
Readings

of particular interest

The Specter of Medical Rationing

The Painful Prescription: Rationing Health Care by Henry J. Aaron and William B. Schwartz (Brookings, 1984), 161 pp.

Health care costs continue to climb rapidly in the United States. By contrast, Great Britain spends barely half as much per capita on hospital care as does the United States. What has Britain sacrificed in exchange for cost control, and will the United States have to make similar sacrifices if it is to cut costs? Henry Aaron, a senior fellow in the Brookings Economic Studies Program, and William B. Schwartz, M.D., Vannevar Bush Professor at Tufts University Medical School, address that question here.

The British health care system, unlike ours, is largely nationalized, and most physicians are salaried employees of the government. The government allocates a specific portion of its budget to the National Health Service and all hospitals must limit operating expenditures on NHS patients to the fixed sum they receive, which sharply limits the resources spent on medical care. To find out how this limitation affected medical practice in Britain, Aaron and Schwartz compared the use of several medical procedures in the two countries.

They found that Britain reduces costs not by lowering the quality of services, in most instances, but by limiting the quantity of services provided. For example, Britain uses CT scanners that are similar to those in this country, but has only one-sixth as many of them per capita. Likewise, Britain performs half as many x-ray exams and one-tenth the amount of coronary artery surgery per capita as we do. British doctors treat acute, life-threatening illnesses as aggressively as Americans in younger patients but not, in some cases, in the elderly.

The proportion of the British population on hemodialysis, a long-term and costly treatment necessary for the survival of patients with

kidney failure, is one-third that of the United States. In Britain the procedure is rationed primarily by age. Up through age 44, British dialysis rates are the same as France, West Germany, and Italy; for ages 45-54 the rate is two-thirds that of those countries; for ages 55-64 it is one-third; and for ages 65 and over it is less than one-tenth. In addition, patients with physical handicaps, mental illness, diabetes, and hepatitis are less likely to be treated than are other patients.

These criteria are not explicit, yet rarely do "unsuitable" patients present themselves at a dialysis center. This is because general practitioners and internists screen potential patients and do not refer "unsuitable" patients for treatment. Both sides thus avoid facing the psychological implications of the official decision to deny care. Many British doctors seem to feel, however, that even if resources were unlimited they would not recommend dialysis for many of the sorts of patients who are treated in the United States.

Several other factors in addition to age seem to influence British resource allocation. One is geography. The National Health Service inherited wide regional variations in per capita spending; with little growth in the NHS budget, poorly served localities have had a hard time catching up because they can gain only at the expense of another. Another factor is the emotional and psychological anxiety aroused by a disease such as cancer. Radiation therapy is available to all who can benefit from it. Metastatic tumors responsive to chemotherapy are always treated, although nonresponsive ones frequently are not.

Aaron and Schwartz also observed that the British treat highly visible unusual illnesses intensively. Hemophilia, an uncommon disease whose symptoms alarm any observer, is treated at the same rate and almost as intensively as in the United States. By comparison, the severe pain and diminished endurance caused by an-

gina are less visible social problems, and coronary artery surgery to correct angina is performed only a tenth as often in Britain as here. In addition, patients who must do without coronary artery surgery can usually still hold a job, although many must make major adjustments in life style.

Surgery or therapy is more commonly provided in Britain in cases where withholding it is likely to leave the patient as a burden on society. Medical service is also more likely to be provided if the aggregate cost of treating all cases of a given type is relatively low.

Rationing decisions generally fall hardest on capital-intensive procedures. The NHS tightly controls capital expenditures on CT scanners and other expensive equipment but finds it difficult to monitor expenditures that show up as higher hospital operating expenses. As a result, British spending on "total parenteral nutrition" (a form of intravenous feeding), is high relative to spending on CT scanners: reallocating money from the former to the latter could provide more benefit to the average patient. However, both services are undersupplied by U.S. standards: Britain spends only one-quarter as much per capita on TPN as does the United States.

British patients awaiting hip surgery must wait many painful months or even years for treatment. There is a way, however, for such patients to "jump the queue" and receive immediate treatment. Private hospitals and clinics have been growing rapidly, and now perform up to 25 percent of the hip replacements in some parts of Britain. NHS physicians are allowed to spend part of their time treating private patients, either in the 2,800 "pay beds" in NHS hospitals to which private patients can be admitted or in the growing network of wholly private hospitals and nursing homes.

Aaron and Schwartz contend that the savings that can be realized from eliminating wasteful procedures are not going to be enough to control health costs in the United States. At some point benefits will have to be forgone. But several obstacles hinder the adoption of British-style cost-cutting moves here, aside from the incentive our payment system gives physicians and patients to maximize medical treatment. Americans are more accustomed than Britons to receiving a very high level of care, more knowledgeable about medical advances

and treatments, and more likely to challenge a physician's diagnosis and therapy. And special interest groups can more easily form to lobby for particular groups of patients in the United States.

Consult before Digging

Facility Siting and Public Opposition by Michael O'Hare, Lawrence Bacow, and Debra Sanderson (New York, 1983: Van Nostrand Reinhold), 223 pp.

There are many important facilities that most people believe should exist, but that hardly anyone wants to have as a neighbor. Such facilities are diverse, ranging from freeways and airports to halfway houses and prisons to power plants and hazardous waste depositories. In the past two decades mounting political opposition on the local level has made it increasingly difficult, in some cases impossible, to find sites for such facilities.

The political difficulties of siting cause a number of serious problems, according to the authors of this book (O'Hare is a lecturer at Harvard's Kennedy School of Government, Bacow is associate professor at MIT, and Sanderson, president of CLTW, a consulting firm, was assistant secretary of environmental affairs for the state of Massachusetts). Some projects never get built at all. Despite thirteen unsuccessful attempts to build oil refineries in New England in recent years, the region must still import its refined oil from outside. When new construction becomes impossible, society goes on relying on older facilities that are overcrowded, outdated, and ironically often noisier or dirtier than the new would have been. Even when a needed facility is built, political snags drive up its price, encouraging it to be built in the wrong place, and taint its later relationship with the host community.

The authors criticize the traditional method of making siting decisions—what has been called the "decide-announce-defend" pattern. In that pattern, a developer first chooses what to build and where to put it on technical grounds, consulting with engineers, market analysts, lawyers, and perhaps local government officials. It may then—if it is a private company—assemble the necessary land quietly

so as to avoid driving up its price. Neighbors may first learn about the project in a local paper, when the bulldozers are already around the corner. When an opposition begins to mobilize—its urgency spurred by the fear that the project will soon be a *fait accompli*—the developer may be genuinely surprised, having expected that its negotiations with local government officials had settled such questions.

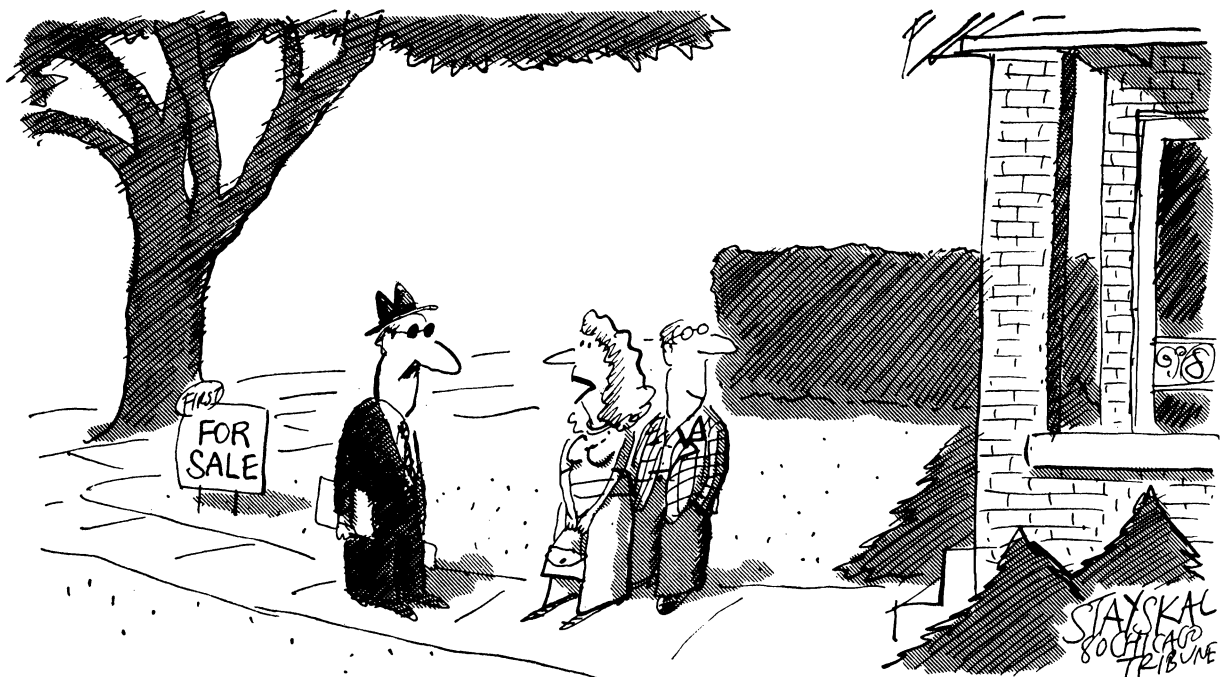
The logical course for opponents at this late stage is to block any permits the developer has to apply for. Although lawmakers have often assumed that increasing public participation in the permit process will help iron out differences, the authors say, it really encourages polarization—especially when advocates are using a public hearing to build a record for judicial review. Furthermore, “people have better things to do than commit large amounts of time to the business of government.”

Developers often falsely imagine that neighbors will go along once they are told why the site is technically the best place for the project. Failing that, they imagine that making it through the hearing process will guarantee them the right to build. But the opponents have several bites at the apple: if they cannot stop the granting of permits or prevail in court, they

can interest other regulators in the matter—at local, state, and federal levels. Finally, or simultaneously, they can turn to media campaigns, political pressure, or disruptive demonstrations.

The authors believe that it is often impossible to defeat such local opposition; the better course for developers is to defuse it by compensating the neighbors of a facility. Negotiated compensation encourages both sides to suggest design or site changes that could render the project less obnoxious to the neighborhood. There is also a case for compensation on grounds of straight efficiency, since it makes the developer take into account the social costs of its project.

But the authors warn that outright monetary compensation may not work in all cases. Sometimes a conditional form of compensation is best. The developer may offer, for example, to make good any future losses in neighbors’ property values. Contributions to particular public services put under strain by the facility are also a good way to placate opposition. If the project will inflict damage on, say, recreational values, the developer can contribute services in kind, as by dedicating a nearby parcel to recreational use.



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"We like this one . . . How far away is the school, train station, church, grocery store and nuclear power plant?"

Compensation of any sort works best when it is directed at near neighbors and at those whose objections to a facility are based on tangible impacts rather than ideological considerations. Moreover, the community must be well enough informed to get an idea of the risk it is being compensated for. Thus, the authors say, negotiated settlement demands a flow of timely information to the affected parties. Developers should consider paying initial grants of money to the neighbors to help them inform themselves, since the manner in which the information is provided affects the candor, completeness, and objectivity with which it will be credited.

Some of these recommendations have already been applied in practice. A 1980 Massachusetts law, discussed extensively in the book, provides for local government participation in a negotiated compensation process before hazardous waste processing facilities are built.

Preservation, Paralysis, and Policy

"Landmarks Preservation in New York" by Joseph B. Rose, in *Public Interest*, no. 74 (Winter 1984), pp. 132-145.

Twenty-five years ago many urban reformers believed that the solution to the problems of the big cities was to tear down obsolete buildings and replace them with modern, ordered, and pristine towers. Today, reformers are keen on preserving architectural history and heap praise on such projects as the renovation of Boston's Faneuil Hall and New York City's South Street Seaport. The focus of city-planning activism has swung from compelling the demolition of old buildings to prohibiting it.

Influenced by the movement for historic preservation, many cities have passed laws that prohibit owners from tearing down or redeveloping buildings that have been designated by a city panel as landmarks. In this article, Harvard doctoral candidate Joseph B. Rose discusses charges that mandatory preservation has "run amok" in New York City, endangering both the economic vitality of the city and the property rights of its residents.

In 1965 New York City passed a pioneering law creating an eleven-member Landmark Pres-

ervation Commission (LPC) with the power to designate individual landmarks and historic districts and regulate their use. Structures so designated must be kept in "good repair" and cannot be demolished or altered in any way without the permission of the LPC. Failure to abide by these restrictions is punishable in some cases by imprisonment.

At first the LPC was circumspect in its decisions to designate privately owned structures, Rose says. Its perspective changed, however, following the Supreme Court's 1978 ruling in *Penn Central v. City of New York*. In that case the Court rejected a contention that it was unconstitutional taking of private property rights without compensation for the commission to prohibit the construction of an office tower above Grand Central Terminal. Instead, it ruled, the action was a constitutional exercise of New York City's "police power," much like a zoning ordinance.

Soon the commission began to expand its original limited purpose. Under attack for preserving only the "elite" portion of the architectural past, the commission began assigning landmark status to buildings and districts that cast light on "social history" by showing how the average person lived. What had begun as an effort to preserve "the history of the very famous and the wealthy" became a crusade to "record the history of the ordinary," in the words of one commission member. "This coupling of historic preservation with democratic social history has made it difficult to disqualify any aged structure," the author says. The commission has to date designated more than 16,000 buildings, many of whose owners objected to landmark status, along with such features of the urban scene as an old elevated subway track (characterized by the City Planning Commission as a blight) and the gnarled street plan of lower Manhattan.

"One explanation for the LPC's aggressive behavior," Rose says, "is the relative ease with which it implements its administrative decisions." The City Planning Commission has official authority over neighborhood planning and zoning matters, but its decisions to restrict development are easily overturned by the city's Board of Estimate. In the wake of the *Penn Central* case, the city gave the LPC sweeping emergency powers inhibited by virtually no such checks or balances. As anti-development

activists turned to landmark designations to block an ever-growing number of projects, Rose claims, the commission began to usurp many of the CPC's statutory responsibilities. Churches and theaters of "dubious aesthetic significance" became a favorite target for landmarking, Rose says, in part because of a predilection for buildings of low height. He quotes the *New York Times* architecture critic, who wrote: "One of the greatest gifts the city's churches and theaters convey . . . is the open air above them." Whatever its virtues, however, open air is hardly (in the author's view) the sort of "architectural landmark" the LPC was enacted to preserve.

Although there is an appeals process and a "hardship clause" exception to LPC rulings, Rose says that in practice neither one is much of a curb on the LPC's power: "of the more than 16,000 designated landmarks in New York City, only five owners have ever been granted permission to demolish a building due to reasons of economic hardship." The owner of a building can appeal a landmark designation only after it takes effect. The appeal process can stretch on for years, which is deadly to prospective developers who must pay interest charges on the unused land.

Because it fails to compensate property owners for the costs it imposes on them, the LPC is free to tread casually on private property rights, says Rose. He adds that it impairs the city's tax base by discouraging new development and lowering the value of existing real estate. (The commission explicitly ignores such financial considerations in its designation process.) If the LPC had to take into account the costs of its decisions, it would act with more restraint.

Although the economic costs of preservation do "not necessarily . . . make all designations inappropriate," Rose says, fairness dictates that the costs not be loaded onto the shoulders of a small number of owners. Since direct compensation would be expensive and politically unrealistic, Rose proposes alternative ways to do so at no cost to city treasuries. One costly effect of landmark designation typically is to make owners forgo much of the height and density that the zoning laws would permit on the site. A way to compensate owners for landmarking is to allow them to sell these unusable height and density rights to other landowners,

who would then be permitted to add more stories to their buildings elsewhere. Such a scheme, Rose believes, would strike a better balance between the aims of preservation, the property rights of citizens, and the well-being of the city.

A Skeptical Look at the Ministry of Aesthetics

The Democratic Muse: Visual Arts and the Public Interest by Edward C. Banfield (Basic Books, Inc., 1984), 244 pp.

The federal government has long subsidized the arts by means of land grants, tax exemptions and deductions, and the like. It briefly ventured into direct funding, also, between the Depression and World War II, when the Section of Fine Arts in the Treasury Department and the Works Progress Administration provided relief to thousands of unemployed artists. Still, the creation in 1965 of the National Endowment for the Humanities and the National Endowment for the Arts was a watershed. It legitimated the idea of a "national cultural policy" and cemented the bond between art and the federal government as no previous act of Congress had done.

In this book, Edward C. Banfield, George D. Markham professor of government at Harvard, reviews the record of the NEA principally (though not exclusively) in connection with the visual arts. In addition, he examines two other channels of federal subsidies, direct and indirect, to the visual arts—to art museums (of which there are presently around 200 that have operating budgets of \$250,000 or more) and to art education in the public school system. These institutions, he argues, have tended to provide the public with experiences incidental to the aesthetic: art as entertainment, antiquarianism, therapy, and so on. Yet if there were any justification for public funding of art institutions, he believes, it would be to promote aesthetic experience in the public.

Banfield suggests that NEA, not unlike many other federal agencies, has tried to further its own growth by building constituencies, even going so far as to subsidize publications advising museums how to influence federal leg-

isolation. In turn, the endowment has served to enhance the images of incumbent politicians as supporters of the arts. (Richard Nixon in 1969 asked Congress to double the appropriations for both endowments on the advice that it was a "quintessentially presidential thing to do.")

NEA officials have kept a good deal of relative liberty in the awarding of grants. Their tendency to favor avant-garde and radical art has led them to fund projects, especially grants made to individual artists, that some outraged members of Congress have characterized as bizarre. In 1974, acting chairman Michael Straight refused to approve a set of grants whose stated purposes he deemed frivolous. The endowment responded by changing its rules: "hereafter, applicants were not to say what they intended to do with the fellowship."

The typical art museum, like NEA, pursues a goal of self-preservation—which in its case means trying to enhance the prestige and size of its collection in order to attract support. Prestige is obtained by acquiring recognized masterworks, but because all or most of the museums that bid for such works are subsidized, prices are driven up to staggering levels (and then serve in turn to justify higher subsidies). The major museums acquire far more objects than they can display. This means that many valuable works are never or seldom exhibited and that the storage itself, often in spaces that occupy valuable downtown property originally donated by the government, is an expensive proposition. When expansion becomes necessary, government must again bear the cost: "it has been estimated," Banfield writes, "that state and local governments have provided 40 percent of the cost of museum buildings."

In trying to justify their status as public institutions, museums have had to emphasize their role as "educators." In these and various other "outreach" programs, according to Banfield, aesthetic concerns became subjugated to social ones. Another ploy is to organize costly "blockbuster" exhibits that draw crowds so large that each patron is often limited to a few seconds of viewing. (NEH helped underwrite the cost of nearly all such exhibits from 1972 to 1976, and NEA, by the end of fiscal 1980, had given museums \$100 million in matching grants for crowd-attracting activities.) Not only are such exhibits expensive—shipping around

objects from city to city is costly (and bad for the objects)—but they also force museums to devote more of their resources to public relations at the expense of maintaining their own collections.

Art education in the public school system dates back to about the same time as the founding of the large museums and had the same original purpose: moral education. Only in the last twenty years, however, has the federal government become heavily involved. The Elementary and Secondary School Act of 1965 provided \$150 million for developing new curricula, fostering new approaches to teaching art, and so forth. According to Banfield, most of the money went for "isolated performances and one-day 'cultural trips' [which were] sharply reduced in 1970, when an evaluation showed that these activities had little lasting educational value." The NEA, for its part, began an "Artists-in-Schools" program, which has been criticized as little more than a way to find employment for artists. The National Art Education Association reported in 1977 that the federal government had, despite many efforts, had "little impact" on traditional art education. Indeed, the programs' major effect seems to have been to stimulate the growth of an active lobby of art educators.

Banfield's view is that—given the premises of the American political tradition—visual art is not within the proper sphere of the federal government. Private funding of the arts, for all its failings, at least has the benefit of not enabling coalitions to force their chosen extra-aesthetic values on the public. But, given the likelihood that art and government will remain linked for the time being, Banfield offers what he calls two "plausible alternatives" for art policy, in both of which he sees some merit but neither of which he believes would find favor in today's political climate. First, museums should commission reproductions, as close to perfect as possible, of high-quality art. Although devoid of prestige or antiquarian interest, these works would make the aesthetic experience of good art available to far more people than it is now, at far lower cost. "From the public standpoint, it makes more sense to use tax dollars to *increase* the supply and *decrease* the price of art," Banfield says. Second, Banfield proposes that the gap between "fine" and "applied" art be narrowed by emphasizing the

aesthetic enhancement of objects of ordinary use—thus integrating art into the conduct of everyday life.

More fundamentally, Banfield questions whether the national government should involve itself with the visual arts at all. Some things give pleasure to individual citizens but do not involve a genuinely public interest; others affect the quality of the whole society but are still not the concern of government, either because it cannot manage them well or because government exists for other purposes. “The American regime rests on the principle that the functions of government are to protect the individual in the exercise of certain inalienable rights and to establish the preconditions for the development of competent citizenry.”

Tax Law as a Policy Vehicle: Unsafe at Any Speed?

“*Bob Jones University v. United States: Public Policy in Search of Tax Policy*” by Paul B. Stephan III, in *Supreme Court Review*, 1983, pp. 33-82.

Although the question whether racially discriminatory schools are eligible for tax exemption has been hotly controversial, the Supreme Court’s resolution of the issue last year rested on a narrow and technical basis. But the decision in *Bob Jones University v. United States* nonetheless raises a significant policy question, according to Paul B. Stephan III, associate professor at the University of Virginia School of Law. The reason is that the decision apparently revives the long-dormant “public policy” doctrine. This doctrine—which Congress had appeared to put to rest in 1969—once gave courts and the Treasury wide discretion to withhold deductions or other tax advantages from taxpayers who, although otherwise eligible for the advantage, had violated some norm of public policy.

The courts and tax agencies had encountered numerous problems in their attempts to elucidate the doctrine before 1969. First was a problem of selectivity: which public policies, of the many possibilities, should implicitly modify tax rules? Tax administrators would seem to have no special competence in making this sensitive political decision. Second, which

tax rules should be modified? Third, how can the tax penalty be made proportional to the gravity of the particular offense?

The proportionality question raised perhaps the greatest difficulties. Since the value of a tax advantage depends largely on a taxpayer’s bracket and overall tax situation, denial of the benefit leads to an essentially arbitrary distribution of punishments that cannot be justified on grounds of either deterrence or moral desert.

Perhaps because of frustration with these problems, Congress in 1969 added provisions to the Internal Revenue Code that indicated strong disfavor for the doctrine. Since then, the author says, “the principle that Congress alone should convert income-measuring rules into sanctions for misbehavior has generally prevailed.”

Until the *Bob Jones* case, that is. Stephan says the Court looked hard for some way to outlaw racial discrimination in tax-exempt private schools without having to revive the public policy doctrine. But its effort failed. Neither the historical law of charitable trusts, nor the Treasury’s traditional treatment of charitable exemptions, nor the actions of Congress on the issue, provides a satisfactory distinct basis for denying *Bob Jones University* its exemption.

It is often argued that exempting charities and charitable deductions from taxes is a striking departure from a general pattern of taxing economic transactions, and is justifiable only as an attempt to accomplish public purposes. Accordingly, the argument runs, the exemption ought to cover only those charitable donations and institutions that truly serve public purposes by, among other things, complying with public policy. Stephan outlines a different rationale for the charitable exemption. Taxpayers are allowed to deduct donations from their taxable income simply as a matter of defining their *net* income; the money they give away to others is naturally not treated as if they had kept or spent it. Charities themselves are not subject to business taxes because they do not seek profits. Thus the charitable tax provisions, far from being a special privilege calling for a *quid pro quo*, are fully consistent with the effort to tax net income and business profits.

By denying the exemption, the Court reopens all the problems it previously encountered with the public policy doctrine. The In-

ternal Revenue Service must now attempt to determine, first, what constitutes racial discrimination, and second, what institutions besides schools and what evils besides racial discrimination should fall within the scope of the public policy rule. Further, the service must decide what are the ripple effects of an exemption denial: do students lose the tax exclusion of their scholarships, faculty the exclusion of their fellowships, and parents the exemption for student dependents? And how should the service measure the taxable "income" of a school that does not pursue profit? Stephan warns that the sanction may result in disastrous consequences for heavily endowed schools guilty of minor acts of discrimination, but impose few costs on hard-core segregated schools that rely for support principally on tuition rather than donations.

There is nothing sacred about tax law, the author says, and no intrinsic reason why revenue collection should be the only purpose that taxation serves. But in a society where an ever-growing public sector requires ever-increasing taxation for its support, the scope of a public policy rule can only become wider and wider, in both range of application and devastating impact on targets.

Bob Jones reflects a simplistic belief that the government, when confronted with something bad (whether illegal or immoral is unimportant), must attack the offending act with every resource at its disposal. The conviction that withholding any potential means of attacking a problem demonstrates a lack of commitment to its solution suffers from two flaws. First, it ignores the possibility that some agencies of government may have comparative advantages as prosecutors of particular policy violations. Second, it ignores the fact that the failure to mold a penalty system to match the policy it enforces has both moral and welfare costs. *Bob Jones* illustrates each of these flaws.

Thus, if only implicitly for the time being, the Court's opinion invites the Treasury and the courts to develop a public policy overlay for every tax rule whose role in defining the base of taxation is not immediately apparent. This, Stephan says, is what makes the case important and the outcome regrettable.

Property Rights in Orbit

(Continued from page 18)

quickly and recouped sizable benefits when the Environmental Protection Agency adopted its bubble, offset, and emissions banking programs. Once restraints on arc were lifted, it is a safe bet that a healthy market would soon emerge.

The transition might be more politically acceptable if, like radio and television broadcasters, satellite firms continued to receive their slots free of charge, but could sell them after that. This would, of course, confer substantial rents on the firms that get free slots—rents that would accrue to the public if the government were to claim ownership of the arc sectors allocated to it through the ITU. One solution to this problem would be to require every firm to buy its slot whenever it replaced its existing satellite. This method would also soften somewhat the financial shock to incumbent slot holders who would incur huge unexpected costs if they suddenly had to compete in an auction for the slots they were already using. And since the life of a typical satellite is about seven years, the transition to a market system would not take long to complete.

Another fear might be that firms or consortia might succeed in monopolizing slots (just as some have worried that marketable air pollution permits could be "cornered" in particular regions). As an aside, note that this problem is not unique to market processes—for FCC decisions have themselves tended to distribute more new slots to incumbents than to newcomers. Under a market scheme, judicious application of antitrust laws should be sufficient to guard against undue market power in the arc. Ultimately, of course, the threat of monopoly will be curbed by the increasing competitiveness of alternative technologies, such as fiber optics and terrestrial microwave.

Finally, there is the argument that pricing the arc will make telecommunications services more costly. This is not necessarily so. Much of the current demand for slots is no doubt due to their zero price—that is, there may be fewer serious bidders once they must put their money where their applications are. In addition, pricing the arc might call forth the kinds of technical innovations that have resulted in constantly falling prices for hand calculators, per-