whom the issue of governmental legitimacy is not whether the government should pursue values but from where these values should come. In particular, he never feels called upon to respond to those on the Left who seek to make the values Professor Stewart is espousing—the values of civic virtue associated with the

36. Stewart, *supra* note 1, at 1540 n.12.

37. *Id.* at 1551–52; see *supra* note 21.

classical republican tradition—the basis of public policymaking.<sup>38</sup> This does not mean simply making the classical republican tradition one factor among the many that should be taken into account in a hierarchical decisionmaking process that purports to be neutral. It means transforming the ideal of civic virtue into a way of establishing and justifying value choices through active democratic participation in the governmental decisionmaking process. Many who criticize the welfare state from the Left, in short, like many civic humanists before them, see civic virtue as the only source of values we have in a world in which value choices are up for grabs.<sup>39</sup>

It is true, of course, that one of the points of Professor Stewart's Article is to advance the cause of classical republicanism. He speaks articulately about the importance of civic virtue, about the values generated by small-scale associations like town meetings and religious and fraternal societies.<sup>40</sup> Indeed, he defends civic virtue against the advocates of the market and, to this extent, he fits right into the classical republican tradition. The problem is that he seeks to defend classical republicanism by fostering the *regulatory state*, not by fundamentally restructuring the decisionmaking process. Indeed, at the end of his Article, he seeks to persuade us that, by some synthesis, a combination of judicial review, bureaucratic specialization, electoral representation in the legislature and carefully devised efforts at decentralization might produce a neutral government, civic virtue, a free market, *and* the regulatory state.<sup>41</sup> It will not be easy, of course, and we could fail; but careful, judicious revision of the status quo is the best course to follow. It is at this point that Professor Stewart reappears as an Eisenhower Republican rather than a classical republican.

Now, to be fair, I should indicate more specifically what a classical republican criticism of Professor Stewart's position might be.<sup>42</sup> This I shall now attempt to do, focusing on the broadcasting and environmental issues on which Professor Stewart concentrates. Beginning first with the issue of broadcasting, decentralization of program content to the local community is, as Professor Stewart suggests, a central goal.<sup>43</sup> Moreover, he is right to suggest that cable technology could be a way to open up the

38. See, e.g., Pitkin & Shumer, *On Participation*, 2 DEMOCRACY 43 (1982); J. GAVENTA, POWER AND POWERLESSNESS (1980); L. GOODWYN, THE POPULIST MOMENT (1978). This is my own position. See Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

39. See J. POCOCK, *supra* note 32, at 211-18. For general analyses of how values must be created in the modern world, see A. MACINTYRE, AFTER VIRTUE (1981); R. RORTY, PHILOSOPHY AND THE MIRROR OF NATURE (1979).

40. Stewart, *supra* note 1, at 1569.

41. *Id.* at 1587-89.

42. Note that I am *not* saying what *the* classical republican stance on these issues is—there is no such thing. I seek only to indicate one such possible stance, one that gives an indication of the kind of argument from the Left that Professor Stewart never feels obliged to address.

43. *Id.* at 1574.



possibility of locally controlled programming.<sup>44</sup> But decentralization would not promote civic virtue if each local broadcaster, whether on free or cable TV, were simply a hierarchically organized corporation that related to its community only through the shadow market of the Nielsen ratings. Promotion of classical republican values requires involving the greatest possible number of people in the process of making programming decisions.

Such involvement, first of all, is fostered by a participatory rather than a hierarchical form of broadcasting organization. Curiously, when Professor Stewart talks of the value of civic virtue, he refers only to town meetings and fraternal organizations and not to one's life at work.<sup>45</sup> But since our daily work (together with our family life) occupies most of our time, the participatory values that are the hallmark of the civic virtue tradition must be part of our work life if they are actually to transform our human experience. Moreover, these organizations should be structured to allow television consumers as well as producers to participate in programming decisions and to ensure that this participation is not just through a market nexus, but through joint discussion and planning. We now seriously lack organizational forms that permit such participation; it will take imagination and radical change to create them. But different approaches can be tried to see how a consumer voice can most effectively be heard. Stations could be consumer cooperatives whose members could plan the appropriate variety of programming; discussion in a town meeting might be productive in communities of an appropriate size; a municipally-owned station might be organized as a vehicle for mass participation;<sup>46</sup> sections of the community interested in a particular form of programming could organize themselves to provide it.

The point of such initiatives is to involve the public in decisionmaking to a sufficient degree that the very act of participation changes the way individuals treat each other, the way they experience their lives—that is the classical republican vision. The goal is to make programming come out of the discourse of the community rather than have the community discourse derive from commercial programming. If this kind of vision could be realized, none of Professor Stewart's arguments for regulation would justify perpetuating the regulatory state. Surely the FCC, chastened by judicial review and executive branch intervention, is unnecessary to promote civic virtue. The problem with regulation from a classical re-

44. *Id.*

45. *Id.* at 1569.

46. Approximately forty small cities now run cable television franchises themselves; Cleveland, Ohio, Palo Alto, California, and Cambridge, Massachusetts have also been considering municipal ownership. Varley, *Cities as Operators*, 86 *TECHNOLOGY REV.*, Jan. 1983, at 57-58.

publican perspective is not that it prefers some values over others—that's okay—but that these values derive from a centralized elite and not from active involvement of citizens with each other.

Turning to the issue of environmental controls, Professor Stewart recognizes that "interstate mobility of products, capital, and labor" currently undermines local efforts to improve environmental quality.<sup>47</sup> Since a corporation can threaten a community that seeks to impose vigorous clean air standards with leaving town, local communities often compete not for strict environmental controls but for lax ones, preferring survival with smog to economic catastrophe. Professor Stewart accepts this mobility as a given. He fails, however, to be sufficiently concerned with the identity of the people who make the mobility decisions and with the conditions under which they are made. From a classical republican perspective, as I have argued elsewhere,<sup>48</sup> political and economic decentralization must go hand-in-hand: There can be no meaningfully decentralized decision-making about environmental matters as long as decisions about capital mobility are centralized. Moreover, local communities must be empowered to make environmental decisions. Currently, even those communities now willing to pay the economic price of environmental safety are often prevented by law from imposing environmental controls.<sup>49</sup>

Of course, it would be foolish simply to decentralize decisionmaking overnight to communities as they are currently organized. That would produce chaos because there are no effective mechanisms in place for inter-community discussion and cooperation. Competition for environmental protectionism would be no better than competition for environmental degradation. We need an effective way for national economic and environmental policy to be built together from the ground up, starting with local community decisionmaking and building toward inter-community and inter-state cooperation. A classical republican agenda would seek to create such mechanisms. If such participation and cooperation could be achieved, I doubt that Professor Stewart's arguments for the regulatory state would be considered a better way of linking the needs for civic virtue, environmental quality and economic vitality.

This discussion of broadcasting and environmental policy is not designed to set a classical republican agenda for the future. The point instead is to underscore the ideological basis of Professor Stewart's argu-

47. Stewart, *supra* note 1, at 1546.

48. See Frug, *supra* note 38, at 1126-28.

49. Some common reasons for this powerlessness include pre-emption and lack of home-rule authority; the commerce clause could provide additional restraints if needed. *Stablex Corp. v. Town of Hooksett*, 122 N.H. 1091, 456 A.2d 94 (1982); *cf. Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) (upholding Minnesota statute barring certain nonrefundable containers against equal protection and commerce clause challenges).

ments for neutrality. He speaks only to those on the Right who believe that there can be—indeed *must* be—such a thing as governmental neutrality, and seeks to convince them of his own commitment to neutrality. Like the architects of the regulatory state, he finds the necessary neutrality in governance by proposing an amalgamation of corporate, administrative and judicial leaders. While these bureaucratic leaders cannot be trusted not to impose their own values on American society, they can adequately “balance” the ideals of civic virtue with those of the market to make their policies reflect value neutrality. Professor Stewart, however, ought to address those of us who freely admit that government decisionmaking is based on value choices and who argue that values should come from political participation rather than from regulatory decisionmakers. The purpose of this participation is not just to legitimate political decisionmaking. Instead, its purpose is to create a different kind of world, a different way of living our lives. “Only as a citizen,” the classical republican tradition suggests, “as [a] political animal involved in a *vivere civile* with his fellows [can an individual] fulfill his nature, achieve virtue, and find his world rational.”<sup>50</sup>

50. J. POCOCK, *supra* note 32, at 114.