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CIVIC LIBERALISM AND THE “DIALOGICAL MODEL” OF JUDICIAL REVIEW*

(Accepted 26 December 2005)

In a world that is inherently indeterminate, a suitable theory of distributive justice must perhaps itself be indeterminate, and its indeterminacies must accommodate those of the world where relevant.

Russell Hardin, Indeterminacy and Society

I. INTRODUCTION

Consider the following scenarios which could occur in any affluent, liberal democratic society:

Scenario #1: Intelligence gathering operatives believe that there is a good chance that the country will be the target of a terrorist attack within the next 48 hours. The exact nature of the attack is unknown but there is good reason to believe that the risk of attack is significant. Military personnel and equipment have been stationed at airports and some airlines have cancelled flights. Much debate takes place in the media concerning how much is being done to guard against this possible attack. Critics of the existing government claim that more should be done. One prominent critic complains that “citizens should not have to be fearful of such attacks in their own homes, schools or airports; the government needs to do more to eliminate these threats!”

Scenario #2: Leroy has been diagnosed with bowel cancer and is not expected to live until the end of the year. A new expensive drug therapy could, however, extend Leroy’s survival by 5 months. This would permit him to spend one last Christmas with his family and friends. However,

* For their helpful comments on earlier drafts of this paper I am grateful to the members of the democracy reading group at Waterloo University (especially my colleague Jan Narveson) and two anonymous referees for this journal.

the drug is only available to sufferers with private health care, which Leroy could not afford. Leroy's family find this predicament unacceptable. They write to their local politician complaining about the state of the publicly funded health care system. They believe we have a collective responsibility to ensure that patients like Leroy have the chance to experience one last Christmas with their loved ones.

Scenario #3: Tragedy hits a small rural community. A young child has been abducted from her home. The local community is mounting pressure on the media and government to commit more resources to the search for the child and the kidnapper. Details about the abduction are sketchy but one eyewitness did see a suspicious vehicle in the neighborhood shortly before the abduction. The community demands that more investigators should be assigned to this case. Furthermore, the community demands that more be done to ensure that such crimes do not occur again in the future. More police officers are needed and they should be equipped with the most modern and effective crime-fighting equipment.

Scenario #4: The beef industry of the country is reeling from the repercussions of a recent report that the tests done on a dead calf confirm that it had BSE. Other countries have since banned imports of beef from our country. Much debate now takes place concerning not only the issue of how to improve existing procedures so further cases of BSE do not occur, but also about what the government should do to help the crippled beef industry.

Scenario #5: The economy is rapidly moving towards a knowledge-based economy, an economy built on technology and innovation. Long-term projections suggest that stable economic growth will require a much needed investment in the education sector. More skilled educators are needed, better research facilities are required and some concerted effort must be made to keep the current “knowledge workers” in this country. Reports suggest that a significant number of such workers have left the country for work in a neighboring country.

Scenario #6: Beth is a single mother of three and juggles two part-time jobs. Her family live in low-income housing. The government and Beth’s local parish help her to provide for her family by providing various forms of social assistance (e.g. affordable housing, clothes for her children, etc.). Despite this assistance, Beth feels that she is fighting a losing battle. She barely scrapes enough money together to make ends meet but is unable to save anything for the future. There is a chance she might lose one of her part-time jobs. Given the high unemployment rate and Beth’s limited skills, she knows that losing that job will have dire consequences for her family and will extinguish any remaining hopes she has of helping her family escape life in poverty.