

5-1-1998

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Recommended Citation

Daniel E. Witte, *Getting a Grip on National Service: Key Organizational Features and Strategic Characteristics of the National Service Corps (AmeriCorps)*, 1998 BYU L. Rev. 741 (1998).
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Getting a Grip on National Service: Key Organizational Features and Strategic Characteristics of the National Service Corps (AmeriCorps)*

I. INTRODUCTION

Of all the initiatives and programs that President Bill Clinton has supported during his Administration, the National Service Corps¹ (sometimes referred to as “AmeriCorp,” but

* In addition to the staff members of the *BYU Law Review*, the author wishes to thank the following individuals for the invaluable proofreading, logistical assistance, scholarly suggestions, critiques, and other assistance necessary for the publication of this Comment (and also for efforts to refine the general concepts of Cyberstatistical Libertarianism and Family Federalism in the abstract): Assistant Professor Larry M. Arnoldsen (Secondary Education), Ed.D, McKay School of Education, Brigham Young University; Professor W. Gibb Dyer (Organizational Behavior/Human Resources), Ph.D, Department Chair of the Organizational Leadership & Strategy Department, Marriott School of Management, Brigham Young University; Associate Professor Hal Gregersen, (Organizational Behavior/Human Resources), Ph.D, Organizational Leadership & Strategy Department, Marriott School of Management, Brigham Young University; Matthew Hilton, Ph.D, J.D., practicing civil rights attorney; Cory W. Leonard, Director of NGO Family Voice; Professor Lee T. Perry (Strategy), Ph.D, Organizational Leadership & Strategy Department, Marriott School of Management, Brigham Young University; Professor Richard G. Wilkins (Constitutional Law), J. Reuben Clark Law School, and NGO Family Voice, Brigham Young University; Professor Stephen G. Wood (Administrative & Employment Law), J. Reuben Clark Law School, Brigham Young University; and Professor Warner P. Woodworth (Organizational Behavior/International Development), Ph.D, Organizational Leadership & Strategy Department, Marriott School of Management and Kennedy Center for International Studies, Brigham Young University.

Special thanks is also due to Dinah Witte, who helped manage the large collection of documents supporting the research for this Comment as well as other matters; Thomas Skousen, who is applying mediating institution analysis to historical questions pertinent to religious liberty; Paul C. EchoHawk, who provided feedback as to my analysis concerning Native American parental rights issues and the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (1994); Paul D. Kohler, who edited numerous various revisions of the Comment; James Ahlstrom; and Jeff Butler.

Though many have provided valuable assistance, the author accepts sole scholarly responsibility and attribution for the material substance of all opinions, representations, analysis, and conclusions contained within this Comment, and disclaims any official endorsement of such by any other entity or individual.

1. As this Comment will explain at length, the “National Service Corps,” also known by its nickname “AmeriCorps,” is an incorporated entity created by statute. Additionally, the Corps serves as a kind of flagship program within the “National

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here-inafter also referred to as “the Corps”) is arguably the program that the President regards as the most important and personally fulfilling,² as well as the most historically significant.³ The Na

Service Initiative,” a political movement that incorporates such interrelated principles and methods as, for example, community activism, “service learning” pedagogy, compelled nonprofit activity for students, social justice, “Points of Light” awards for outstanding volunteers, mentoring, scholarships for educational activity, and voluntary participation in government-generated community service projects. The “National Service Corporation” is simply a term that describes the government corporation that sponsors activities related to the National Service Initiative; the National Service Corporation runs the National Service Corps program in conjunction with other programs and activities related to the National Service Initiative.

2. The President has said as much on numerous occasions. *See, e.g.*, William J. Clinton, Remarks at the Presidential Scholars Awards Presentation Ceremony (July 1, 1994), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: WILLIAM J. CLINTON 1174, 1175 (1995) [hereinafter “William J. Clinton” will be referred to as “Clinton,” and “PUBLIC PAPERS OF THE PRESIDENT OF THE UNITED STATES: WILLIAM J. CLINTON” will be referred to as “PAPERS”] [hereinafter Presidential Scholars, 7/1/94] (“Perhaps the signature program of this administration, when the history of our time here is written, will be the AmeriCorps program, the national service program [I]f we can just keep the funding up, we’ll have 100,000 young Americans . . . revolutionizing life at the grassroots level.”); Clinton, Remarks in a Swearing-In Ceremony for AmeriCorps Volunteers (Sept. 12, 1994), in PAPERS 1536, 1538 (1995) [hereinafter Swearing-In Ceremony, 9/12/94] (“[AmeriCorps is] the most important commitment your President ever tried to make to the American people, to give us a chance to come together, to move forward together.”).

3. *See, e.g.*, Clinton, Remarks on the Fourth Anniversary of the Americans with Disabilities Act (July 27, 1994), in PAPERS 1318, 1319 (1995) (“We are at a moment in history when our values, what we believe is morally right, and our interests, what is clearly good for us in a tangible material way, are one. We do not have a person to waste”); Clinton, Remarks to Summer of Safety Program Participants in Saint Louis (June 24, 1994), in PAPERS 1134, 1135 (1995) [hereinafter Summer of Safety] (“In a funny way, the national service program, which is the least bureaucratic, least nationally directed program I have been associated with, may have the most lasting legacy of anything I am able to do as your President, because it has the chance to embody all the things I ran for President to do.”); *see also, e.g.*, Clinton, Remarks on Signing the National and Community Service Trust Act of 1993 (Sept. 21, 1993), in PAPERS 1543, 1544-45 (1994) [hereinafter Trust Act]:

I also want to acknowledge . . . the roots of history in [the signing of the National and Community Service Trust Act of 1993] Twice before in this century Americans have been called to great adventures in civilian service. . . . Franklin Roosevelt created the CCC and gave America the chance . . . [to] build America for the future. . . .

. . . We also point with pride . . . [to] John Kennedy’s Peace Corps, created by legislation which President Kennedy signed 32 years ago tomorrow.

. . . I hope, believe, and dream that national service will remain throughout the life of America not a series of promises but a series of challenges across all the generations and all walks of life to help us to rebuild our troubled but wonderful land.

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tional Service Corps organization is somewhat unique in that every aspect of the institutional design is spelled out in minute detail by statute.⁴ Although national service and the Corps have been widely discussed and debated in the political arena and in the media, those discussions have generally been conducted at a broad level of analysis. Little effort has been made to describe, in an accessible and scholastically documented manner, how the Corps is structured and what the Corps is designed to accomplish. Such analysis is important because the National Service Corps could have a profound and tangible monetary and organizational impact on scores of nonprofit organizations, educational institutions, governmental entities, neighborhoods, ethnic groups, and religious proselytizing programs.

This Comment attempts to provide an overview of the key organizational features and strategic characteristics of the National Service Corps. The overview rests almost entirely upon (1) an analysis of the lengthy and intricate body of legislation creating the Corps; (2) Clinton's own public comments about the Corps; and (3) the comments of and reports about prominent Corps supporters through the media. Although issues and controversies related to the Corps are examined for the convenience of the reader, no attempt is made to exhaustively explore the tangential legal issues related to these criticisms and controversies. The purpose of this Comment is primarily to assist the reader in understanding the unique design of the Corps, its relationship to the national service agenda, and the various criticisms of the National Service Corps voiced in political and media circles.

4. For the entire National Service statutory scheme, see 42 U.S.C. §§ 12501-12682 (1995); for the provisions dealing most directly with the Corps itself, see *id.* §§ 12611-12660.

There is one notable exception to this detailed approach. The statutory scheme has remarkably few restrictions on how, where, or when the National Service Corps can be utilized. Instead, the statute is like a kind of enabling act, leaving a very wide range of discretion and flexibility to the executive branch in deciding how to use the Corps. *See, e.g., id.* § 12501(b), (b)(1) ("It is the purpose of this chapter to . . . meet the unmet human, educational, environmental, and public safety needs of the United States . . ."); *id.* § 12639(h)(1) ("In conducting the evaluations required under this section, the Corporation may require each program participant and State or local applicant to provide such information as may be necessary . . .").

Toward fulfilling this purpose, Part II of this Comment will provide an overview of the Corps. This overview provides insight into the amalgamation of mediating institutional characteristics found in, *inter alia*, the military, law enforcement, scouting, the Peace Corps, the Civilian Conservation Corps, business corporations, religious proselyting programs, Boys Town, the civil rights movement, the New Deal, the Bureau of Indian Affairs, World War II educational programs, and the federal executive branch of government. In the interest of clarity, however, this Comment will not attempt to overtly cross-compare all of the distinctive institutional characteristics shared between the Corps and other institutions.

After a general overview of the National Service Corps concept in Part II, Part III of this Comment sets forth nine characteristics of the National Service Corps that are distinctive from the standpoint of organizational strategy and culture as they relate to legal and policy debate surrounding the Corps. Understanding these distinctive characteristics will help readers determine which issues of the organization are deserving of their own additional in-depth inquiry.⁵

Part IV of this Comment sets forth some of the legal and policy objections that have been raised in response to the National Service Corps and the National Service movement embodied by the Corps. Part V concludes that the public needs to be better educated about the policy debates associated with the National Service Initiative generally and the National Service Corps particularly because of the potential the Corps has to assume a powerful role in the nonprofit sector of the economy.

II. A SHORT OVERVIEW OF THE NATIONAL SERVICE CORPS

The National Service Corps has been billed to the public as “sort of a domestic Peace Corps.”⁶ The concept of AmeriCorps is

5. Such individuals or organizations might include religious leaders, proselyting programs, judges, policy-makers, lobbyists, nonprofit officials, charitable foundations, educators, and others who may encounter national service issues, but who lack the time necessary to piece together the fundamental structure of the statutory scheme.

6. Clinton, Remarks on Signing the Improving America's Schools Act of 1994 in Framingham, Massachusetts (Oct. 20, 1994), in PAPERS 1811, 1813 (1995) [hereinafter *Improving America's Schools*]; see also Clinton, Remarks to Students at

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statutorily described as “[a] national service entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.”⁷ Clinton regards the National Service Corps as constituting a government initiative for the nonprofit service economic sector paralleling his (ultimately defeated) healthcare reform initiative for the medical economic sector.⁸ Furthermore, Clinton has repeatedly identified President Roosevelt’s New Deal as a source of political inspiration leading to the era of the National Service Corps.⁹

The Corps is targeted toward a specific demographic group, namely youth between sixteen and twenty-five (youth between the ages of fourteen to twenty-one can participate in the Corps summer camp, which is of shorter duration, less intensive, and part-time).¹⁰ In addition to activities related to service, the pro

Hillsborough Community College in Tampa, Florida (Mar. 30, 1995), in PAPERS 427, 430-31 (1995) [hereinafter Hillsborough] (“[O]ur national service program . . . [is] basically to bring the idea of the Peace Corps to the streets of America. . . . [and provide] the GI bill if you’ll help us to deal with our security problems here at home”).

7. 42 U.S.C. § 12572(a)(10). Problems include unmet needs in a plethora of different fields. *See, e.g.*, Clinton, Remarks to AmeriCorps Volunteers in Aberdeen, Maryland (Sept. 11, 1994), in PAPERS 1532, 1533 (1995) [hereinafter AmeriCorps Volunteers] (“These young people will be doing a lot of things, working in education, working to help the environment, working to deal with people’s human needs, working to help increase the safety and security of our neighborhoods and our schools and our streets.”).

8. *See, e.g.*, Clinton, Remarks at a Fundraiser for Representative Richard Gephardt in St. Louis (June 24, 1994), in PAPERS 1138, 1142 (1995) [hereinafter Gephardt] (“[In] national service . . . the Government provides the money and sets the goals and people at the local level decide how to organize all these young people to solve problems. That’s a lot of what we’re trying to do with health care.”).

9. *See, e.g.*, Clinton, Remarks at the University of California in Los Angeles, California (May 20, 1994), in PAPERS 959, 961 (1995) [hereinafter UCLA]:

The wise decisions of [Franklin D. Roosevelt] built four decades of robust economic growth and expanding opportunity and laid the foundation for us to be able to win the cold war. Now, we stand at our third pivotal moment in this century. And you are designed to play the leading role. The cold war is over. It is up to all of us to keep the American dream alive here at home, even as it advances abroad. But this miracle of renewal must begin with personal decisions.

10. *See* 42 U.S.C. § 12613(b), (b)(1) (“A person shall be eligible for selection for the national service program if the person . . . is at least 16 and not more than 24 years of age”); *id.* § 12655i(a), (a)(1) (“Enrollment . . . shall be limited to individuals who, at the time of enrollment, are . . . not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 14 years nor more than 21 years of age”); *id.* § 12656(c)(3)(A), (C)

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gram provides for day care, counseling, and health care programs for dependents of the program's participants.¹¹ An overview of the National Service Corps command structure, another very important component of the Corps concept, is provided in Appendix A.

With the annual number of participants having grown in half a decade from an initial 20,000 participants per year¹² to 65,000 per year,¹³ and with the potential and ambition for eventual levels of a "couple hundred thousand people" on a regular basis,¹⁴ the National Service Corps is an organization with a sophisticated and apparently carefully distilled organizational design. The Corps is designed to instill in participants a set of ideals that mixes humanitarian, political, and religious themes by using a sophisticated set of regimens and incentives patterned after those in military and scouting programs.¹⁵ In order to maintain its role as a social change agent,¹⁶ the Corps gathers information and has mechanisms in place to respond to political forces at various levels of federal, state, and local government. The Corps is organic in nature; the only restriction that appears to constrict its evolution is

(providing similar guidance for ages 16 to 25).

11. *See id.* § 12594(e) (stating that child care is to be made available to all full-time participants of the program); *id.* § 12618(d) ("As the Director determines appropriate, the Director may provide each member of the Corps with health care services, child care services, counseling services, and other supportive services.").

12. *See* Clinton, Remarks at a Swearing-In Ceremony for AmeriCorps Volunteers (Oct. 12, 1995), in PAPERS 1581 (1995) [hereinafter Swearing-In Ceremony, 10/12/95].

13. *See* Clinton, Remarks at the Presidential Scholars Awards Presentation Ceremony (June 20, 1996), in PAPERS 937, 940 (1996) [hereinafter Presidential Scholars, 6/20/96]; Clinton, Remarks to Students at Hillsborough Community College in Tampa, Florida (Mar. 30, 1995), in PAPERS 427, 431 (1995) ("There are more people in AmeriCorps today than ever served in the Peace Corps in any single year of its history . . .").

14. *See* Clinton, Remarks in a Town Meeting with Speaker of the House of Representatives Newt Gingrich in Claremont, New Hampshire (June 11, 1995), in PAPERS 848, 859 (1995) [hereinafter Town Meeting] ("If I could fund it all, if the Speaker would support me, I'd get up to a couple hundred thousand people in AmeriCorps in no time.").

15. *See infra* text accompanying note 20.

16. *See* Clinton, Remarks at the Kickoff of the President's Summit for America's Future in Philadelphia, Pennsylvania (Apr. 27, 1997), in 33 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 604, 604-05 (1997) [hereinafter DOCUMENTS] ("I want to redefine the meaning of citizenship in America. I want the children . . . [to say] Well, to be a good citizen, you have to obey the law. You've got to go to work or be in school. You've got to pay your taxes, and, oh, yes, you have to serve in your community . . .").

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budgetary allotment, and it allows for highly dynamic and rapid changes in internal priority and strategy. Additionally, the Corps both engages and assimilates other organizations it encounters, simultaneously building upon and changing existing organizations.¹⁷ The growth appears to be focused in a politically pragmatic manner, taking the paths of least resistance first and then focusing resources to occupy areas in the socio-political landscape that appear most receptive to absorbing the national service scheme.¹⁸

III. KEY ORGANIZATIONAL CHARACTERISTICS OF THE NATIONAL SERVICE CORPS

As mentioned in the introduction, this Comment identifies nine distinguishing characteristics of the Corps.¹⁹ The characteristics are noteworthy from the standpoint of organizational strategy and culture. As will become evident in Part IV, the organizational strategy and culture are central to most of the legal and policy debate that surrounds the Corps.

A. *The Corps Is a Mediating Institution Designed to Instill a Specific World View*

The concept of a federal national youth corps arose as a result of President Bill Clinton's desire to revitalize the nation's moral fabric by sharing his interpretation of America's common values with America's youth on a systematic and widespread basis.²⁰ Clinton desires to use "national service . . . to . . . build[]

17. See *infra* text accompanying notes 98, 154.

18. See *infra* text accompanying note 154.

19. Organizations can be "designed" to function in particular ways, and to have particularized kinds of inculcating impacts upon participants. Often the "template" for one organization can be compared to the "template" for another organization to see if there is similarity or difference. For example, the army command structures for Korea, the United Kingdom, Australia, the United States, and Columbia could be compared to trace patterns of copying or adoption, and/or to replicate the inculcative effects of one particular military organization through "reverse engineering."

Copyright law has a somewhat similar idea; if two artistic works have enough of the same pattern characteristics, the correlation ("striking similarity") can be characterized as evidence that someone had access to another work and that they have copied that other work. See, e.g., *Gaste v. Kaiserman*, 863 F.2d 1061, 1067-68 (2d Cir. 1988).

20. See, e.g., Clinton, The President's Radio Address (Oct. 22, 1994), in *PAPERS* 1833, 1833 (1995):

[W]hile the National Government will set the standards and help to develop

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communities from the grassroots up.”²¹ The National Service Corps is thus intended to be a mediating institution²² designed to foster structural intercultural interaction in a setting that inculcates a particular set of beliefs and values in its newly unified participants.²³ The set of attributes has been, at least in part, defined in political terms.²⁴

the measurements of whether schools are meeting them, it is fundamentally the responsibility of people at the grassroots to make sure those standards are met. . . .

. . . [This statute] supports programs that teach our young people that character does count, that helps them to learn the difference between right and wrong, based on standards developed in our local communities.

Clinton indicated that the “standards developed in our local communities” focuses on the task of identifying the best means for implementing predetermined ends, not on the task of identifying end objectives. *See, e.g.*, Gephardt, *supra* note 8, at 1142 (“[I]n national service . . . the Government provides the money and sets the goals and people at the local level decide how to organize all these young people to solve problems.”); *see also, e.g.*, Swearing-In Ceremony, 9/12/94, *supra* note 2, at 1536-37 (discussing how the Corps “will give new life to the values that bind us as Americans,” asserting that the concept is “about all of our choices gathered together as a country . . . about all of us together, who we are as individuals and who we are as a nation,” and observing that “when it is all said and done, it comes down to three simple questions: What is right? What is wrong? And what are we going to do about it?”).

21. Clinton, Remarks on the Observance of the Birthday of Martin Luther King, Jr. (Jan. 17, 1994), in *PAPERS* 94, 97 (1995).

22. Mediating institutions are organized (informal or formal, loose or tight, simple or complex) systems of associations and relationships between people and other people and also between people and nonhuman phenomena. Mediating institutions refer to the vast and diverse number of organizations in society that influence the interface between a person and that person’s outside environment. *See generally* Jonathan R. Macey, *Packaged Preferences and the Institutional Transformation of Interests*, 61 U. CHI. L. REV. 1443 (1994).

23. *See* Clinton, Remarks at the Gallaudet University Commencement Ceremony (May 13, 1994), in *PAPERS* 906, 908 (1995):

By joining the Conservation Corps and committing yourselves to rebuild our Nation, by exercising your freedom and your responsibility to give something back to your country and earning something . . . in return, you have embodied the renewal that America must seek. . . . Government can make good laws, and we need them. But it can’t make good people. In the end, it’s our values and our attitudes that make the difference. Having those values and attitudes and living by them is everyone’s responsibility and our great opportunity.

24. Clinton has alluded to the “values and attitudes” that he views as “everyone’s responsibility.” His outlook includes the following four items:

1. *An internationalist, cosmopolitan perspective that favors public education blended with the vocational sector.* *See, e.g.*, Clinton, Remarks to the American Council on Education (Feb. 22, 1994), in *PAPERS* 289, 294-95 (1995) [hereinafter *Education*] (discussing a “global economy with . . . blurred borders” that requires “universal education,” asserting that national service

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National service is thus a vehicle to: (1) “enforce standards of conduct to promote proper moral and disciplinary conditions,”²⁵ (2) “build an ethic of civic responsibility,”²⁶ (3) “develop citizenship values and skills,”²⁷ (4) “renew the ethic of civic responsibility and the spirit of community,”²⁸ (5) “further [] [young peoples] understanding and appreciation of their community,”²⁹ (6) “engender [] a sense of social responsibility and commitment,”³⁰ (7) “contribut[e] to [an] understanding of civic responsibility,”³¹ (8) “significantly increase the support for

“is more than a program, it carries the spirit of what America is going to have to be like,” and noting “we have an opportunity to do something that Americans have resisted for too long, which is to merge instead of keep divided our notion of vocational education and academic education”).

2. *Political activism focused against the use of guns, intensive local law enforcement activity, and a humanistic approach to the delivery of social services.* See, e.g., Clinton, Remarks at the AmeriCorps Public Safety Forum in New York City (Mar. 10, 1994), in PAPERS 419, 422 (1995) (According to the President, the Corps “represents the best of our country” and it “will give Americans, especially the young, a chance to serve our Nation.” This is important because there is a need to “change . . . our laws” to include such items as “the Brady bill and the crime bill and put[ting] more police on the street.” The President wishes to “change the basic attitudes of this country . . . about how we think about ourselves and one another,” but he feels that “[g]overnment cannot do this job alone; neither can the police forces themselves.”).
3. *Partnerships between business, public schools, and churches focusing on political common ground.* See, e.g., Swearing-In Ceremony, 9/12/94, *supra* note 2, at 1537-38 (stressing that the Corps invites “citizens and businesses, schools and churches” to “come together as partners,” that “we can belong to something larger than ourselves,” and asking “all Americans . . . to reflect on . . . words like ‘action’ and ‘commitment,’ ‘community’ and ‘common ground’”).
4. *Trust in and obedience to authority.* See, e.g., Summer of Safety, *supra* note 3, at 1137 (Clinton states that his representation of “the entire American people at the 50th anniversary of D-Day” has helped him to realize that “[o]ne of the biggest problems we’ve got in this country today is that we are constantly being told . . . that everybody in power is trying to take advantage of you” and that Corps volunteers are going “to make more difference than all of the bad things that’ll ever be said on the talk radio shows.”).
25. 42 U.S.C. § 12615(f)(1) (1995). See Appendix A *infra* for a description of the Superintendent’s duties.
26. *Id.* § 12582(b)(7)(A); see also *id.* § 12572(a), (a)(4), (a)(4)(B) (“[N]ational service programs may include the following types of national service programs: A service program that . . . brings participants together for additional training and other activities designed to foster civic responsibility”).
27. *Id.* § 12656(c)(3)(C).
28. *Id.* § 12501(b)(2).
29. *Id.* § 12656(b)(3).
30. *Id.* § 12561(b)(1)(A).
31. *Id.* § 12611(2).

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national service,”³² (9) “affirm common responsibilities[,] . . . shared values” and “positive experiences,”³³ and (10) “promot[e] positive attitudes . . . regarding . . . solving community problems[,] . . . improv[ing] the lives of others, [and] the responsibilities of . . . a citizen and community member, and other factors.”³⁴ Indeed, according to Clinton, “[c]itizen service . . . is an essential part of what it means to be an American.”³⁵

The law specifically identifies the philosophy that is to be utilized in meeting the above criteria: “service opportunities shall consist of activities reflecting the life and teachings of [Reverend] Martin Luther King, Jr., such as cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.”³⁶ The role of Martin Luther King’s world view as a mission statement of purpose for the National Service Corps is not trite; the ideological premise has

32. *Id.* § 12611(1).

33. *Id.* § 12501(a)(2).

34. *Id.* § 12639(g)(4).

35. Clinton, The President’s Radio Address (Apr. 26, 1997), in DOCUMENTS 599, 600 (1997).

36. 42 U.S.C. § 12653(s)(1). “Social justice” has been interpreted to mean that (1) public schools should supplant family and church institutions as the developmental source for a child’s “moral compass,” (2) federal government must involve itself more in the affairs of local schools, and (3) children should be culturally assimilated and homogenized in conformity with principles of international law. *See In re Alien Children Educ. Litig.*, 501 F. Supp. 544, 548, 556, 561 (S.D. Tex. 1980), *aff’d* 628 F.2d 448 (5th Cir. 1980), *aff’d* 457 U.S. 202 (1982). AmeriCorps is a government organization that, in every aspect of its design, is calculated to engender adherents to the late Reverend’s beliefs; *see also*, AmeriCorps Volunteers, *supra* note 7, at 1532-33, where Clinton thanks those answering “the high calling” of AmeriCorps by donning “the yellow outfits,” in the process utilizing a rhetorical manner that is strikingly similar to the encouragements provided to participants in various religious orders and proselyting programs:

The Scripture from Isaiah . . . is something we would all do well to read and live by on a regular basis and to echo the words of Isaiah, “Here am I, Lord; send me.” . . . [S]ervice to others is something everyone can do and something everyone should do because of our relationship to God, our responsibility to others, and our responsibility to ourselves.

Trust Act, *supra* note 3, at 1545 (“[B]eyond the concrete achievements of AmeriCorps . . . I hope and pray [it] will help us to strengthen the cords that bind us together as a people, will help us to . . . become what God meant us to be.”); *id.* (“There are millions of Americans who are not really free today because they cannot reach down inside them and bring out what was put there by the Almighty . . . preserving the freedom of America . . .”).

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been taken very seriously and is routinely emphasized by Clinton.³⁷

The National Service laws provide some guidance as to how the Reverend King's world view is to be instilled in the nation's youth. By law, April 19, 1994 is "designated as National Youth Service Day."³⁸ "In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities."³⁸ The Corporation also must ensure that any entity conducting national service programs will consult with local labor unions for guidance regarding the best way to conduct the service activities.³⁹ National service programs should "build an ethic of civic responsibility and produce a positive change in the lives of participants through training and participation in meaningful service experiences and opportunities for reflection on such experiences."⁴⁰ The programs are to include measurable goals for "the service experience to be provided to participants in the programs."⁴¹ The Corporation is to give preference to programs that further these goals.⁴²

The law identifies a certain group of other world views that, in contrast to the world view of the Reverend Dr. Martin Luther King, Jr., are specifically disallowed in the context of national service. "[A]ny approved national service position provided to an applicant will not be used to . . . give religious instruction, . . . conduct worship services, . . . provide instruction as part of a program that includes mandatory

37. *See, e.g.*, Clinton, Address Before A Joint Session Of The Congress On The State Of The Union (Jan. 24, 1995), in PAPERS 75, 80 (1995) (Indeed, "[t]he National Service Corps" is "the essence of the New Covenant."); Clinton, Remarks at the Martin Luther King, Jr., Commemorative Service In Atlanta, Georgia (Jan. 15, 1996), in PAPERS 67 (1996) ("I signed legislation which transformed Martin Luther King's birthday into a national day of service to reflect the life and legacy of Dr. King. I recently appointed a friend of Dr. King's and an advisor, former Senator Harris Wofford, to head our Corporation for National Service."); Clinton, The President's Radio Address (Jan. 14, 1995), in PAPERS 47, 47-48 (1995) (Clinton feels that "Dr. King was one of the great moral prophets of our time," and has seen to it that as part of the "New Covenant" AmeriCorps participants perform service on the King Holiday.).

38. 42 U.S.C. § 12653(q)(1)-(2).

39. *See id.* § 12526(d); *id.* § 12544(d)(2).

40. *Id.* § 12582(b)(7)(A).

41. *Id.* § 12582(b)(8)(B).

42. *See id.* § 12656(d)(4)(B).

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religious education or worship[,] or . . . engage in any form of proselytization.”⁴³ The statute does not provide guidance as to how “religious instruction,” “religious education,” “worship,” and “proselytization” are to be distinguished from the set of beliefs and values the program itself is explicitly and specifically mandated to install into its participants. The apparent net effect of the provisions is to preclude religious institutions from intervening with religious material promoting world views and behavior patterns not in congruence with those advocated through the National Service Corps program.

B. The “Service Learning” Philosophy of the Corps is Premised upon the Utilization of Youths Organized in Carefully Supervised Work Crews Performing Semi-Skilled Labor

The National Service Corps represents “an opportunity to do something that Americans have resisted for too long, which is to merge instead of keep divided our notion of vocational education and academic education.”⁴⁴ National service is based on a pedagogy called “service learning.”⁴⁵ According to the two official definitions in the statute, “service learning” consists of the following five core elements (as synthesized by the present author):⁴⁶

43. *Id.* § 12584(a).

44. Education, *supra* note 24, at 295; *see also* Clinton, Remarks at the Dartmouth College Commencement Ceremony in Hanover, New Hampshire (June 11, 1995), in PAPERS 844, 847 (1995) (“The idea behind national service is to make a connection between ideas and the real world of need out there beyond the ivory towers of academia, to make a connection between earning an education and advancing the quality of life for others who may not have it”); Daniel E. Witte, Comment, *People v. Bennett: Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment*, 1996 BYU L. REV. 183, at 246 n.10 (discussing the combination of education with industrial production).

45. *Cf., e.g.*, Colin L. Powell, *Everybody’s Children: Giving Helps Young People Grow*, TIME, Dec. 15, 1997, at 135, 135 (discussing “service-learning” in the context of “reluctant volunteer[s]” that have to participate in order to graduate from Maryland high schools, and discussing how AmeriCorps has transformed their lives).

46. Two different portions of the National Service statute define “service learning,” each using slightly different wording. The main text synthesizes the language from 42 U.S.C. §§ 12626(8), 12511(23), one provision encompassing a definition of “service learning” as an abstract pedagogical method and the other provision defining “service learning” as an integral component of “curriculum” in elementary schools, secondary schools, institutions of higher education, and community programs.

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1. "Active participation";⁴⁷
2. "[O]rganized service" with "structured time";⁴⁸
3. Programs that are "coordinated with an . . . institution of . . . education . . . or community service program, and with the community,"⁴⁹ so that the work projects are "integrated into . . . the academic curriculum";⁵⁰
4. A belief by Corps members that they are "meet[ing] actual community needs"⁵¹ that exist "in real life situations in their own communities";⁵² and
5. Programs that "provide structured time for a Corps member to think, talk, or write about what the Corps member did and saw during an actual service activity"⁵³ in order to ensure "participants to reflect on the service experience"⁵⁴ that is designed for them, so that the experience "foster[s] the development of a sense of caring for others, good citizenship, and civic responsibility."⁵⁵

The statute expands upon the concept of "service learning" and explains how the method is to be implemented. "[T]o the maximum extent practicable,"⁵⁶ "the Corporation shall give preference to programs that . . . will be labor intensive, and involve youth operating in crews"⁵⁷ "of diverse individuals."⁵⁸

47. *Id.* § 12626(8)(A).

48. *Id.* § 12626(8)(A, B); § 12511(23)(B)(ii).

49. *Id.* § 12511(23)(A)(ii).

50. *Id.* § 12511(23)(B)(I).

51. *Id.* § 12626(8)(A).

52. *Id.* § 12626(8)(C).

53. *Id.* § 12626(8)(B).

54. *Id.* § 12511(23)(B)(ii).

55. *Id.* § 12626(8)(D).

56. *Id.* § 12617(a)(3).

57. *Id.* § 12655h(a); *see also id.* § 12656(d)(4)(C) (Preference is to be given to programs that "will be labor intensive."); *id.* § 12613(a) ("[E]ligible young people shall work in teams on Civilian Community Corps projects.")

58. *Id.* § 12617(a)(3); *see also id.* § 12572(a):

[N]ational service programs may include the following types of national service programs:

(1) A community corps program that . . . promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds

(2) A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service

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Service learning also requires that “[e]ach member of the Civilian Community Corps shall be provided with between three and six weeks of training that includes a comprehensive service-learning curriculum designed to promote team building, discipline, leadership, work, training, citizenship, and physical conditioning.”⁵⁹ Such an approach includes “[a]n individual[] placement program that includes regular group activities, such as leadership training and special service projects.”⁶⁰

“The Corporation shall support innovative programs and activities that promote service-learning.”⁶¹ The “youth service programs[] include participant service in . . . law enforcement agencies[] and penal and probation systems.”⁶² These programs allow the youth to distribute their newly found understanding with the community through the mechanism of volunteer law enforcement. Although the statute itself does not identify any examples of youth law enforcement activity, Corps members would presumably be possible candidates for neighborhood patrols, school patrols, decoys for sting operations against cigarette or alcohol vendors who sell to underage customers, informants in child abuse litigation, and members of search and seizure teams for dragnet operations in local schools. As sexual education, counseling, and care are within the scope of the Corps mandate,⁶³ Corps members could also be utilized to assist other youth in overcoming obstacles that prevent access to

corps . . . that

. . . .

(C) provides those participants who are youths and young adults with—

(I) crew-based, highly structured, and adult-supervised work experience . . . and

(ii) the opportunity to develop citizenship values and skills through service to the community and the United States.

59. *Id.* § 12616(a).

60. *Id.* § 12572(a)(5).

61. *Id.* § 12653(p).

62. *Id.* § 12655c(a)(2), (a)(2)(C).

63. *See, e.g.,* Clinton, Remarks at Kutztown University In Kutztown, Pennsylvania (Jan. 25, 1995), in PAPERS 86, 87 (1996) (Early in its existence “members of the Pennsylvania Service Corps, part of AmeriCorps, . . . work[ed] . . . to help people with AIDS”).

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information and counseling for reproductive planning and abortion.⁶⁴

C. AmeriCorps Transplants Corps Members from Their Families into a Military Culture

Clinton views the Corps as a “replacement” of sorts for the regular military, which he has downsized in an attempt to reduce defense spending.⁶⁵ Indeed, he tapped the retiring General Colin Powell to serve “another mission” for his country as Powell was leaving the armed forces.⁶⁶ The Corps uses various facilities and cultural artifacts to reinforce the military values of conformity, unity, team cooperation, and obedience to authority. Of primary importance are (1) the living arrangements; (2) the equipment and facilities; and (3) the bestowal of identity and recognition through uniforms, awards, and ceremony. Each of these components are discussed below.

1. Living arrangements

“Both [the national service program and summer national service program] are residential programs. The membership of the Corps in each program shall reside with other members of the Corps in Corps housing during the periods of the members’

64. *Cf., e.g.,* Powell, *supra* note 45, at 135 (discussing the counseling of gang members by volunteers under AmeriCorps auspices). The Corps scheme authorizes nearly any kind of activity that can be construed as falling within the nonprofit sector. No constraints are placed upon the types of services that can be provided by the Corps or upon the type of enforcement functions the Corps can perform. Political sentiment, not legal letter, is the only real restrictive factor.

65. *See* Town Meeting, *supra* note 14, at 859. Characterizing the Corps as a replacement for the military, Clinton stated:

If I could fund it all, if the Speaker would support me, I'd get up to a couple hundred thousand people in AmeriCorps in no time. But I wanted to do it especially as we bring down the size of the military, because a lot of young people who otherwise would have gone into the military and gotten wonderful training . . . [to] change[] their whole lives forever now won't be able to do it because . . . we don't have a need for the same size military.

Id.

66. Clinton, Remarks at the Opening Ceremony for the President's Summit for America's Future in Philadelphia (Apr. 28, 1997), in DOCUMENTS 607, 608 (1997) (“But, particularly, I want to thank General Colin Powell. . . . General, this [acceptance of my invitation to promote the Corps] may be your most important mission, and I want to thank you for reinlisting.”). For information about the conscription campaign General Powell is heading for the National Service Initiative, see *supra* and *infra* notes 45, 64, 85, 86, 112, 219.

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agreed service.”⁶⁷ “A full-time, year-round youth corps program . . . includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths . . . youths in foster care who are becoming too old for foster care, . . . [and] homeless youths,”⁶⁸ all of whom are people likely to have little personal attachment to a specific geographic location.

Corps members live in a “Corps Camp,” which is “the facility or central location established as the operational headquarters and boarding place for particular Corps units.”⁶⁹ Corps camp living means residency in closely compacted, carefully supervised group quarters occupied by permanently assembled crews of people:

The Corps shall be divided into permanent units. Each Corps member shall be assigned to a unit.

. . . The designated leader shall accompany the unit through out the period of agreed service of the members of the unit.

. . . The units of the Corps shall be grouped together as appropriate in camps for operational, support, and boarding purposes. The Corps camp for a unit shall be in a facility or central location established as the operational headquarters and boarding place for the unit. Corps members may be housed in the camps.⁷⁰

2. *Equipment and facilities*

“Whenever possible, the Corporation shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment.”⁷¹ “[T]he Secretary of Defense shall identify military installations and other facilities of the Department of Defense and, in consultation with the adjutant generals of the State National Guards, National

67. 42 U.S.C. § 12612(c).

68. *Id.* § 12572(a), (a)(2)(B).

69. *Id.* § 12626(3).

70. *Id.* § 12615(c).

71. *Id.* § 126551(d)(4)(B).

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Guard facilities may be used . . . by the Civilian Community Corps for training or housing Corps members.”⁷²

“[T]he Corporation has established the National Civilian Community Corps, which will take advantage of closed and down-sized military bases.”⁷³ Accordingly, “[t]he Director shall enter into agreements . . . with the Secretary of Defense, the Governor of a State . . . or the commanding general of the District of Columbia National Guard . . . to utilize . . . equipment of the Department of Defense and equipment of the National Guard; and . . . Department of Defense facilities”⁷⁴

In the operation of the military equipment and facilities and in various aspects of their work, “[a] member of the Corps shall be considered an employee of the United States for purposes of . . . tort claims liability and procedure.”⁷⁵

3. *Recognition through uniforms, awards, and ceremony*

“The Corporation may support the development . . . [of] training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs”⁷⁶ Awards are also given in various official ceremonies conducted by the Corps.⁷⁷ In practice, these awards tend to have the flavor of commencements and ceremonies associated with military or police academies.⁷⁸

72. *Id.* § 12622(a)(3).

73. Proclamation No. 6662, 59 F.R. 16,507 (1994).

74. 42 U.S.C. § 12621(b)(1).

75. *Id.* § 12620(c).

76. *Id.* § 12653(o). There is apparently no restriction that would prohibit the Corps from making a unilateral administrative decision to use military or paramilitary uniforms. Currently, the uniforms tend to look similar to the Varsity and Explorer Scout shirts and patches used in the Boy Scouts of America. *See, e.g.*, Clinton, Photo Insert #2, *in* PAPERS (between pages 1812 and 1813) (1994) (Clinton administering an oath to youths in AmeriCorps uniforms).

77. *See* 42 U.S.C. § 12592(f).

78. *See, e.g.*, Swearing-In Ceremony, 9/12/94, *supra* note 2 (including the administration of an oath by Clinton to the participants).

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*D. AmeriCorps Utilizes a Military Culture, with a Strict
Comm and Organizational Structure*

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The national service program functions in some respects as a standing domestic army⁷⁹ within the United States.⁸⁰ Its design could gradually evolve into federalized law enforcement⁸¹ missions involving domestic “peacekeeping” of a sort similar to the “peacekeeping” operations conducted by the current United States military in conjunction with the United Nations in countries such as Haiti, Bosnia, or Somalia.⁸² The

79. Although use of firearms has not been emphasized in initial rhetoric or, apparently, in initial programs, participants could use firearms without any apparent conflict with statutory provisions. The Executive Branch can apparently simply determine that firearms are appropriate.

80. *See also* 42 U.S.C.A. § 12623(b) (placing both the Secretary of Defense and the Chief of the National Guard Bureau on the Advisory Board governing the Corps); *cf., e.g.,* Powell, *supra* note 45, at 135 (discussing the use of the Corps to “settle [gang] conflicts peacefully”); *supra* notes 45, 64, 65, 76, and *infra* notes 85, 86, 87, 112, 219.

81. *See, e.g.,* Swearing-In Ceremony, 10/12/95, *supra* note 12, at 1581 (“[T]housands and thousands” of Corps members “helped to close those crack houses and give those children safe streets to walk.”); Hillsborough, *supra* note 6, at 431 (“These AmeriCorps volunteers are . . . members of three local law enforcement agencies . . . They’re working together to make . . . community policin[g] a reality, to make the streets safer. They’re out there doing things that uniformed officers don’t have to do that lower the crime rate and make people safer.”); Clinton, The President’s Radio Address (Mar. 11, 1995), in PAPERS 330, 331 (1995) (“Our young AmeriCorps volunteers are partners with our . . . police officers, doing work that won’t get done any other way. They’re walking police beats in Brooklyn . . .”). Many of the above comments were made in relation to discussions about the Brady gun control bill, a cause that Clinton firmly supports.

82. Indeed, AmeriCorp in many respects is designed to function like an armed scout troop or Peace Corp, with military and law enforcement functions blended together in both the organizational culture and the organizational activities. Many times the President has addressed the volunteers as if they were about to storm the beach at Normandy or conduct a SWAT team operation against drug dealers. *See, e.g.,* Swearing-In Ceremony, 9/12/94, *supra* note 2, at 1537 (1995) (stating that “we are grateful for those of you who wish to give back something to the country that has done so much for you,” noting that “[t]he people who made this country great are . . . farm boys on the beaches of Normandy, the police officers walking the dark beats,” and asserting that “you, the people of AmeriCorps, will be America’s next generation of heroes”); *see also, e.g.,* Summer of Safety, *supra* note 3, at 1135-37 (explaining that it is necessary to “get out here and help the volunteers by having the National Government do its part to be partners in the fight against crime,” asserting that “a big part of our national security is what happens right here . . . on the streets of every community of this country,” commenting that “order” is “a really personal thing,” advocating that “we ought to . . . provide boot camps,” and noting that commitment is key to putting on a police uniform or a Corps uniform); Education, *supra* note 24, at 294 (1995) (“The national service program which Congress adopted, AmeriCorps, will . . . send . . . young people out across our country, helping police to stop crime and violence . . .”); Gephardt, *supra* note 8, at 1138 (1995) (describing how ex-Marines are “doing a lot for our national security right here at home” by “organizing block patrols” that “work[] with the police to diminish crime”).

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Corps utilizes a corporate legal arrangement that is juxtaposed with a military command structure and culture. Indeed, "service in the Corps" is viewed "as an alternative to service in the Armed Forces,"⁸³ and the statute asserts that "domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces . . . [as a] national service opportunity for young Americans."⁸⁴ Publicity efforts for national service also heavily rely upon military themes.⁸⁵

The involvement of women in the regular military, and the involvement of women in the Maryland public schools that already have mandated service for graduation as part of the National Service Initiative,⁸⁶ suggests that if national service with the National Service Corps were to be made mandatory on a national scale, the logic of "equal protection" could be utilized to compel (as opposed to merely permit) women as well as men to participate in the draft.⁸⁷ Indeed, Clinton has repeatedly identified a conceptual nexus between women serving in the military and women serving in the National Service Corps.⁸⁸

83. 42 U.S.C. § 12622(a)(4) (1995).

84. *Id.* § 12611(4).

85. As an example, the April 28, 1997 issue of *Newsweek* featured Ret. General Colin Powell pointing in Army-poster fashion, with a caption reading "I Want You." See also Jonathan Alter, *Powell's New War*, NEWSWEEK, Apr. 28, 1997, at 28 (featured article).

86. See, e.g., Powell, *supra* note 45, at 135 (discussing a female who was required to participate in Maryland's service program).

87. Some members of Congress have expressed fears about the possibility that the Selective Service System could be utilized to obtain recruits for AmeriCorp and eventually combine military and national service into one mandatory, comprehensive program. See, e.g., John Elvin, *Is There A Draft In There?*, INSIGHT, Aug. 4, 1997, at 34 (discussing, *inter alia*, concerns expressed by Representative Ron Paul about the connection between the Selective Service scheme and the Corps). Indeed, at some point an equal protection argument may be made that, if men can be compelled to register and participate in the Selective Service and the military, it is unconstitutional not to also compel women to do the same because women have "demonstrated" their ability to serve in the military. In that way, drafts could capture the entire relevant age population sector, instead of just the fifty percent of civilians who are male.

88. See, e.g., Clinton, Remarks at the Faces of Hope Reunion Luncheon (June 9, 1995), in PAPERS 837, 838 (1995) ("One of them was a woman who retired from the military, said she never had a chance to go to college—she had the GI bill, but she wanted to do this service in her community before she went back to college."); Town Meeting, *supra* note 14, at 859 (relating how a woman retired from the Navy "just wanted to serve [her] country again in the neighborhoods").

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The command structure of the National Service Corps, described in more detail in Appendix A, consists of a centralized, hierarchical structure supported with a governmental "incorporation." The structure includes (1) the president of the United States, (2) a board of directors, (3) a civilian community corps advisory board, (4) a chief executive officer, (5) a director, (6) a permanent cadre of supervisors and training instructors, (7) superintendents, (8) unit leaders, and (9) corps members. The structure is significant when considering the organizational culture of the Corps.

E. The Corps Utilizes an Extensive, Sophisticated Information-Gathering Network

The national service laws mandate that an extensive, national interlinked informational network be created for use by the Corporation. By law, states involved in national service must establish "registries" and "networks" that "contain[] such information . . . as the Corporation may require"; one use for the networks is to monitor whether affirmative action measures are being implemented by each state and the organizations within that state.⁸⁹ The Corporation has broad discretion to decide what kinds of information must be submitted to the network by any or all of the various private and governmental entities and individuals having any connection⁹⁰ to the national service scheme.⁹¹ Many of these information networks already

89. 42 § U.S.C. § 12638(e)(1)(E).

90. *See id.* § 12643(a)(1). Of course, private and governmental entities currently can avoid such requirements by refusing to participate in the Corps scheme. However, the costs associated with disengaging information systems from the integrated informational scheme, together with the pressures of federal monetary incentives facilitated through government taxation and revenue sharing schemes, may eventually operate to insure that nonparticipation becomes an economically impractical option.

91. *See id.* § 12543(a)-(b) ("[A] State Commission shall prepare, submit to the Corporation, and obtain approval of, an application . . . Such application shall be submitted to the Corporation at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require."); *see also id.* § 12544(b) (local organizations applying directly to the Corporation to provide information); *id.* § 12544(c) (local organizations applying to the State Commission are to provide the information); *id.* § 12561(d)(1) (institutions or partnerships applying to the Corporation to provide the information); *id.* § 12582(a) (states, state agencies, Indian tribes, public or private non-profit organizations, institutions of higher education, and Federal agencies to provide information to the Corporation); *id.* § 12615(b)(3) (individual applicant to comply with information regulations of Corporation, which at a minimum must include a record of an individual's work

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exist in the form of local computer databases, which could easily be linked nationally.⁹²

The law specifically provides that participating individuals must report their career history to the Corporation, as well as other additional information the Corporation in its discretion deems relevant.⁹³ Other participating state governments, tribal governments, businesses, and nonprofit private organizations are also required by numerous different statutory provisions to submit sundry types of information that are restricted only by the discretion of the Corporation. For example, participating state agencies and Indian tribes must report a three-year strategic plan to the federal Corporation, and the Corporation must approve the details in the submitted plans about how the state or tribe intends to implement the “service learning” methodology.⁹⁴ As another example, “[t]he entity [in question]

experience); *id.* § 12639(h)(1) (“In conducting the evaluations required under this section, the Corporation may require each program participant and State or local applicant to provide such information as may be necessary”); *id.* § 12653(f)(1); *id.* § 12653a(b).

92. See, e.g., Janet Bingham, *Student Database Called Orwellian: Colo. Plan a Threat to Privacy, Critics Say*, DENVER POST, June 30, 1996, at 1A. The piece discusses proposals before the Colorado Board of Education that for the first time would centralize certain information about Colorado’s 656,000 public school students in order to help educators qualify districts for more state and federal money. Districts would furnish the information via the Internet to a centralized system in the state education department, accompanied by student name and Social Security or other identifying number. Researchers could then have unfettered access to an individual longitudinal record of school history, schools attended, disciplinary records, physical or emotional disabilities, sexual orientation, standardized test results, emotional history, participation in gifted and talented or remedial programs, transfer to or from a private or home school, military service, and residence in mental health or correctional or detention facilities, and could share such information in a national “electronic exchange of records among schools, social services, health and law enforcement agencies, colleges, the military and even employers.” *Id.* Such comprehensive databases allow very powerful individual “mosaic” composite profiling to be done from massive amounts of information. Cf., e.g., *Kasza v. Browner*, No. 96-15535, 1998 WL 3586, at *1, *3, *4-*5, *23 (9th Cir. Jan. 8, 1998) (discussing concern about the “mosaic” technique in the context of a secret military facility in Nevada known by UFO enthusiasts as “Area 51” (citing *Halkin v. Helms*, 598 F.2d 1, 8 (D.C. Cir. 1978))).

93. See 42 U.S.C. § 12615(b)(3) (stating that an individual applicant must comply with information-providing regulations of Corporation, which at minimum includes a record of individual’s work experience).

94. See *id.* § 12525 (a)-(b) (stating that to “be eligible to receive a grant . . . a State, acting through the State educational agency, or an Indian tribe, shall . . . submit to the Corporation . . . an application at such time and in such manner as the Chief Executive Officer may reasonably require”); *id.* (stating that “a 3-year

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shall determine, for the year covered by the evaluation, the total number of participants in the programs, and the number of participants within the programs in each State, by sex, age, economic background, education level, ethnic group, disability classification, and geographic region.”⁹⁵

The Corporation is to have the power to audit the information network and ensure that the Corporation’s policies are being implemented:

The Comptroller General, or any of the duly authorized representatives of the Comptroller General, shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

- (1) within the possession or control of the Corporation or any State or local government, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly . . . and
- (2) that the Comptroller General, or his representative, considers necessary to the performance of an evaluation, audit, or review.⁹⁶

Participating public and private nonprofit organizations are also to “gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects” by interacting with the national service community on an ongoing basis.⁹⁷

F. National Service Assimilates Other Federal, State, Tribal, Local, and Private Programs

The national service scheme is interlinked with other federal programs, and it is designed to continuously expand and assimilate⁹⁸ numerous governmental entities, private

strategic plan . . . for promoting service-learning” must “includ[e] information demonstrating that the programs will [conform to] . . . the approved strategic plan”).

95. *Id.* § 12639(1)(1)(B)(ii).

96. *Id.* § 12643(a).

97. *Id.* § 12551(c)(7)(A).

98. “Assimilation” as used in this Comment refers to a process whereby two or more systems are (1) integrated, and (2) purged of peculiar characteristics that operate to distinguish one system from other systems. This process may totally or partially be implemented with voluntary and cooperative support; the absence of resistance will of course speed the *rate* or the process of assimilation.

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organizations, and individual citizens that the program encounters.⁹⁹ The national service statutory scheme specifically affords broad discretion to the Corporation in this regard, stating that “[t]he Corporation may develop, in cooperation¹⁰⁰ with the heads of other Federal agencies, regulations designed to permit . . . joint programs in which activities supported with assistance made available . . . under [national service] are coordinated with activities supported with assistance made available under programs administered by the heads of such agencies”¹⁰¹ Priority is given to establishing national service programs that can be “replicat[ed]” and that “build on existing programs.”¹⁰² “[N]ational service programs carried out by another Federal agency” and that “are proposed to be expanded to additional States” are especially preferred.¹⁰³

The recruiting mechanisms for national service are interlinked with recruiting programs for the United States Armed Forces.¹⁰⁴ The Department of Labor assists in developing re-recruitment systems and strategies.¹⁰⁵ National service and military service are considered interchangeable under the statutory scheme, especially in terms of the target recruits and the inducement issues involved in recruitment; their mutual impact on each other is to be continuously assessed in order to ensure that a synergistic relationship is maintained.¹⁰⁶ This is

99. See Clinton, Remarks on Signing the National Infant Immunization Week Proclamation (Apr. 20, 1994), in PAPERS 729, 730 (1995) (“I would be remiss if I didn’t mention one of my pet projects, the national service program, AmeriCorps. . . . [W]e know in the end, *our ability to succeed depends upon the ability of grassroots-based community organizations to reach everybody in a disciplined way.*” (emphasis added)).

100. The “cooperative” development of regulations with the Corporation is an idea that seems to appear only when there is a parity issue between two entities of federal government (which are ultimately both subject to the reconciling power of the President).

101. 42 U.S.C. § 12655 m(a).

102. *Id.* § 12585(c)(2), (4).

103. *Id.* § 12585(d)(2)(A), (d)(2)(D).

104. See *id.* § 12622(a)(4) (“The Secretary of Defense may permit Armed Forces recruiters to inform potential applicants for the Corps regarding service in the Corps as an alternative to service in the Armed Forces.”).

105. See *id.* § 12622(b) (“[T]he Secretary of Labor shall identify and assist in establishing a system for the recruitment of persons to serve as members of the Civilian Community Corps. . . . [T]he Secretary of Labor may utilize the Employment Service Agency or the Office of Job Training.”).

106. See *id.* § 12639(g)(3), (9):

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done because “[t]he Corporation shall ensure that programs that receive assistance . . . are evaluated to determine their effectiveness in . . . recruiting and enrolling diverse participants . . . based on economic background, race, ethnicity, age, marital status, education levels, and disability”¹⁰⁷

The Corporation is also to work closely with the Department of Education.¹⁰⁸ “[P]reserve teacher education” across the country is to include service-learning “as a key component.”¹⁰⁹ “[F]aculty of the institution [are] to use service-learning methods throughout their curriculum”; institutions are to “facilitat[e] the integration of community service carried out under the program into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students can obtain credit for their community service projects.”¹¹⁰ In addition to instructing personnel within education, the Department of Education is to assist the Corporation in developing a “service-learning” curriculum that is to be used by instructors who are “qualified” in service-learning to train personnel from “community-based agencies” about the service-learning methodology.¹¹¹ This includes requiring students to engage in “service-learning” with the national service programs in order to graduate,¹¹² a tactic that may under some precedent¹¹³

The Corporation shall ensure that programs that receive assistance . . . are evaluated to determine their effectiveness in . . . encouraging each participant to engage in public and community service . . . such as . . . the Peace Corps . . . [and] the military . . . [and] . . . attracting a greater number of citizens to . . . the Armed Forces, the National Guard, [and] the Peace Corps

See also id. § 12622(a)(4); *id.* § 12639(a) (mandating that an evaluation for impact of national service on Armed Forces and Peace Corps be conducted).

107. *Id.* § 12639(g).

108. *See id.* § 12561(b), (b)(3), (b)(4).

109. *Id.* § 12561(b)(3)(A). In the speeches about the National Service Corps cited throughout this Comment, Clinton often also mentions Head Start, day care initiatives, national education curriculum initiatives, and similar concepts. *See, e.g., infra* note 117.

110. *Id.* § 12561(b)(3)-(4).

111. *Id.* § 12521(a) (“The Corporation, in consultation with the Secretary of Education, may make grants . . . to States (through State educational agencies), and to Indian tribes, to pay for . . . building the capacity . . . to implement school-based service-learning programs, including . . . providing training [and] . . . developing service-learning curricula to be integrated into academic programs.”).

112. Clinton has endorsed the idea of requiring students in public schools to

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participate in national service. *See, e.g.*, Clinton, The President's Radio Address (Apr. 5, 1997), in DOCUMENTS 469, 470 (1997):

Today I challenge schools and communities in every State to make service a part of the curriculum in high school and even in middle school. There are many creative ways to do this . . . [such as] making service part of the curriculum, putting service on a student's transcript or even requiring it, as Maryland does. . . . [E]very young American should be taught the joy and duty of serving and should learn it at the moment when it will have the most enduring impact on the rest of their lives.

See also Robert A. Rankin & Steven Thomma, *Clinton Calls for Responsibility: President Makes Plea at Commencement*, THE DENVER POST, May 11, 1996, at 5A (Clinton called for "every high school in America to put community service into its curriculum and offered to match any local effort that gives exemplary students a \$500 reward for outstanding community service.").

Since 1996, Ret. General Colin Powell has also been on a publicity campaign throughout the country discussing "service learning" in the context of "reluctant volunteer[s]" that have to participate. *See* Powell, *supra* note 45. In essence, Ret. General Colin Powell is openly advocating school-sponsored involuntary servitude on the basis that the servitude is good for the participants because of the skills and benefits they enjoy during the compelled activity. However, Powell does not address the issue of the opportunity cost to the recalcitrant volunteers. *See, e.g., id.* at 135 (asserting that children "are everybody's children" because "[t]he whole society has a stake in their destiny and a duty to help them grow up," and therefore the National Service Corps and compulsory service-learning high school graduating requirements like the one in Maryland are desirable because the "reluctant volunteer[s]" are "transformed" and accrue beneficial experience for their resumes).

113. *See, e.g.*, Ohio Assoc. of Independent Sch. v. Goff, 92 F.3d 419, 423 (6th Cir. 1996) (citing Herndon v. Chapel Hill-Carrboro City Bd. of Educ., 899 F. Supp. 1443 (M.D.N.C. 1995) (*Herndon* is a case rejecting a Thirteenth Amendment challenge to the National Service Initiative). In *Goff*, the court decided that the government could impose mandatory testing on private schools, and legally dissolve any private incorporated organization that refused to cooperate with this *de facto* government control over private school curriculum. Under the *Goff* rationale, one could argue that a national "service learning" curriculum requirement could be imposed upon every public and private school in the country, making national service impossible to evade.

Other cases, however, suggest a trend in the opposite direction, due to the deference one should afford to a parent's fundamental right to direct the upbringing of their child and the private choices of parents about how their children should be educated and trained. *See, e.g.*, *Reno v. American Civil Liberties Union*, 117 S. Ct. 2329, 2341 (1997) ("parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society"); *City of Boerne v. Flores*, 117 S. Ct. 2157, 2161 (1997) (explaining that religious rights and rights related to the education of children may overlap, but they are distinct and not coterminous); *M.L.B. v. S.L.J.*, 117 S. Ct. 555 (1996) (stating that there are inadequate procedures afforded to protect parental custody); *J.B. v. Washington County*, 127 F.3d 919 (10th Cir. 1997) (stating that there is a fundamental parental right to direct the upbringing of a child, but that right cannot defeat child abuse investigations supported by probable cause); *Croft v. Westmoreland County Children & Youth Servs.*, 103 F.3d 1123 (3d Cir. 1997) (stating that a fundamental right associated with family integrity prohibits child abuse intervention and governmental control over a child without probable cause); *Peterson v. Minidoka County Sch. Dist.* No. 331, 118 F.3d 1351, 1358 (9th Cir. 1996) (stating that parents cannot be

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eventually encompass private schools as well as public schools.

All federal government agencies are to develop plans for ensuring that federal employees participate in the national service program as uncompensated adult participants.¹¹⁴ In addition to the federal government employment scheme, the federal government is to officially encourage private businesses to use company hiring, compensation, and promotion decisions to assure that their private employees participate in the national service program as uncompensated adult participants.¹¹⁵

G. The Corps' Centralized Structure Includes a Carefully Crafted Agenda and Strict Control by the Corporation over State, Local, and Tribal Governments, and also Private Entities

The national service scheme has a tight, centralized control structure for setting priorities, determining the means for achieving the priorities, monitoring for compliance with the means identified, and taking enforcement action against any individual or organization or government that does not comply with the means identified. The statutory scheme itself imbues the Corporation with expansive discretion, but does set forth some general principles, methods, and priorities that the Corporation must include in its strategy.¹¹⁶

terminated arbitrarily from government employment in order to penalize the way in which they exercise their fundamental right to direct the upbringing of a child); *Stephen v. Stephen*, 937 P.2d 92 (Okla. 1997) (holding that judges may not assume as a default that public education is superior to home education in divorce proceedings); *Williams v. Williams*, 485 S.E.2d 651 (Va. Ct. App. 1997) (stating that the government may not force associations on children with any adult over the united opposition of the child's parents); *see also* Laurel S. Walters, *Schools Move to Control Off-Campus Behavior*, CHRISTIAN SCI. MONITOR, Mar. 12, 1998, at 3 (stating that the American Civil Liberties Union is increasingly concerned about schools that are attempting to replace parents as the authority that controls children in their home environment).

114. *See* 42 U.S.C. § 12642(a), (a)(5):

The head of each Federal agency and department shall design and implement a comprehensive strategy to involve employees of such agencies and departments in partnership programs with elementary schools and secondary schools. Such strategy shall include . . . the encouragement of businesses and professional firms to include community service among the factors considered in making hiring, compensation, and promotion decisions.

115. *See id.*

116. *See id.* § 12585(d)(2)(A), (B), (D), (F), (G) ("[N]ational service programs to

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Participating state, tribal, and local governments are to operate any national service in conformity with national Corporation directives—directives which may eventually be linked to nationalized standards for education.¹¹⁷ Federal statutes do dictate some state and tribal policies directly,¹¹⁸ including specific details about the characteristics of individuals that may serve on the policy-making bodies of state and tribal government.¹¹⁹ Generally, however, the “Corporation

receive priority[] [from] the Corporation may include . . . national service programs carried out by another Federal agency[,] . . . that conform to the national service priorities[,] . . . are proposed to be expanded to additional States[,] . . . [are endorsed] professional corps programs . . . [or are] programs that . . . include an evaluation component.”); *see also id.* § 12585(c) (“[C]riteria required . . . in evaluating applications [favorably] . . . are [1] the feasibility of replicating the program. . . . [2] strong and broad-based community support [3] quality of the leadership . . . [4] [strong] past performance . . . [5] [broad] extent to which the program builds on existing programs [and]. . . . [6] [the] extent to which projects would be conducted in . . . areas where they are needed most”; this means that communities that are “designated as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low income people[,] . . . environmentally distressed[,] . . . [or that are] adversely affected by Federal actions related to the management of Federal lands[, or] . . . adversely affected by . . . realignment of military installations” are to be targeted.); *id.* § 12656(d)(4) (Secretaries shall give a preference to those projects “provid[ing] long-term benefits to the public,” “instilling in the participant a work ethic and a sense of public service,” requiring “labor intensive” regimens, susceptible to “prompt[ly]” “plann[ing] and initiat[ion],” and “provid[ing] academic, experiential, or community education opportunities.”); *id.* § 12655h (a), (a)(1) (“[T]he Corporation shall give preference to programs that . . . will provide long-term benefits to the public . . .”).

117. Clinton has linked national education standards and national service together in his remarks on various occasions. *See, e.g.*, Improving America’s Schools, *supra* note 6, at 1812-13 (“[S]chools have become the home away from home for a lot of children,” and therefore it is necessary for “the National Government [to] set [national education] goals” and to “develop measurements to see whether . . . School District[s] [are] meeting the goals,” with local citizens “get[ting] to determine how you’re going to meet the goals” and assisting with the expansion of “the Head Start program, as Senator Kennedy said”); *see also supra* text accompanying note 97 (national “service learning”).

118. *See, e.g.*, 42 U.S.C. § 12527(b):

In providing assistance . . . a State educational agency or Indian tribe . . . shall give priority to entities that submit applications . . . that . . . are in the greatest need of assistance, such as programs targeting low-income areas; . . . involve . . . students from public elementary or secondary schools, and students from private elementary or secondary schools, serving together; or students of different ages, races, sexes, ethnic groups, disabilities, or economic backgrounds, serving together; or . . . are integrated into the academic program of the participants.

119. *See, e.g., id.* § 12638(c)(1)-(2) (“State Commission for a State shall include as voting members” an expert in (1) “the educational, training, and development

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shall develop evaluation criteria and performance goals.”¹²⁰ “Subject to such requirements as the Corporation may prescribe, a State Commission may delegate nonpolicymaking duties” to local or private entities.¹²¹ “The Corporation may specify a minimum percentage of participants to be selected from the national leadership pool . . . and may vary the percentage for different types of national service programs.”¹²² The Corporation provides notice to various applicants about the adjustments that the Corporation has made in “national service priorities” and the effect that the adjustments will have on the applicant’s eligibility for various types of participation and funding.¹²³

Similar to state and local governments, participating private organizations and individuals are also governed by statutory provisions,¹²⁴ and they are additionally to comply with the Corporation’s directives. The Corporation determines what

needs of youth,” (2) an expert in “promoting the involvement of older adults in service and volunteerism,” (3) a “representative of community-based agencies . . . within the State,” (4) “the head of the State educational agency,” (5) “a representative of [state] local governments,” (6) a “representative of local labor organizations,” (7) “a representative of business,” (6) a youth “who is a participant or supervisor in a program,” and a “representative of a national service program.” Optional voting members include (1) “local educators,” (2) “experts in the delivery of human, educational, environmental, or public safety services,” (3) “[r]epresentatives of Indian tribes,” (4) “out-of-school youth or other at-risk youth,” (5) “representatives of entities that receive assistance under the Domestic Volunteer Service Act.” “Representatives selected from among . . . State agencies operating community service, youth service, education, social service, senior service, and job training programs” may serve as “ex officio nonvoting members.”); *id.* § 12638(d)(1) (“Not more than 50 percent of the voting members of a State Commission, plus one additional member, may be from the same political party. . . . Each member of the State Commission for a State shall serve for a term of 3 years . . .”).

120. *Id.* § 12583(d)(2).

121. *Id.* § 12638(g).

122. *Id.* § 12583(f).

123. *Id.* § 12572(c)(2)-(c)(3)(B) (The Corporation is constrained only by a requirement to “provide advance notice to potential applicants of any national service priorities to be in effect,” with such notice including “a description of any alteration made in the priorities since the previous notice” and “a description of the national service programs that are designated by the Corporation . . . as eligible for priority consideration in the next competitive distribution of assistance”; equitable treatment shall be extended to national service programs that “would be adversely affected by annual revisions in such national service priorities.”).

124. *See, e.g., id.* § 12542(b)(1)-(b)(1)(A) (“A . . . grantmaking entity may . . . make a grant to a qualified organization to implement, operate, expand, or replicate a community-based service program that provides for meaningful human, educational, environmental, or public safety service by participants . . .”).

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criteria will be used to determine whether an organization has properly “qualified” itself.¹²⁵

In order to measure compliance with the Corporation’s directives, “[t]he Chief Executive Officer shall establish and maintain a decentralized field structure that provides for an office of the Corporation for each State,” and “[e]ach State office . . . shall . . . monitor and evaluate the performance of all programs and projects within the State that receive assistance under the national service laws.”¹²⁶ State Commissions must prepare a national service plan with specified components and also establish registries and networks for the Corporation’s information-gathering activities.¹²⁷ Additionally, participants must commit to conduct evaluation of programs as directed by the Corporation, to “apply measurable performance goals and evaluation methods,” to conduct opinion surveys of communities and participants “as the Corporation may require,” and to “cooperate with any evaluation activities undertaken by the Corporation.”¹²⁸

After conducting monitoring activities, Corporate officials have substantial powers to enforce their directives. “The Corporation may reject a State Commission if the Corporation determines that the composition, membership, or duties of the State Commission do not comply with the requirements”¹²⁹ The same is true for local government and private entities; for example, “[t]he Corporation may . . . suspend or terminate payments under a contract or grant . . . or revoke the designation of positions . . . whenever the Corporation determines there is a material failure to comply with . . . the applicable terms and conditions.”¹³⁰ The Corporation may go so far as to assume direct control by placing programs in a kind of receivership status; “if the Corporation determines that a State, Indian tribe, or local educational agency substantially fails or is unwilling to provide for such participation on an equitable

125. *Id.* § 12541(3) (“The term ‘qualified organization’ means a public or private nonprofit organization with experience working with school-age youth that meets such criteria as the Chief Executive Officer may establish.”).

126. *Id.* § 12651h(a), (b), (b)(4).

127. *See id.* § 12638(e), (e)(1)(D)-(E).

128. *Id.* § 12583(d)(1)(A)-(C).

129. *Id.* § 12638(h)(3).

130. *Id.* § 12636(a)(1).

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basis, the Chief Executive Officer shall waive such requirements and shall arrange for the provision of services to such students and teachers.”¹³¹

H. The Corps Utilizes a Normative Approach Combined with Broad Enabling Authority

The Corps utilizes a normative philosophy to alter the socialization orientation of its own participants and to assess the limits of political toleration for social change in local public sentiment. In doing so, the National Service system employs top-down management. Although “unmet human, educational, environmental, [and] public safety needs”¹³² are repeatedly mentioned throughout the voluminous provisions, it is the Corporation that ultimately designates which needs exist, which needs are unmet, which unmet needs should be addressed, and what means will most effectively address those unmet needs. The statute itself also affords some general guidance about unmet needs, which the Corporation interprets with great discretion and on the basis of an enabling scheme that imposes few if any limiting constraints on what constitutes the boundaries of Corps activity. “[U]naddressed community and individual needs” include “providing after-school ‘safeplaces,’ [such as] schools, with opportunities for learning and recreation.” “[D]evelopment needs” include “health care, education, and job training” and “other important unaddressed needs”¹³³ such as conservation. Local communities are encouraged to fiscally support the National Service Corps activities conducted in their local community.¹³⁴ However, neither the participants, the participating institutions, nor the communities have any direct, tangible, and ultimate control over how the National Service program, or portions of the program are constituted or conducted.¹³⁵

131. *Id.* § 12528(b).

132. *Id.* § 12572(b)(4); *see also id.* § 12501(b); *id.* § 12521(a)(2)(B)(I)(I).

133. *Id.* § 12572(12), (13).

134. *See id.* § 12617(c)(2) (“The Director shall encourage camp superintendents to negotiate with representatives of local communities, to the extent practicable . . . [arrangements may include] cost-sharing and the provision by the communities of in-kind support and other support.”).

135. *See id.* § 12572(c)(1)(A)-(B) (“[T]he Corporation shall . . . periodically alter priorities as appropriate regarding the types of national service programs to be

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Obviously, the information network of the Corps and the resources of the Corps both represent powerful opportunities to employ tax-supported government resources to gather valuable campaign information and to curry favor with specific special interest groups. The statute purports to ensure that "any approved national service position provided to an applicant will not be used to perform service that provides a direct benefit to any . . . partisan political organization."¹³⁶ Although no associated enforcement or penalty mechanisms are provided, the statute states that "[a]ssistance provided . . . shall not be used by program participants and program staff to . . . finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office."¹³⁷

As a possible complication, however, the National Service system is designed to routinely gather and evaluate information regarding political sentiment and public attitudes relative to various programs.¹³⁸ Ongoing assessment is made to ensure that opposition in the public and the communities will not coalesce to a degree needed to impede the graduate and consistent establishment and expansion of Corps programs.¹³⁹ The definition of the nature and location of appropriate service

assisted . . . and the purposes for which such assistance may be used."); *id.* (stating that states are to establish priorities and also periodically alter them).

136. *Id.* § 12584(a).

137. *Id.* § 12634(b).

138. *See, e.g., id.* § 12583(d)(1)(A)-(C):

An application submitted . . . shall also include an assurance by the applicant that the applicant will . . . apply measurable . . . evaluation methods (such as the use of surveys of participants and persons served), which are to be used as part of such evaluation to determine the impact of the program . . . on communities and persons served by the projects performed by the program; . . . on participants who take part in the projects; and . . . in such other areas as the Corporation may require; and . . . cooperate with any evaluation activities undertaken by the Corporation.

139. *See id.* § 12639(d)-(e):

The Corporation shall develop and publish general standards for the evaluation of program effectiveness in achieving the objectives of the national service laws.

. . . In evaluating a program receiving assistance under the national service laws, the Corporation shall consider the opinions of participants and members of the communities where services are delivered concerning the strengths and weaknesses of such program.

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is politically oriented, statistically measured,¹⁴⁰ and strongly normative in emphasis. “The criteria required to be applied in evaluating applications” includes “evidence such as the existence of strong and broad-based community support for the program.”¹⁴¹ No guidance is provided as to how these activities differ from “indirectly[] [financing] any activity designed to influence the outcome of an election,”¹⁴² and the statute does not provide any guidance for determining when, if, or how elected public officials can ethically access Corps information.

Although normative means are employed, national service is to be more than a mere reflection of public sentiment. By law, national service is designed to mold public sentiment with the goal of increasing favorable opinions of federal government activity:

It is the purpose of [the national service laws] to authorize the establishment of a Civilian Community Corps to provide a basis for determining—

(1) whether residential service programs administered by the Federal Government can significantly increase the support for national service and community service by the people of the United States;

(2) whether such programs can . . . contribut[e] to [an] understanding of civic responsibility in the United States¹⁴³

Thus, the Corps is partly premised upon the notion that citizens desire to have the government spend citizen tax

140. *See id.* § 12582(e)(2) (requiring states to consider population density and economic distress in deciding how to allocate the national service positions).

141. *Id.* § 12585(c); *see also id.* § 12561(e)(1)-(e)(1)(E) (“[T]he Corporation shall give priority to applicants that submit applications . . . that demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of the students, to supporting the community service projects carried out under the program [and that] demonstrate community involvement in the development of the proposal”).

142. *Id.* § 12634(b). Obviously, information gathered through the National Service Corps could be tremendously helpful to those planning political campaigns. Additionally, the diversion of government resources can be conducted by incumbents in ways that influence election outcomes. The temptation to misuse the National Service Corps for political purposes could become very strong for politicians of either party, and the statutory guidance and penalties against such use appear to have no practical teeth. The statute does not set forth specific penalties for noncompliance, and also does not address issues of standing.

143. *Id.* § 12611.

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revenue to change citizen opinion about how the government should spend citizens' tax revenue.¹⁴⁴

I. The Corps Design Appears to Target Specific Demographic Minority Populations

The Corps criteria are designed to target primarily young urban African Americans and urban Hispanics, as well as young Native Americans on Indian Reservations.¹⁴⁵ Indeed, of the two major demonstration projects¹⁴⁶ specifically mentioned by the statute in order to start the national service program, one project specifically focuses on an isolated Native American

144. Corps supporters view the National Service Movement as a tax-supported organization for supporting political activism. *See, e.g.,* Jonathan Alter, *Powell's New War*, NEWSWEEK, Apr. 28, 1997, at 28, 32:

Summit backers hope this partnership will open a whole new chapter in American social history. "We are trying to crack the atom of civic power," former senator Harris Wofford, director of AmeriCorps, wrote in an internal memo to Summit organizers. "Achieving that goal will be much harder than the task of cracking the physical atom when Roosevelt secretly set that goal." Wofford, who played a central role in the civil-rights movement, compares [the Summit] to when Martin Luther King Jr. and his followers charted their course in 1955. . . . If the [National Service] Summit succeeds, Wofford writes, it will be the first time since that era that Americans have set clear civic goals.

Senator Wofford introduced a bill that would have used federal money to create incentives for local schools to incorporate mandatory community service into the integral design of their curriculums. *See* Cynthia L. Brennan, Comment, *Mandatory Community Service as a High School Graduation Requirement: Inculcating Values Or Unconstitutional?*, 11 T.M. COOLEY L. REV. 253, 254-55 (1994). For more information about Wofford's role in the National Service Initiative, *see supra* note 37, *infra* note 243, and *infra* Appendix note 13.

145. The language of the statute does not mention race as a mandatory criteria for participation in the Corps. However, the statutory scheme (1) consistently uses combinations of demographic criteria that narrow in on particular demographic communities without identifying them by name, *see, e.g., infra* note 153 and accompanying text, (2) specifically mentions the importance of racial classification, *see, e.g., supra* note 118, (3) earmarks a Native American tribe for one of the two initial Corps demonstration projects, *see infra* note 147, and (4) exists against a general backdrop of a federal government with a history of micro-managing and/or "experimenting" with minority communities such as Native-Americans and Japanese Americans, *see infra* notes 202, 203. Regardless of the intent of those who advocate the National Service Corps scheme, the practical effect of the statute is to target minority demographic populations for disparate impacts.

146. The other major demonstration project consisted of "military installation conversion" programs designed to turn closed bases into a "community center" and "Head Start" facilities for children. *Id.* § 12653c(c).

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group in Alaska as constituting a subject population for “intensive community development” by the Corps.¹⁴⁷

The Corps scheme specifically is directed toward “low-income”¹⁴⁸ populations, “educationally disadvantaged”¹⁴⁹ individuals and “economically disadvantaged youths.”¹⁵⁰ This focus “includ[es] out-of-school youths[,] . . . youths in foster care who are becoming too old for foster care, . . . homeless youths,”¹⁵¹ and “activities on public lands or Indian lands.”¹⁵² The statute specifically ties funding allocation to correct focus on the target populations:

[T]he Corporation shall ensure that not less than 50 percent of the total amount of assistance to be distributed to States . . . is provided to carry out or support national service programs and projects that . . . place a priority on the recruitment of participants who are residents of [communities identifiable as having high concentrations of low-income people] or Federal or other public lands.¹⁵³

The statute provides additional guidance as to how to identify populations and participants that should be primary targets for Corps participation. In addition to minority ethnic

147. *Id.* § 12653d:

The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

. . . .

. . . The application . . . shall, at a minimum . . . take into consideration the primary noncash economy of the region; and . . . the needs and desires of residents of the local communities in the region; and . . . include specific strategies, developed in cooperation with the Yupik speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

148. *Id.* § 12572(a)(9)(A) (stating that programs should be directed towards “low-income families”); *see id.* § 12655c(a)(2)(E) (stating that programs should be directed towards “low income youths”).

149. *Id.* § 12655c(a)(2)(E).

150. *Id.* § 12613(c), (d); *see also id.* § 12614(b) (“To the extent practicable, at least 50 percent of the participants in the summer national service program shall be economically disadvantaged youths.”).

151. *Id.* § 12572(a), (a)(2)(B).

152. *Id.* § 12655e(a).

153. *Id.* § 12585(e).

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and racial populations,¹⁵⁴ populations who are experiencing severe economic or political upheaval are also identified as more likely to accept assimilation into national service programs:

- (A) Communities designated as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low income people.
- (B) Areas that are environmentally distressed.
- (C) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.
- (D) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations.¹⁵⁵

It should be noted that the Corps puts heavy emphasis on committing resources to the promotion, recruitment, and expansion activities of the Corp.¹⁵⁶ Although minority, low income, and traumatized populations are targeted for the initial focus, after momentum is sufficiently developed “[t]he Director shall ensure that the Corps units and camps are distributed in urban areas and rural areas in various regions throughout the United States.”¹⁵⁷

IV. THE MOST PROMINENT CRITICISMS OF THE NATIONAL SERVICE INITIATIVE AND THE NATIONAL SERVICE CORPS

The criticisms of the National Service Initiative and of the National Service Corps can be divided into topical areas. Each topical area of criticism can typically be divided into component subarguments based upon legal principles and social policy rationale.

The discussion of the criticisms below does not represent an exhaustive list of all possible criticisms, and it does not attempt

154. *See id.* § 12613(c) (“In selecting persons for the national service program, the Director shall endeavor to ensure that participants are from economically, geographically, and ethnically diverse backgrounds.”); *see also id.* § 12585(d)(1) (requiring program recipients to be “geographically diverse”); *id.* § 12614(b).

155. *Id.* § 12585(c).

156. *See, e.g., id.* § 12651d(g)(1) (establishing mandated minimums for funding of “public awareness” and “recruitment” activities).

157. *Id.* § 12615(e); *see also id.* § 12614(a) (“[A] diverse group of youth aged 14 through 18 years who are from urban or rural areas shall work in teams.”).

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to fully explore all aspects of each topical area. Instead, the discussion provides a brief overview of the most prominent criticisms against the National Service Initiative and identifies some additional problems and criticisms that may eventually arise in conjunction with the Corps. These criticisms are: (1) it is improper for government resources to be used to instill a specific world view; (2) compelling individuals to render uncompensated labor is unconstitutional involuntary servitude, and counterproductive in terms of producing actual individual enrichment; and (3) socialized government management of the nonprofit sector will be wasteful and will harm the private and religious nonprofit service providers that already exist.

A. It Is Improper for Government Resources To Be Used to Instill a Specific World View; Self-Determination Is Ignored, Government Corruption and Overreaching is Fostered

The National Service Initiative and the National Service Corps constitute a governmental endorsement of a particular world view,¹⁵⁸ and represent a use of government resources to spread that world view.¹⁵⁹ This use of government resources and coercive power has engendered legal and policy criticisms.

1. Legal theories against use of government resources to instill a particular world view

Although the National Service Initiative is promoted to participants as “a journey that will change their lives forever,”¹⁶⁰ some people not wishing to embark on the journey have attempted to challenge the National Service Initiative concept of “involuntary volunteerism” on constitutional grounds.¹⁶¹ Public scrutiny is only beginning, and the court

158. See *supra* notes 36, 37, 144.

159. See *supra* text accompanying note 144.

160. See, e.g., Swearing-In Ceremony, 9/12/94, *supra* note 2, at 1536.

161. So far the courts have generally upheld the ability of schools to force their students to work on “volunteer” projects in order to graduate, even when the student objects on grounds that compelled service violates rights of religion, expression, parental upbringing of a child, association, and liberty interests against involuntary servitude. See, e.g., *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174 (4th Cir. 1996) (upholding a community service program required for graduation), *cert. denied*, 117 S. Ct. 949 (1997); *Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454 (2d Cir. 1996) (upholding a New York public school program requiring 40 hours of community service), *cert. denied*, 117 S. Ct. 60 (1996); *Steirer v. Bethlehem Area Sch. Dist.*, 987

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decisions upholding involuntary volunteerism have come under fierce scholarly criticism based upon a tapestry of constitutional rights, including those related to freedom of expression, the right of free association, the right to direct the upbringing of a child,¹⁶² and also freedom from involuntary servitude.¹⁶³

F.2d 989 (3d Cir. 1993) (upholding a Pennsylvania public school program which required 60 hours of community service during a student's four years of high school).

The net effect of these decisions is as follows: if the federal government can induce the cooperation of state or tribal governmental entities (either through persuasion or through economic coercion of the governmental entity, *see supra* note 97) to participate in the National Service Initiative by responding to its concept of coerced community service for school students, *see supra* note 112, the courts will refrain from recognizing Thirteenth Amendment claims against the state and/or federal government by the students in servitude.

162. Of late it has been demographic minority groups that have been strongly emphasizing the need to renew respect for parental rights. *See, e.g.*, Alveda C. King, *Fighting for School Choice: It's a Civil Right*, WALL ST. J., Sept. 11, 1997, at A14 (in an editorial side-by-side with a Catholic arguing for educational choice, the author writes about how the civil rights discussed by the author's uncle, Martin Luther King, Jr., can only be realized if there is educational choice.); *Mohawks Take Over School*, DAILY HERALD (Provo, Utah), Sept. 5, 1996, at A4 (explaining how the Mohawk Indians took over a school in upstate New York and sent the teachers home because the Indians needed more "control over [their] children's education"); *Islamic Educational and Muslim Home School Resources* (visited Oct. 1, 1997) <http://www.ici.net/cust_pages/taadah/taadah.html> (indicating that the issue for Muslim parents is how much home education to use, not whether to use home education).

163. *See, e.g.*, Scott Bullock, Commentary, *Community Service: Do Mandatory Service Requirements for Students Violate Their Rights? Yes: Forced "Volunteerism" Defeats the Purpose*, A.B.A. J., Mar. 1996, at 50; Lauren Kares, *The Unlucky Thirteenth: A Constitutional Amendment in Search of a Doctrine*, 80 CORNELL L. REV. 372, 391-92 (1995); Mark S. Sobus, *Mandating Community Service: Psychological Implications of Requiring Prosocial Behavior*, 19 LAW & PSYCHOL. REV. 153 (1995); Brennan, *supra* note 144, at 257-63; Bradley H. Kreshek, Comment, *Students or Serfs? Is Mandatory Community Service a Violation of the Thirteenth Amendment?*, 30 LOY. L. REV. 809 (1997); Bruce J. Rome, Note, *Mandatory Community Service in Public High Schools: Constitutional Problems in Steirer v. Bethlehem Area Sch. Dist.*, 28 U.S.F. L. REV. 517, 525 (1994); Daniel M. Stefaniuk, Note, *No Service, No Diploma: Parental Rights Challenge to Mandatory Community Service in Immediato v. Rye Neck Sch. Dist.*, 14 T.M. COOLEY L. REV. 149 (1997). *But see* Cheryl Aptowitz, Commentary, *Constitutional Law-Free Speech and Involuntary Servitude-High School Graduation Requirement of Community Service Does Not Violate First or Fourteenth Rights to Free Speech Even Though Expressions of Altruism May Be Obvious to Observers, nor Does Requirement Violate Thirteenth Amendment Prohibition Against Involuntary Servitude Even if the Students Are Not Compensated-Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989 (3d Cir. 1993), 24 SETON HALL L. REV. 547 (1993); Dennis D. Hirsch, Commentary, *Do Mandatory Service Requirements for Students Violate Their Rights? No: Public Service Programs Are Nothing Like Slavery*, A.B.A. J., Mar. 1996, at 51; Scott D. Minden, *The Constitutionality of Mandatory Community Service Programs in Public Schools*, 68 S.

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Critics argue that the First Amendment¹⁶⁴ generally does not permit the government to compel individuals to participate in activities that effectively embody and express ideas contrary to the world view of that individual.¹⁶⁵ There is no such thing as religiously “neutral” educational mediating institutions, because organizational culture, educational pedagogy, and implicit working philosophical premises can never be neutral.¹⁶⁶ It could also be argued that forced participation violates the First Amendment by creating associational opportunity costs¹⁶⁷ and by violating the First Amendment prohibition against any “law respecting an establishment of religion.”¹⁶⁸

There are other¹⁶⁹ constitutional theories available as well; critics of the National Service Initiative have charged that compelled servitude violates a parent’s fundamental right to

CAL. L. REV. 1391 (1995).

164. The First Amendment forbids any “law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” U.S. CONST. amend. I.

165. See *supra* note 163; a large proportion of those authors address the issue of the right of expression.

166. See generally Richard F. Duncan, *Public Schools and the Inevitability of Religious Inequality*, 1996 BYU L. REV. 569; Thomas M. Skousen, Comment, *The Lemon in Smith v. Mobile County: Protecting Pluralism and General Education*, 1997 BYU EDUC. & L.J. 69.

167. By compelling certain activities and associations, government interferes with other patterns of associational and expressive choice that the free individual would choose if left to their own volition. Due to the principle of opportunity cost, all messages, meaning, culture, membership and organization are inherently and simultaneously inclusive and exclusive. Cf. *Hurley v. Irish-American Gay, Lesbian, & Bisexual Group*, 515 U.S. 557, 573 (1995) (stating that “all speech inherently involves choices of what to say and what to leave unsaid” and striking down an attempt under state discrimination law to coerce parade organizers to accept entries and participants conveying a message contrary to the message desired by parade organizers (quoting *Pacific Gas & Elec. Co. v. Public Utilities Comm’n.*, 475 U.S. 1 (1986))).

168. U.S. CONST. amend. I. There are to date apparently no lawsuits challenging the AmeriCorps program on establishment grounds. If the statute was found to be a violation of church and state principles, due to the fact that the entire program is officially designed to preach the gospel of Dr. King, see *supra* notes 36, 37, 144, the finding would also probably invalidate the entire AmeriCorp statutory scheme. In the past, for example, “[c]ourts that have found constitutional violations have invalidated their states’ entire education systems, not just specific statutes, and have ‘remanded’ the cases to state legislatures for enactment of reforms to cure constitutional defects.” Note, *The Limits of Choice: School Choice Reform and State Constitutional Guarantees of Educational Quality*, 109 HARV. L. REV. 2002, 2012 (1996).

169. “Other” in this context means theories besides those associated with the First, Fifth, Thirteenth, and Fourteenth Amendments.

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direct the upbringing of their child,¹⁷⁰ and efforts to compel community service (especially over long periods of time or in boarding contexts) could also run afoul of the right of privacy protected by the Third, Fourth, and Ninth Amendments.¹⁷¹

2. *The policy argument against using government resources to instill a world view*

Clinton views the Corps as an organic and growing means by which he can perpetuate his political vision and influence far beyond the confines of his own stay in the Presidential office.¹⁷² However, some judges have noticed that “[a]n essential

170. See Stefaniuk, *supra* note 163, at 149; cf. Witte, *supra* note 44.

171. The Third Amendment provides: “No Soldier shall, in time of peace be quartered in any house, without consent of the Owner, nor in time of war, but in a manner to be prescribed by law.” U.S. CONST. amend. III. The Fourth Amendment provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. CONST. amend. IV. The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” U.S. CONST. amend. IX.

To this point the National Service Initiative has not become sufficiently entrenched or comprehensive to the degree necessary to elicit the privacy theories in court.

172. See Summer of Safety, *supra* note 3, at 1135:

In a funny way, the national service program, which is the least bureaucratic, least nationally directed program I have been associated with, may have the most lasting legacy of anything I am able to do as your President, because it has the chance to embody all the things I ran for President to do, . . . to empower individuals and communities to take control of their own destiny.

. . . Our political system . . . limits the President to two terms. Our destiny is not dependent upon the actions or success of any one individual. But it is dependent upon the shared values, the shared commitment, and the shared willingness of a majority of the people in this country and a majority of the people in every community in this country to seize our own destiny.

These young people in the national service program . . . [are] going to help us to be better Americans . . . where we live.

. . . I hope I live to see a permanent program with at least a quarter of a million young Americans every year, working to move this country in the right direction.

See also, e.g., Presidential Scholars, 7/1/94, *supra* note 2, at 1175 (stating that AmeriCorps is “the signature program of this administration” because it involves hundreds of thousands of youth “revolutionizing life at the grassroots level”); Gephardt, *supra* note 8, at 1138-39 (“[W]e’ll have 100,000 young Americans . . . solving problems . . . [and] giving power and purpose back to the lives of people [A] quarter of a million young Americans every year within 5 years, from now on, forever, working to deal with our problems and build our country.”).

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element in maintaining a system of limited government” against authoritarianism is to prevent the kind of “massive state involvement with mediating institutions that would invest the capacity to influence powerfully, through socialization, the future outcomes of . . . political processes.”¹⁷³ Some “ideas

173. Witte, *supra* note 44, at 239 (quoting *People v. Bennett*, 501 N.W.2d 106, 122 n.3 (Mich. 1993) (Riley, J., dissenting)).

The prospect of government-facilitated reconstruction of the political base through the use of mediating institutions is not hypothetical, it is real and is a tool of authoritarian practitioners bent on forcing the human mind. At various times, various governments have openly acknowledged the fact that government-sponsored mediating institutions are being designed and used to instill specific educational and socialization characteristics in youth so that the outcomes of political processes will be altered over time and specific demographic groups will be targeted by facially “neutral” legal schemes. In the United States, for example, one of the major arguments used to garner support for compulsory education in the mid-1800s was that (1) Catholic immigrants were a threat to the (overwhelmingly Protestant) republic of the United States, and (2) compulsory education tailored to eliminate Catholic schools was necessary to cleanse Catholic children of their subversive Catholic world view so that a Protestant religious world view could be inculcated. See Libby Sternberg, *History Sheds Light on Bars to School Choice*, INSIGHT, Jul. 28, 1997, at 28.

In Turkey, Muslims historically used the might of the government to forcibly inculcate an Islamic world view into the children of conquered Christians. See Witte, *supra* note 44, at 244 n.208. Muslim families in Turkey now are discovering that their own religious liberties are being denied by militant secularists who are using the same time-honored authoritarian tactic to promote an atheistic world view. Militant secularists have leveraged control of the military to force the democratically-elected Turkish government to change its education laws, forcing a more restrictive compulsory education scheme designed to cut enrollment in the popular (and better performing) private Muslim schools, in spite of the fact that the move sparked angry demonstrations throughout Turkey. See Zeynep Alemdar, *Turkey Passes Pro-Secular Education Bill*, SAN JUAN STAR, Aug. 17, 1997, at 40. This move was justified because “[n]o country in the world would tolerate an education system which produced generations that were indeed enemies of the country’s system,” *id.* at 40, and because “[t]he [Muslim] academies . . . are producing an Islamic electoral base. . . . [and are] growing so fast . . . that academy graduates . . . would be enough to produce a landslide in the 2005 elections, enabling Islamists to rule without restraint by secularist allies,” Richard Boudreaux, *Young Turks: Fundamentalists in Training?: Debate Over Role of Muslim Academies in Mideast’s Most Rigidly Secular State Pits Military Against Islamic Government*, L.A. TIMES WORLD REPORT (published in cooperation with KOREA TIMES), May 17, 1997, at 2. In light of this political technique, see *supra* note 172.

The danger of allowing the government to “punish the expression of some viewpoints while permitting the expression of opposing viewpoints” is clear; fairness becomes impossible. See Danny J. Boggs, *A Differing View on Viewpoint Discrimination*, 1993 U. CHI. LEGAL F. 45, 46. Peculiar institutions, if they are allowed to evolve without restraint, will inevitably harm peculiar peoples; see, e.g., *Daniel* 1:1-10 (King James) (discussing the removal of Hebrew youth by a Babylonian king in order to educate and socialize the youth for service in the royal Babylonian governmental cadre); *Mock Marriage Generates Protests*, DAILY UNIVERSE (Provo,

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touching the relation between individual and state [are] . . . wholly different from those upon which our institutions rest," and the Supreme Court has noted there are some systems of social order that no legislative body could impose upon the people "without doing violence to both the letter and spirit of the Constitution."¹⁷⁴ Oddly, legal scholars and judges have paid little attention to the fact that the Supreme Court's analysis seems to have substantial support in the position of the Framers themselves; it is clear from the writings of Thomas Jefferson, John Adams, and James Madison that the Framers (1) were familiar with the Platonic model for social order and (2) rejected that model because they considered it odious and irreconcilable with the United States constitutional system of ordered liberty based upon their own presuppositions.¹⁷⁵

Utah), Nov. 19, 1997, at 2 (parent decided to home educate her son after the school board for Star Hill Elementary near Dover, Delaware, refused by a formal vote to stop a teacher from conducting mock same-sex marriage ceremonies in her class that involved pairing second-grade students in "the 'wedding of friends'").

174. Witte, *supra* note 44, at 243 (analyzing *Meyers v. Nebraska*, 262 U.S. 390 (1923)).

175. Thomas Jefferson and John Adams repeatedly made disparaging remarks about Plato and his totalitarian social scheme for a utopian society. In a letter to Adams, Jefferson expressed a hope that the citizenry would sober to the realities of history and exercise their freedom of educational choice in order to support the best curriculums for family consumers, noting in part:

I amused myself with reading seriously Plato's republic. I am wrong however in calling it an amusement, for it was the heaviest task-work I ever went through. . . . While wading thro' the whimsies, the puerilities, and unintelligible jargon of this work, I laid it down so often to ask myself how it could have been that the world should have so long consented to give reputation to such nonsense as this? . . . Education is chiefly in the hands of persons who, from their profession, have an interest in the reputation and dreams of Plato. . . . But fashion and authority apart, and bringing Plato to the test of reason . . . he is one of the race of genuine Sophists, who has escaped . . . by the adoption and incorporation of his whimsies onto the body of artificial Christianity. His foggy mind, is forever presenting the semblances of objects which, half seen thro' a mist, can be defined neither in form or dimension. . . . It is fortunate for us that Platonic republicanism has not obtained the same favor as Platonic Christianity; or we should now have been all living, men, women, and children, pell mell together, like beasts of the field or forest. . . . [I]n truth [Plato's] dialogues are libels on Socrates.

. . . When sobered by experience I hope that our successors will turn their attention to the advantage of education on the broad scale, and not of the petty *academies* . . . which are starting up in every neighborhood . . .

Letter from Thomas Jefferson to John Adams (July 5, 1814), in 2 THE ADAMS-

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JEFFERSON LETTERS, at 432-34 (Lestor J. Cappon ed., 1959) [hereinafter LETTERS].

In letters to Jefferson, John Adams was equally critical. He said the "philosophy" of Plato was "absurd," Letter from John Adams to Thomas Jefferson (June 28, 1812), *in* LETTERS, at 308 (Lestor J. Cappon ed., 1959), bemoaned Plato's concept of "a Community of Wives; a confusion of Families, a total extinction of all Relations of Father, Son and Brother," Letter from John Adams to Thomas Jefferson (Sept. 15, 1813), *in* LETTERS, at 377 (Lestor J. Cappon ed., 1959), and noted that Plato "calls ['Love'] a Demon," Letter from John Adams to Thomas Jefferson (Oct. 10, 1817), *in* LETTERS, at 522 (Lestor J. Cappon ed., 1959). In his most telling observations, Adams described his meticulous study of Plato, expressed delight in knowing that Jefferson shared the same "Astonishment," "disappointment," and "disgust" with Plato, and then concluded as follows:

Some Parts of [his writings] . . . are entertaining . . . but his Laws and his Republic [sic] from which I expected the most, disappointed me most. I could scarcely exclude the suspicion that he intended the latter as a bitter Satyr upon all Republican Government Nothing can be conceived more destructive of human happiness; more infallibly contrived to transform Men and Women into Brutes, Yahoos, or Daemons than a Community of Wives and Property. . . .

After all; as long as Marriage exists, Knowledge, Property and Influence will accumulate in Families. Your and our equal Partition of intestate Estates, instead of preventing will in time augment the Evil

Letter from John Adams to Thomas Jefferson (July 16, 1814), *in* LETTERS, at 437.

In contemplating the United States system of ordered liberty, Madison considered the "Influence . . . of Public opinion on Government" and the "Influence . . . of Education on Government." Notes for the *National Gazette* Essays, *in* 14 THE PAPERS OF JAMES MADISON 157, 157 (Robert A. Rutland et al. eds., 1983). In doing so, Madison noted the following:

The best provision for a stable and free Govt. is not a balance in the powers of the Govt. tho' that is not to be neglected, but an equilibrium in the interests & passions of the society itself

. . . .

Whatever facilitates a general intercommunication of sentiments & ideas among the body of the people, as a free press, compact situation, good roads, interior commerce &c. is equivalent to a contraction of the orbit within wch. the Govt. is to act

. . . .

Public opinion, sets bounds to every Government, and is the real sovereign in every free one.

As there are cases where the public opinion must be obeyed by the Government, so there are cases, where, not being fixed, it may be influenced by the Government. . . .

. . . .

. . . Plato (Republic) . . . remark[ed] that the natural rotation in Government is from the abuses of Monarchy to Aristocracy, from the oppression of aristocracy to democracy, and from the licentiousness of

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Left to themselves, “[i]ndividuals tend to choose activities congruent with salient aspects of their identities, and they support the institutions embodying those identities.”¹⁷⁶

Identification also may engender internalization of, and adherence to, group values and norms and homogeneity in attitudes and behavior. Just as the social classification of others engenders stereotypical perceptions of them, so too does the classification of oneself and subsequent identification engender the attribution of prototypical characteristics to oneself. . . . This self-stereotyping amounts to depersonalization of the self (i.e., the individual is seen to *exemplify* the group), and it increases the perceived similarity with other group members and the likelihood of conformity to group norms.¹⁷⁷

“[T]he self-stereotyping occasioned by psychological grouping causes one to *expect* attitudinal and perceptual agreement with group members, such that disagreement triggers doubt and, in turn, attitudinal/perceptual change.”¹⁷⁸ A change in identity can lead to a change in political behavior.¹⁷⁹

Democracy back to Monarchy. . . .

In proportion as Government is influenced by opinion, must it so be by whatever influences opinion. . . .

. . . .

In proportion as slavery prevails in a State, the Government, however democratic in name, must be aristocratic in fact.

Id. at 158-63; *see also* West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 641-42 (1943) (noting that “Authority [in the United States] is to be controlled by public opinion, not public opinion by authority”); HOLMES ALEXANDER, TO COVET HONOR: A BIOGRAPHY OF ALEXANDER HAMILTON 173 (1977) (Madison and Hamilton’s philosophical arguments at the Constitutional Convention were “in sharp contrast with Plato’s ideas of collectivism”).

176. Blake E. Ashforth & Fred Mael, *Social Identity Theory and the Organization*, 14 ACAD. OF MGMT. REV. 20, 25 (1989).

177. *Id.* at 26.

178. *Id.* at 29. Furthermore, as Plato explained long ago with his Allegory of the Cave, the effect can be reinforced by constraining the liberty of the subject and manipulating the informational environment to create a virtual reality that drastically impacts the subject’s ability to cope with reality. *See* PLATO, THE REPUBLIC 206 (Benjamin Jowett trans., Int’l Collectors Library 1950) (describing chained prisoners manipulated by contrived shadows on a cave wall).

179. Clinton understands this relationship. *See* UCLA, *supra* note 9, at 962 (“We have a future to build, and you must lead the way. You know you can do it, *because*

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Unfortunately community service has often been used as an effective means for encouraging political docility to government authoritarianism; it makes some sense to control a population by using carefully supervised, simple, time-consuming, labor-intensive activities that yield easily measurable results.¹⁸⁰ Authoritarians encourage populations of mixed demographic groups, because the internal differences reduce the risk of an effective challenge by the population to the central authority.¹⁸¹ The “doomsday” scenario of government overreaching would contemplate the possibility of the National Service Corps becoming a standing domestic military force that requires all young men and women to engage in law enforcement and domestic peace-keeping missions.¹⁸² Local school programs that increasingly engulf the entire life experience of students¹⁸³ can be linked to the long-term evolution of national service, a

of the way you have been educated here and the people from whom you have learned and with whom you've learned. And you can lead the way for the whole future of this country.” (emphasis added).

180. *See, e.g., After Tiananmen, Chinese Students Opt for Charity Over Demonstration*, KOREA HERALD, June 3, 1997, at 1 (discussing the effective use of the “Generosity Society” initiative by the Government to engender “a new trend of charity work” that channels the energy from the Chinese students’ “militancy for social change” away from politics, so that students who were only thirteen years old at the time of the Tiananmen Square massacre will disbelieve that any atrocities actually occurred at all).

181. *See, e.g., Lorien Holland, China Encourages Ethnic Koreans to Help North Korea*, KOREA HERALD, May 28, 1997, at 3 (noting “a Chinese policy[] used in all its border regions[] of diluting ethnic populations by sending in Han Chinese settlers”).

182. *See supra* text accompanying note 82.

183. Some local education initiatives also emphasize total institutionalization for children and youth, and would be particularly well-positioned ideologically, politically, and logistically to merge with the Corps; a single executive branch regulation could easily purport to “implement” the Corps program into such schools and effectively make the Corps the assumed structure for youth upbringing. *See, e.g., Margot Hornblower, It Takes a School: A New Approach to Elementary Education Starts at Birth and Doesn't Stop When the Bell Rings*, TIME, June 3, 1996, at 36-38 (discussing the efforts of elementary schools to “rescue” children in the capacity of “surrogate parents” and transform from schools into “caring communit[ies]” by starting “even before birth,” rescuing the “whole famil[y],” hiring “parent educators” to “offer parenting skills and developmental screening to families with young children, beginning in the third trimester of pregnancy,” “moving away from the narrow focus on curriculum reform,” involving the school in “anything that affects the child” emotionally or socially (including “nutrition to drug-abuse prevention to health care and psychological counseling,” and having ten-hour days for children “on campus”); *see also infra* notes 184, 185.

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process that is already beginning to occur even at the elementary school level¹⁸⁴ through explicit design.¹⁸⁵

In addition to the government-funded mass socialization¹⁸⁶ of voters and future voters, there may also eventually be problems related to the unethical political use of Corps information databases for advantage in political campaigns.¹⁸⁷ Additionally, campaign finance and/or influence-peddling issues may arise in conjunction with how Corps resources are deployed to serve particular special interest groups and/or strategic demographic/geographic political constituencies.¹⁸⁸ In the hands of an unscrupulous politician, the Corps could eventually become a very potent tool for accomplishing illegitimate purposes.

B. Compelling Uncompensated Labor Is Unconstitutional and Counterproductive

The National Service Initiative and the National Service Corps are based on the premise that government can use direct law and/or severe economic penalties to compel recalcitrant individuals to perform labors that the government believes will benefit the individual and/or society as a whole.¹⁸⁹ This premise has also engendered legal and policy criticisms.

184. For example, "young AmeriCorps volunteers are working in the elementary school" in Carbonville, Illinois. Clinton, Remarks on the First Anniversary of AmeriCorps and an Exchange with Reporters (Sept. 12, 1995), in PAPERS 1346, 1347 (1995) [hereinafter First Anniversary]. As another example, "AmeriCorps members . . . [in] the Home Instruction Program for Preschool Youngsters, or HIPPIY, an early learning program . . . [will help] mobilize a citizen army of one million . . ." Clinton, The President's Radio Address (Apr. 26, 1997), in DOCUMENTS 599, 600 (1997).

185. Clinton, Remarks on Presenting the President's Service Awards in Philadelphia (Apr. 27, 1997), in DOCUMENTS 609 (1997):

In Philadelphia, the superintendent of schools is working to make service the expected thing in elementary and middle school. Maryland has required it in high school. And I challenge every State and every school in this country at least to offer in a disciplined, organized way every young person in school a chance to serve.

186. See, e.g., *supra* note 143.

187. See *supra* text accompanying notes 136-142.

188. See *id.*

189. See *supra* note 161.

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1. Legal argument against compelling individuals to perform involuntary labor

Opponents of “involuntary volunteerism” believe that such tactics violate the Thirteenth Amendment¹⁹⁰ prohibition against involuntary servitude.¹⁹¹ The Thirteenth Amendment has very sweeping scope and applicability, protecting nondelinquent minors against state-sponsored “beneficent”¹⁹² involuntary servitude,¹⁹³ even if the servitude is coerced purely through legal or economic means.¹⁹⁴ The same logic also could be

190. The Thirteenth Amendment provides: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. CONST. amend. XIII.

191. See generally sources cited *supra* note 163, most of which contain a direct and extended Thirteenth Amendment argument and analysis.

192. Federal, state, and local governments cannot properly establish involuntary servitude for minors simply because a majority of the citizenry believes that it would be “good” for society and/or for the minor to be placed in a peculiar institution, any more than such governments can disallow expressions of ideas protected by the First Amendment simply because the ideas are disfavored by a majority of the citizenry.

193. Akhil R. Amar & Daniel Widawsky, Commentary, *Child Abuse as Slavery: A Thirteenth Amendment Response to Deshaney*, 105 HARV. L. REV. 1359, 1359-60, 1365, 1365 n.18, 1368-70, 1373-74, 1373 n.58-61, 1374 n.62 (1992). Amar and Widawsky observe in the above selections that the plain language of the Thirteenth Amendment makes the prohibition against involuntary servitude very comprehensive in scope, and that the only routine and continuous form of involuntary servitude that the Thirteenth Amendment clearly did not eliminate was the parent-child relationship (in fact, as the authors note, Republican legislators indicated that one purpose for the Thirteenth Amendment was to protect the parental rights and rights to family autonomy that were abrogated when slaves were sold away from other family members on the auction block in contractual arrangements enforced by the power of government). Amar and Widawsky note that the Thirteenth Amendment’s “universal, transcendent norm” against the *de facto* “peculiar institution” anywhere in the territory of the United States operates to emancipate regardless of the age, familial status, race, or “biological otherness,” of the person in bondage. The involuntary servitude cannot be excused simply because the use of slavery is for purposes other than “maximization of the master’s financial profit,” or the enslavement is “*de facto* instead of *de jure*,” or the enslavement takes a form different from traditional “forced labor,” or there is state action and/or official state law sanction for the servitude. It is clear from the onset of the enactment of the Thirteenth Amendment that courts understood that the Thirteenth Amendment would gradually eliminate peculiar institutions far removed from the context of black slaves in the southern United States. See, e.g., *In re Sah Quah*, 31 F. 327 (D. Alaska 1886) (granting habeas corpus against operation of the peculiar institution of slavery long established by Native Americans in Alaska, despite a defense argument of tribal sovereignty).

194. Amar & Widawsky, *supra* note 193, at 1369 (Thirteenth Amendment prohibits “an intent to prohibit compulsion through *physical coercion*,” as well as “involuntary servitude enforced by the use or threatened use of *physical or legal coercion*,” restrictions which encompass “the use or threat of *physical restraint* or

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extended to the Fourteenth Amendment¹⁹⁵ (and Fifth Amendment¹⁹⁶) protection of "liberty";¹⁹⁷ after all, community service curtails both the spatial and qualitative liberty one has to control one's own life activities.¹⁹⁸ Additionally, compelled service in most contexts is arguably a "taking" of property in violation of the Fifth Amendment, since the monetary value of private time and labor has been appropriated.¹⁹⁹

Courts analyzing the Thirteenth Amendment issue have not applied the strict scrutiny test associated with fundamental rights, because they have avoided characterizing school-mandated "community service" as the kind of involuntary servitude that was intended to trigger the protection of the

physical injury, or by the use or threat of coercion through law or legal process." (quoting *United States v. Kozminski*, 487 U.S. 931, 942, 944, 952 (1988)).

195. The Fourteenth Amendment provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law." U.S. CONST. amend. XIV, §1.

196. The Fifth Amendment, incorporated against state government in addition to federal government, provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken without just compensation." U.S. CONST. amend. V.

197. *See, e.g., Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454, 460-61 (2d Cir. 1996), *cert. denied*, 117 S. Ct. 60 (1996).

198. Involuntary servitude is always a curtailment of liberty because of the principle of opportunity cost, but of course not all deprivations of liberty are forms of involuntary servitude. Involuntary servitude is simply one of the more intrusive, security-conscious, pro-actively oppressive conditions of liberty deprivation; a condition of involuntary servitude *de facto* precludes full enjoyment of any other form of constitutional liberty because personal faculties cannot be engaged in accordance with free will when they are occupied in executing the dictates of another master. Observance of the Thirteenth Amendment is a *sine qua non* prerequisite to observance of other liberties in the first fourteen federal constitutional amendments. A captive audience represents an inherent deprivation of constitutional rights, regardless of what a master chooses to do with the captive audience once it has been constituted.

199. If one accepts the premise that one's own time is worth money, and, therefore, that labor time is a property right, the Fifth Amendment prohibition against use of private property without just compensation is also implicated. *See* U.S. CONST. amend. V.

An alternative formulation would hold that community service is actually not a "taking," but rather a government "tax" on personal time that is paid "in-kind" instead of in cash. *Cf. supra* note 16. Such a "tax" would, of course, be regressive, because (1) poorer people need a larger proportion of their personal time just to labor in order to obtain the bare necessities of life, and (2) it is the poor and minority populations that are more likely to be in public schools and the most likely to be targeted for National Service. *Cf. supra* note 144.

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Thirteenth Amendment.²⁰⁰ Since compulsory attendance laws in general are arguably already a liberty-curtailling form of involuntary servitude, it is difficult to draw an analytically principled distinction between two years of compelled gym class exercises and two years of compelled²⁰¹ “service learning” in the community.²⁰² Disturbingly, however, the courts have not explained whether or how service can ever differ from servitude; the absence of principled distinctions leaves a very slippery slope²⁰³ and highlights the possibility that our

200. See, e.g., *Herdon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174, 180-81 (4th Cir. 1996), *cert. denied*, 117 S. Ct. 949 (1997); *Immediato*, 73 F.3d at 459; *Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989, 997-1000 (3d Cir. 1993).

One contributing factor leading to such decisions has been a tendency by courts to cling to questionable basic premises about both the original intent of the Framers of the Reconstruction Amendments and the applicability of the constitutional principles those amendments have to modern day life. Legal scholars are beginning to eye these superficially-considered premises more critically. See, e.g., Michael W. McConnell, *The Originalist Case for Brown v. Board of Education*, 19 HARV. J.L. & PUB. POL'Y 457 (1996) (arguing that Alexander Bickel, Laurence Tribe, Richard Posner, Mark Tushnet, Raoul Berger, Ronald Dworkin, and Walter Burns have all erred in assuming that “under the original understanding of the Fourteenth Amendment, racial segregation was constitutionally permissible”).

201. Recall that part of the National Service Initiative entails the efforts of federal officials to induce more local sovereign entities to compel student citizens to perform community service as an integral part of a compulsory government educational scheme. See *supra* note 161.

202. The case of *In re Lelah-Puc-Ka-Chee*, 98 F. 429 (N.D. Iowa 1899), and the companion case, *Peters v. Malin*, 111 F. 244 (N.D. Iowa 1901), demonstrate how truly difficult it is to analytically rectify compulsory education with the United States scheme of ordered liberty. In *Lelah-Puc-Ka-Chee*, a young Native American girl successfully filed a suit in which she claimed a right to a habeas corpus writ against a federal Indian Agent and school Superintendent that had violated her liberty by attempting to compel her attendance at a federal vocational “industrial” school established to “civilize” the local Native Americans and help them to develop job skills and an appropriate work ethic. In *Peters*, a Native American man who had been imprisoned for assisting Lelah-Puc-Ka-Chee and her family in their attempts to flee from the Agent and Superintendent was granted civil damages against the Indian Agent. The civil rights violations were probably propelled by fiscal incentives similar to those outlined in Witte, *supra* note 44, at 226 n.180.

Despite cases such as those above, and cases arising under the First Amendment, see, e.g., *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641-42 (1943) (disallowing a school to coerce a Jehovah’s Witness to salute the flag in violation of the student’s religious tenets), Native Americans continue to find themselves at odds with government officials who persist in compulsory education efforts that the Native Americans view as cultural genocide facilitated by unconstitutional means. See, e.g., *Iowa v. Bear*, 452 N.W.2d 430, 431 (Iowa 1990) (describing and resolving an armed standoff between law enforcement officers and a Native American mother who objected to the school attendance policy applied to her son).

203. See, e.g., PAUL BAILEY, *CITY IN THE SUN* 76-77, 90 (1971) (discussing the

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government-sponsored compulsory education systems have become “constitution-free” zones for the processing of incarcerated²⁰⁴ minors.

Probing deeper into the Thirteenth Amendment theory ultimately reveals that the concept of the National Service Corps represents a fundamental alteration of the traditional United States structure of Family Federalism. Any attempt by the government (state or federal) to control the upbringing of a child without the consent and delegation of authority from the natural parents will implicate the powerful and sweeping protection of the Thirteenth Amendment. This is so because, like adults, minors enjoy the protection of constitutional rights operative against the government,²⁰⁵ and minors have a constitutional right to a continuity of affectionate care from natural parents if those parents have done nothing to forfeit their parental authority to direct the upbringing of their minor.²⁰⁶ A violation of the Ninth Amendment rights of parents

“War Relocation Work Corps,” which required Japanese American internees to take a “pledge” to “contribute to the needs of the nation” transferring to whatever camp location was required and by accepting “whatever pay the War Relocation Authority determines,” “subject to special assessments for educational, medical and other community services as may be provided for in the support of any dependents who reside in a relocation center”).

“[The wage scale] meant that a [Japanese American internee] who held a medical degree or was qualified as a high-school or college teacher could work in the Centers at [low] wages—alongside often inexperienced and unqualified Caucasian personnel” ALLAN R. BOSWORTH, *AMERICA’S CONCENTRATION CAMPS* 146, 147 (1967); *see also id.* at 137, 145, 178-79 (providing salient information about how the camps and the Corps were organized). “The projected enterprise was viewed as crass exploitation of a needy people already reduced to servitude.” BAILEY, *supra*. Years later, after numerous attempts to vindicate Thirteenth Amendment and other constitutional liberty rights, the Japanese American internees eventually obtained an acknowledgment that the entire Roosevelt scheme was unconstitutional. *See, e.g.*, Philip Tajitsu Nash, *Moving for Redress*, 94 *YALE L.J.* 743, 743, 744, 745, 752-53, 754 (1985) (book review); *id.* at 753 (In the camps there was denial “of the right to protection from involuntary servitude, because work done by Japanese Americans in the camps was grossly undercompensated, given prevailing wartime wages.”).

204. Of course, the reputational interest of an individual minor is not harmed by incarceration that is unconnected to a finding of criminal activity or of medical impairments, which might be the case with a prison or a mental institution.

205. *See, e.g., In re Gault*, 387 U.S. 1 (1966).

206. *See generally* Witte, *supra* note 44, at 187 n.4. Even without taking into account the legislative history of the Thirteenth Amendment, *see supra* note 193, it is of course clear that the parent-child relationship has long been viewed as conceptually distinct from the master-slave relationship. *See, e.g.*, Notes for the *National Gazette* Essays, in 14 *THE PAPERS OF JAMES MADISON* 157, 164 (Robert A. Rutland et al. eds., 1983) (Madison observes that “Dependent Colonies are to the

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and their minor via governmental usurpation of control over the life activities of the minor also implicates a minor's right to liberty and a minor's right to be free from involuntary servitude.

Neither the *parens patriae* doctrine²⁰⁷ nor the *in loco parentis* doctrine²⁰⁸ can salvage a government scheme for minors that is incongruent with the prohibition against involuntary servitude and/or deprivations of liberty. The federal government has no *parens patriae* power to affirmatively regulate the daily management of minors in any context,²⁰⁹ and a state government acting in "partnership" with the federal government only possesses the range of state *parens patriae* power that is allowable under the limits imposed by the United States Constitution.²¹⁰ Unless a state has assumed custody of a

superior State, not in the relation of Children and parent according to the common language, but in that of slaves and Master; and have the same effect with slavery on the character of the Superior."). For more on the legacy of the Ghosts of Massachusetts, see Witte, *supra* note 44, at 192 n.17.

207. The doctrine of *parens patriae* "is a concept of standing utilized to protect . . . quasi-sovereign interests, such as 'health comfort, and welfare' of the people," when such interests are threatened and state government intervention may be needed. *Gibbs v. Titelman*, 369 F. Supp. 38, 54 (E.D. Pa. 1973), *rev'd on other grounds*, 502 F.2d 1107 (1974). One of the more common situations where there may be threatened interests requiring state government intervention involves the interests of minors or others of legal incapacity. *See Fontain v. Ravenel*, 58 U.S. (17 How.) 369, 392-93 (1854) (Taney, J., concurring) (noting that Blackstone said that English sovereign was "general guardian of all infants, lunatics, idiots"). Obviously, sovereign power is enjoyed solely by legitimate government, exists independent of private approval, and can be exercised indefinitely.

208. The *parens patriae* doctrine differs from the *in loco parentis* doctrine, the later involving care that is "temporary in character and not to be likened to [the permanent situation of] adoption"; the *in loco parentis* doctrine can pertain to both governmental and non-governmental legal entities, and is implicated "when a [legal] person undertakes the care and control of another [of legal incapacity] in the absence of such supervision by the latter's natural parents and in the absence of formal legal approval." *Griego v. Hogan*, 377 P.2d 953, 955-56 (N.M. 1963).

209. The *parens patriae* power of standing in the United States has always been reserved to the state sovereign and cannot properly be exercised by the federal government. *See Fontain*, 58 U.S. (17 Howard) at 379, 384, 393; *American Loan & Trust Co. v. Grand Rivers Co.*, 159 F. 775, 782 (W.D. Ky. 1908).

210. *Parens patriae* power originated in England and was exercised by the Crown with a range of discretion that was, of course, unconstrained by the United States Constitutional scheme of ordered liberty. *See Fontain*, 58 U.S. (17 Howard) at 392-93. In contrast to the sovereignty of the Crown in England, the states within the United States operate within the confines of the United States federal constitutional framework; consequently, state exercises of the *parens patriae* power of standing are constrained by strict scrutiny analysis and by the application of other federal constitutional due process tests implicated by particular circumstances. *Cf. Paul v.*

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minor in a *parens patriae* standing capacity in a manner comporting with required standards of due process and evidence,²¹¹ a state agency exercising control over a minor stands *in loco parentis* and must yield to parental directives regarding the scope and authorized uses of the authority temporarily and voluntarily delegated from the parents to the state through explicit or implicit means.²¹²

Davis, 424 U.S. 693, 713 (1976) (observing that “matters relating to marriage, procreation, . . . family relationships, and child rearing and education” are “fundamental” or “implicit in the concept of ordered liberty” as described in *Palko v. Connecticut*, 302 U.S. 319 (1937),” and that “[i]n these areas . . . there are limitations on the state’s power to substantively regulate conduct”).

When a state government exercises *parens patriae* power (or any other aspect of sovereign power, for that matter), the state government as a matter of basic constitutional jurisprudence is subject to the procedural due process limitations of the Fourteenth Amendment, the substantive liberty protections of the Fifth and Fourteenth Amendments, the prohibition in the Thirteenth Amendment against involuntary servitude, and the other constraints of the federal constitution. “[T]he admonition to function in a ‘parental’ relationship [of standing] is not an invitation to procedural arbitrariness,” *Kent v. United States*, 383 U.S. 541, 555 (1965), and the substantive due process of the federal constitution helps to prevent states from exercising their *parens patriae* prerogative in a manner that has “all-encompassing scope and . . . sweeping potential for broad and unforeseeable application.” *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972). Federal constitutional protections against violations of ordered liberty, embodied in the First, Third, Fourth, Fifth, Ninth, Tenth, Thirteenth, and Fourteenth Amendments also operate to prohibit state governments from exercising control over the children of the people unless (1) parents delegate their authority to the state voluntarily or (2) the state demonstrates through appropriate due process that there is clear and convincing evidence that the parents have triggered state *parens patriae* interests by placing their child in a clear and present danger. *Cf., e.g., Croft v. Westmoreland County Children & Youth Servs.*, 103 F.3d 1123 (10th Cir. 1997) (discussing evidentiary applications implicated by the fundamental right associated with family integrity); *In re Sah Quah*, 31 F. 327 (D. Alaska 1886) (even sovereignty of Native Americans constrained by the command of the Thirteenth Amendment).

211. *See, e.g., Croft*, 103 F.3d 1123.

212. *Cf., e.g., Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995):

Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom, to the control of their *parents* or guardians. . . . When parents place minor children in private schools for their education, the teachers and administrators of those schools stand *in loco parentis* over the children entrusted to them. In fact, the tutor or schoolmaster is the very prototype of that status. As Blackstone describes it, a parent “may . . . delegate part of his *parental authority*, during his life, to the tutor or schoolmaster of his child, who is then *in loco parentis*, and has such a *portion* of the power of the *parent* committed to his charge, *viz.* that of restraint and correction, as may be necessary to answer the purposes for which he is employed.”

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No government at any level exercises an original claim over families or children; under the Family Federalism of the Tenth Amendment, family autonomy is a *power reserved* by the *people* against improper intrusion by *either federal or state* government, and improper intrusion by any level of government results in violation of a fundamental *right retained* by the *people* under the Ninth Amendment.²¹³ Congress can preempt (and federal courts can enjoin) state laws that provide for forms of compulsory participation in mediation institutions, thereby running afoul of the Thirteenth Amendment by prescribing regimens that preclude individual choice about education and lifestyle.²¹⁴ However, the Thirteenth Amendment does not indicate that the federal government can in any way exempt itself (or other governments) from the Thirteenth Amendment's firm command. History has already shed light upon the consequences of handing the federal government a "blank check" to "protect" the welfare of private citizens in ways that are contrary to the United States government's authorized role within the structure of Family Federalism.²¹⁵

Id. at 654-55 (quoting 1 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 441 (1769) ("in loco parentis" italicized in original, other emphasis added)).

213. Cf. U.S. CONST. amend. X (The word "or" clearly indicates that there are three realms of structural power, and that the power with the realms of the federal government, the state government, and the people are each distinct and not completely coterminous with the other realms); U.S. CONST. amend. IX (alluding to "rights retained" by the people).

214. Cf. U.S. CONST. amend. XIII, §2 (providing for enforcement of the Thirteenth Amendment).

215. In order to bring the World War II internment scheme into existence, Earl Warren had capitalized upon wartime fear and racial bigotry in the California electorate and organized a successful campaign to petition President Franklin D. Roosevelt to remove Japanese Americans from the West Coast. See BOSWORTH, *supra* note 203, at 70, 72, 74, 102, 211 (discussing Warren's race-based campaign, which included calling a mass meeting of sheriffs and district attorneys to support the cause, and Roosevelt's plan to scatter Japanese Americans throughout the nation with only one or two families per county). "The whole minority development in our country," [Warren] said in 1972, 'has stemmed from the search for cheap labor. . . . They brought the Japanese in . . . for farm labor.' But the Japanese, Warren suggested, 'were too smart, and they started owning the farms.'" G. EDWARD WHITE, EARL WARREN, A PUBLIC LIFE 68 (1982).

Roosevelt's infamous Executive Order 9066, containing broad enabling language that looks innocuous to a casual reader, garnered significant and timely opposition from only two prominent national figures: F.B.I. Director J. Edgar Hoover and conservative Senator Robert Taft. See, e.g., Kenneth L. Karst, *Justice at War*, 62 TEXAS L. REV. 1147, 1151, 1151 n.26 (1984) (discussing J. Edgar Hoover's campaign

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2. *Policy argument against compelling individuals to perform involuntary labor*

Perhaps the most potent policy criticism of involuntary volunteerism is related to the philosophy of self-determination; personal growth comes when a person has the freedom to choose between good and bad, and of their own free will chooses good. Dr. Mark Sobus, for example, after conducting a social psychology analysis of the likely impact of mandated government community service on the general population, concluded that service learning "is unlikely to foster long-term prosocial attitudes" and that it "should be expected to undermine positive attributions, stifle feelings of self-

to counter false accounts of Japanese American "espionage" perpetrated by the Roosevelt Administration in an effort to garner support for internment); BOSWORTH, *supra* note 203, at 92 ("After Walter Lippmann and a number of other liberals called for concentration camps even for the American born, J. Edgar Hoover went on record with a protest that the demand for evacuation was based primarily upon public and political pressure rather than factual data."); Arval A. Morris, *Justice, War, and the Japanese-American Evacuation and Internment*, 59 WASH. L. REV. 843, 849 n.25 (1984) (book review) (discussing Senator Taft's argument before the Senate that the internment scheme was unconstitutionally broad and vague (citing PETER IRONS, *JUSTICE AT WAR* 68 (1983))).

Once the Japanese Americans were fully enmeshed in the internment scheme, Roosevelt manipulated the liberty of the internees in ways favorable to currying electoral favor for himself, instead of dictating internment policy that was rationally related to Japanese American needs for "protection." See Peter Irons, *Politics and Principle: An Assessment of the Roosevelt Record on Civil Rights and Liberties*, 59 WASH. L. REV. 693, 719 (1984) (discussing the politically-motivated delay in the election-year release of Japanese Americans); Phillip T. Nash, *Moving for Redress and Justice for All: An Oral History of Japanese American Detention Camps*, 94 YALE L.J. 743, 749 n.33 (1985) (mentioning that Aleuts were also interned in Alaska); James Brooks, *After Silence, Italians Recall Internment*, NEW YORK TIMES, Aug. 11, 1997, at A8 (stating that the Italians were released from internment early in order to curry electorate support for the invasion of Italy).

Japanese American parents were angered because Roosevelt's scheme deprived them of educational choice for their families; federally-managed education in the camps was of such poor quality, and led to such severe student problems with deportment, familial relationships, and teenage pregnancy, that many of the Japanese Americans actually believed that the complete schools would be used for the Native Americans that lived on the reservations surrounding some of the internment camps. See BAILEY, *supra* note 203, at 95-96, 100, 172, 197. In the face of the massive deprivation of liberty, however, Christian agencies and Scouting programs did what they could to alleviate the discomfort of the internees; many Japanese American internees openly looked to the Mormon pioneers and to Mormon society as an example of how to cope with oppressive circumstances engendered by systemic civil rights violations sponsored by the federal government. See BOSWORTH, *supra* note 203, at 51-53, 129, 138, 163, 207.

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determination, and ultimately make self-generated acts of community service more scarce.²¹⁶ Thus, Sobus contends that mandated service benefits neither the person nor the community in the long run.

Retired General Colin Powell disagrees. Since 1996 Powell has been on tour throughout the country for the National Service Initiative, openly advocating school-sponsored involuntary volunteerism on the basis that the volunteerism is justified because of the skills and benefits the participants may acquire.²¹⁷ In Powell's view, therefore, it is necessary to force good behavior in order to ensure that everyone in society will succeed and to prevent anyone from becoming lost. Only one-third of American students would choose to accept Powell's plan.²¹⁸

This imposed socialization approach requires that Powell be given the same kind of exclusive control over young civilians that he once had and used as a military commander to mold the behaviors of the enlisted soldiers. Powell seems to believe that the key to helping American is to transform American culture into a paramilitary culture. However, history has cast doubt upon the idea of managing civilians with military paradigms.²¹⁹

216. Sobus, *supra* note 163, at 153, 153 n.a, 182.

217. See, e.g., *supra* note 112. This argument is a bit awkward, since the same justification could be used to argue that black slavery was justified because of the skills (i.e., a knowledge about tobacco cultivation techniques) and amenities (i.e., shelter and food) the peculiar institution conferred upon the slaves themselves, and because the economic well-being of the South arguably was dependent upon slavery during at least part of the slavery era.

218. See John Cloud, *Involuntary Volunteers*, TIME, Dec. 1, 1997, at 76 (“[O]nly 36% [of American students] said they think students should be required to participate in community service.”).

219. Powell's position is historically awkward. See Witte, *supra* note 44, at 250 n.218 (discussing conditions in Native American boarding schools); *supra* notes 91, 94, 95, 111, 118, 119, 131, 147, 152, 202, 215 and accompanying text (discussing aspects regarding the incorporation of Native Americans into the National Service Initiative); *supra* text accompanying notes 21, 69, 78, 146; *infra* Appendix A (discussing characteristics of the Corps). The plight of Native Americans compulsorily educated under the Bureau of Indian Affairs can be partially attributed to the efforts of Captain Richard Henry Pratt of the United States Cavalry, a man who commanded an “all-Negro company” in “Indian country” and a man who believed that the Constitution should be “strictly followed” in order to “assure [the] equality for all races.” He felt compulsory education was needed to help African Americans and Native Americans “advance.” Dean Chavers, *Indian Education: Failure for the Future?*, 2 AM. INDIAN L. REV. 61, 68-72 (1974). With the help of groups who considered themselves friendly to the cause of Native Americans, Captain Pratt

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The military has a distinguished tradition and an undisputed role in the preservation of democracy, and it is organizationally well-suited for marshaling people with character who are willing to engage dangerous situations that threaten United States national security and ordered liberty. At the same time, the military scheme is ill-suited to manage the chaotic and decentralized day-to-day functions of the economic, educational, and familial systems within the American system.

C. Government Management of the Nonprofit Sector Will Be Wasteful and Will Harm the Private and Religious Nonprofit Service Providers That Already Exist

National service represents an effort by the Clinton Administration to nationalize the economically important American volunteer sector²²⁰ and place it under control of the United States federal government in a manner similar to that attempted with health care.²²¹ The prospect of this possibility

succeeded in obtaining Congressional legislation that established schools operated on "former military posts, operated by army officers" that were designed to "educate" the Native American students and facilitate their "civilization" into Anglo economic practices and ethics. *Id.*

Regrettably, the benefits of compulsory education proved to be catastrophically misdirected, resulting in a "breakdown [of] the internal organization and culture of the Indian tribes" that previous oppressive treaties had failed to achieve. *Id.* The Bureau of Indian Affairs had literally assumed the Platonic guardian-ward relationship of the type and with the severe effects predicted and condemned by the Framers of the Constitution. *See* Hollister v. United States, 145 F. 773, 776 (8th Cir. 1906) ("Indians are yet wards of the nation, in a condition of pupillage or dependency."); *supra* note 175.

The United States federal government's record in nationalized education has been dismal, and similar nationalized child education programs conducted in other countries have produced analogous tragic results for their minority communities. *See, e.g.,* David Crary, *Abuse at Boarding Schools in Canada Coming to Light*, DAILY HERALD (Provo, Utah), Dec. 5, 1996, at E19; Jack Taylor, *Australia Hit Over "Stolen Generation" of Aboriginal Children*, KOREA HERALD, May 22, 1997, at 8. Instead of creating new federalized schemes such as the National Service Corps that nationalize education and "civilization" efforts for even broader demographic segments, it might make more sense to focus on dissolving existing Federal Programs such as the Bureau of Indian Affairs.

220. *See* Joe Stewart-Mash, *Nonprofits Are Not Necessarily Nonprofit*, INTERMOUNTAIN COM. REC., Oct. 31, 1997, at A1 (discussing the importance of the practice of mingling nonprofit efforts with the government in the form of subcontracting and observing that such governmental interaction subjects the nonprofits to possible audits and other enforcement of laws governing organizations who take funding and contract payments from the government).

221. Clinton has on several occasions noted that the National Service Corps will

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has also aroused legal and policy arguments in opposition, although the controversies have not yet ripened into litigation.

*1. Legal arguments against socialized government
management of the nonprofit sector*

The most cantankerous legal issue here arguably relates to the logistics required to implement the socialized nonprofit scheme. As soon as money flows through the government before being distributed to private organizations, the government must develop lists of "approved" organizations and ration resources to them. Since such lists are inevitably assembled through lobbying and bureaucratic processes, the lists impact First Amendment rights connected with expression, association, and religion, since "unapproved" organizations kept off the list lose out on volunteers and other benefits as a result of having failed to configure to government-mandated organizational criteria.²²² Single-sex mediating institutions, for

socialize human intellectual capital and volunteer nonprofit activity. *See, e.g.*, Gephardt, *supra* note 8, at 1142 (discussing the prospect of "giving power and purpose back to the lives of people to make them safer"); *id.* (noting that "we could have a quarter of a million young Americans every year . . . forever, working to deal with our problems"); *id.* (noting also that in "national service . . . the Government provides the money and sets the goals" which is "a lot of what [the government is] trying to do with health care.").

While Clinton's health care reform initiative did not pass and is regarded by many as a political failure, few people recognize that Clinton did succeed in obtaining passage of the companion initiative of the health care reform effort, the National Service Corps.

222. *See, e.g.*, Sobus, *supra* note 163, at 157 (noting that it was determined that Boy Scouting service cannot be approved as service that "counts" like service performed under the auspices of some other non-profit organizations); Stefanuk, *supra* note 163, at 149 (discussing how Rye Neck School District "students had to select an organization or an agency from a school approved list[] and had to coordinate work schedule and transportation"); *id.* (stating that school officials had to approve service for any organization not on the list).

In the eyes of some, Boy Scouting is already an "unapproved" institution. During the 1990s the scouts have endured relentless attempts in federal and state court (especially in California) to directly compel them to accept homosexuals, atheists, and women into Scout membership and leadership; the strategy of direct coercion through litigation has, at least up until the spring of 1998, generally been unsuccessful. *See, e.g.*, *Welsh v. Boy Scouts of Am.*, 993 F.2d 1267 (7th Cir. 1993); *Randall v. Orange County Council, Boy Scouts of Am.*, 1998 WL 125222 (Cal.) (atheists); *Curran v. Mount Diablo Council of the Boy Scouts of Am.*, 1998 WL 125249 (Cal.) (homosexuals); *Yeaw v. Boy Scouts of Am.*, 64 Cal. Rptr.2d 85 (Ct. App. 1997); *Mankes v. Boy Scouts of Am.*, 137 F.R.D. 409 (S.D. Fla. 1991) (females). *But see, e.g.*, *Dale v. Boy Scouts of Am.*, 1998 WL 84577 (N.J. Super. A.D.) (ruling Scout troop

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example, could go unapproved unless they conform to a governmental official's interpretation of the Equal Protection Clause.

The problems intensify in a scenario where national service becomes mandatory for all youth throughout the United States,²²³ because private nonprofit volunteer programs that elect to remain unaffiliated with national service or with the federal government can be effectively roped off from most of the pool of potential youth participants (who are tied up with government-sponsored/sanctioned activity and who are never conspicuously presented with the option of participation in "unapproved" service organizations or activity). Religious institutions, for example, could eventually discover that they have no place in a realm that has traditionally been viewed as quintessentially religious: community service.²²⁴ The general

must accept homosexual Scoutmaster); *ACLU Takes Aim at Boy Scouts*, TAMPA TRIB. (Fla.), Feb. 9, 1998, at 6, available in 1998 WL 2764284 (stating that City of Chicago agreed in a lawsuit settlement to sever sponsorship of 28 Scout programs until the Boy Scouts admit homosexuals and abolish references to religion in the Scout oath); Virginia Breen & Larry Sutton, *N.J. Court Sez Gay Scouts O.K.*, N.Y. DAILY NEWS, Mar. 3, at 7, available in 1998 WL 5923609 (explaining how the New Jersey Superior Court ruled against the scouts' rule against membership of homosexuals under state discrimination law because "a boy scout may be trustworthy, loyal, reverent, and gay," and explaining that the Matawan, New Jersey Scout Troop that was sued "has since disbanded" because of a dearth of volunteers in the wake of the controversy and stating that similar lawsuits are in progress in Chicago and Washington).

If the lawsuits do not succeed in transforming scouting to the point where it is no longer a philosophically distinct alternative to organizations such as the National Service Corps, the fiscal pressures of the Corps may indirectly compel such as result. The inherent problem is, of course, that atheists, homosexuals, and others who disagree with the Boy Scout philosophy are unwilling to simply to engage in the work required to organize their own scouting organization. Instead, Boy Scout antagonists and their allies prefer to seek (1) a free ride on the goodwill that organizations such as Scouting have accumulated because of (not in spite of) an emphasis on a set of moral values, (2) tax-funded government programs that advocate a homosexual world view, and (3) compulsory education as a vehicle to inculcate the homosexual perspective into captive audiences of minors. See generally, e.g., *North American Man/Boy Love Association* (visited Mar. 25, 1998) <<http://www.nambla.org>> (discussing methods for infiltrating institutions and eventually legalizing pedophilia). Imposition of alien sexual mores upon the children of others constitutes a violation of civil rights. Cf. Crary, *supra* note 219, at E19 (pedophilia was a pervasive problem for decades in boarding schools facilitated by Canadian compulsory education schemes; Native American children were forced into boarding schools over the objections of their parents, with results that Native American Mary Anne Nakogee-Davis describes as "our Holocaust").

223. See *supra* note 112.

224. Indeed, this is already starting to happen. In *Sherman v. Community*

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values-education philosophy that seems to be driving the push for service learning is based upon the “idea that right and wrong [can] be taught as if they have no grounding in [traditional] religious belief,”²²⁵ and that social order and public virtue can be sustained on a relativistic, humanistic/communitarian ideological framework.²²⁶ Instead of construing equality to mean equal respect for diversity, some

Consolidated School District, 8 F.3d 1160 (7th Cir. 1993), for example, the plaintiffs sued to stop a public school from allowing the Boy Scouts of America to use their facilities, under the theory that the Boy Scouts were religious and the entanglement would therefore violate the Establishment Clause. The unsuccessful suit was heard by three appellate judges appointed by Republican Presidents, but perhaps the outcome may eventually change if reconsidered by two or three Clinton judicial appointees. The *United States v. Virginia*, 116 S. Ct. 2264 (1996) case involving single-sex education at the Virginia Military Institute certainly is an indication that (1) longstanding tradition is no inherent protection against judicial reconstruction of organizations, and (2) when educational institutions or other mediating institutions are affiliated with government funding processes, the Equal Protection clause and/or the First Amendment Establishment clause can eventually be applied to compel radical alteration of organizational identity.

The same types of “Establishment Clause” and “Equal Protection Clause” theories are slowly gathering steam for use against other religious organizations, and if successful would virtually preclude religion from having a meaningful, practical impact in everyday life. See, e.g., Mike Carter, *Missionaries Working as School Volunteers Angers Some Parents*, DAILY HERALD (Provo, Utah), Dec. 12, 1997, at A1 (Glen R. Schlotterbeck waged a campaign to disallow Mormon missionaries from serving as volunteers in Davis County, Utah, elementary schools while being “introduced as ‘elders’ or ‘sisters’ and “wearing trademark modest skirts or dark suits and ties [with] displayed nametags pronouncing their affiliation with the Church of Jesus Christ of Latter-Day Saints”; Schlotterbeck has “real heartburn” because “the district afford[s] them undue acceptance and legitimacy . . . recognition and familiarity [are] the first step in the proselytizing process,” and there would be “the same problem with a Roman Catholic priest wearing a collar or a nun in full habit” or with “anybody whose motives are suspect” such as people who “may not even be U.S. citizens”).

Of course, the unspoken, but critical premise of the Establishment Clause/Equal Protection neo-theorists is that the trappings of their own lifestyle are “normal” and “value free.” In truth, however, the habitualization process implicated when a child from a religious background is surrounded with people arrayed in “nonreligious” attire is exactly the same process implicated when a child from a nonreligious background is surrounded with people arrayed in attire associated with a religious world view. Coerced change in world view in any direction is inherently unconstitutional.

225. Melissa Healy, *Schools Revive Teaching of Values*, DENVER POST, May 28, 1996, at 2A.

226. Of course, private parties have the right to advocate and/or demonstrate such a philosophy; the problem arises when they attempt to commandeer tax-funded government resources to propound what they believe over the objections of other citizens with contrary world views.

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would have us believe that equality precludes the existence of diversity.²²⁷

227. There have been efforts by some commentators to construe the Equal Protection clause of the Fourteenth Amendment in ways (and through mediating institution schemes) that actually operate to curtail the substantive rights protected under the Liberty clause of the very same Fourteenth Amendment. *See, e.g.*, James G. Dwyer, *The Children We Abandon: Religious Exemptions to Child Welfare and Education Laws as Denials of Equal Protection to Children of Religious Objectors*, 74 N.C. L. REV. 1321 (1996) (stating that the Equal Protection Clause requires that children be cleansed of and buffered from the impacts of their parents' religious lifestyle); Jack Macmullan, Comment, *The Constitutionality of State Home Schooling Statutes*, 39 VILL. L. REV. 1309, 1312, 1312 n. 13 (1994) (containing arguments from educators who have noticed that members of a family tend to be of the same race; the educators concluded that the family unit itself is "racially exclusionary" and that family-based education may have the "discriminatory purpose" of preventing contact between children and those "infected with the HIV virus"); Sonia R. Martin, Note, *A Child's Right to be Gay: Addressing the Emotional Maltreatment of Queer Youth*, 48 HASTINGS L.J. 167, 189 n.153 (1996) (reaching beyond the encouragement of general civility to assert that equal protection for homosexuals requires parental rights to be curtailed so that children with homosexual inclinations can be transplanted from their original upbringing to an environment that will cultivate and reinforce the homosexual inclinations (citing Janet E. Halley, *The Politics of the Closet: Towards Equal Protection for Gay, Lesbian, and Bisexual Identity*, 36 UCLA L. REV. 915, 937 (1989)); Note, *The Limits of Choice: School Choice Reform and State Constitutional Guarantees of Educational Quality*, 109 HARV. L. REV. 2002 (1996) (arguing that the rights implicated in school choice must be curtailed, because Equal protection principles are violated when some schools improve their performance and produce better results than other schools, thereby creating disparity in the levels of achievement).

In the vast majority of situations, the Equal Protection Clause is not fundamentally at odds with the Liberty Clause; as a matter of analytic construction, interpretive presumptions should favor meanings that identify and engender synergistic relationships between the two clauses and disfavor interpretations that identify and engender avoidable logistical and conceptual inconsistencies. Under the Fourteenth Amendment, all people are equally entitled to expansive protection of an identical set of synergistic substantive personal liberty rights. In most circumstances, an approach where one person's liberty rights are curtailed in the name of protecting someone else's right of equal protection operates to ensure that the threshold for the protection of everyone's substantive constitutional rights will be equally *low*, instead of ensuring that everyone's substantive constitutional rights will be accorded equally *high* levels of synergistic deference whenever that is possible. In the context of parental rights and family autonomy, for example, equal protection requires that equal and great deference be accorded to the expansive constitutional familial rights of the people, regardless of the race, religion, national origin, or other inherent characteristics of particular parents when those characteristics have no relevance to a legitimate and compelling state interest. To use a contrary interpretation transforms the Fourteenth Amendment from a shield into a sword.

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2. *Policy arguments against nationalized government management of the nonprofit sector*

Critics of nationalized government management of the nonprofit sector argue that the concept will (1) lead to wasteful use of tax revenue and economic inefficiency, (2) actually harm and homogenize the private nonprofit sector, and (3) lead to a net reduction in the total mixture of quantity and quality of volunteer service activity. Although there is apparently a current dearth of data sufficient and reliable enough to make a conclusive empirical characterization of The National Service Initiative with respect to the above impacts, the theories that have emerged are clear and are deserving of more careful attention.

One can argue that there is only a limited amount of time, labor, and financial resources that a society, at any given level of economic and technological proficiency, can contribute to volunteerism on a sustainable basis (even if there is a desire by society and each individual to maximize total volunteer activity).²²⁸ Inevitably, various nonprofit and religious programs under a nationalized nonprofit system will find themselves competing for resources absorbed and redistributed by the federal national service program,²²⁹ since a nationalized system

228. See, e.g., John Cloud, *Involuntary Volunteers*, TIME, Dec. 1, 1997, at 76:

"[S]ervice learning" . . . [is] sure to offend back-to-basic types, especially in city schools trying to raise test scores. Some of those traditionalists are the students themselves. "A lot of us just don't have the time, with jobs and stuff," says Deitra Goldern, a Carver senior. In her case, "stuff" means preparing for the SAT.

229. See, e.g., Clinton, Remarks at a Town Meeting in Nashua, New Hampshire (Mar. 15, 1994), in PAPERS 454 (1995):

[For a community to obtain funding,] [e]ach State will have the opportunity to certify a community service group. So if, for example, if you've got a community service group . . . where young people would like to do work before, during, or even after college . . . then you *just have to have your group certified*. . . . [I]t's done at the grassroots level, and each State has a community service operation that is related to the national community service effort.

. . . [Once] you get approved, then you say how many people you want, who want to be in the community service program and want to *qualify for the aid*, and then we just have to . . . *fill up the slots each year*, basically as the approvals come in, and everybody will be approved *until we run out of positions*. . . . [W]e'll have 100,000 positions the year after next. I hope that we'll have a half million a year [in community service projects]. That's my goal.

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concentrates all instruments of economic capital (including human intellectual capital) into the hands of the state.²³⁰ Some critics therefore disagree with Clinton's characterization of compensated activity as a "service,"²³¹ and believe that the use of free market mechanisms²³² is a more efficient way to distribute nonprofit economic resources, and to avoid bloated government bureaucracy.²³³

Id. at 457-58 (emphasis added); *see also* Trust Act, *supra* note 3, at 1544-45 ("In the coming months we will challenge States and nonprofit organizations to *compete* for AmeriCorps volunteers" (emphasis added)); Clinton, Teleconference With the U.S. Conference of Mayors (June 13, 1994), in PAPERS 1071, 1073 (1995) ("I hope . . . [to] see that in at least one instance in every city of any size in the country there will be an approved national service program so that we can *channel some of that funding* in to help your young people work on the problems of your community" (emphasis added)); *infra* note 232.

230. *See* Witte, *supra* note 44, at 245 n.211.

231. *See, e.g.*, Presidential Scholars, 6/20/96, *supra* note 13, at 940 (discussing "earning money to go to college by doing community service").

232. Clinton would counter with his definition of a free market, which involves having the government (instead of the private sector) determine the end goals and then have the private nonprofit entities enter bids to demonstrate that they would be able to most efficiently implement the end goals established by the government. *See* Clinton, Remarks to AmeriCorps Volunteers in Dallas, Texas (Apr. 14, 1995), in DOCUMENTS 577, 578 (1995) ("There is no bureaucracy here. These programs in Texas were funded by competition. People have to *compete for these slots*. And nobody gets it unless *they're doing a good job*." (emphasis added)).

233. *See, e.g.*, Thomas Sowell, *A Real Disservice to the Community*, ROCKY MOUNTAIN NEWS, May 22, 1996 at 47A:

The number of things that all the people would like to see done always requires more time and resources than there are available to do them. The question is: How do you decide how to ration—which things to do, to what extent and at what cost?

One of the most unreliable ways is by rhetoric. People who spend their lives spouting words—politicians, intellectuals, and the like—can always paint a pretty picture of things they want to have done. . . .

. . . .

. . . [E]ducators who want to use students' time this way betray the mission of education by downgrading the value of learning in favor of "exciting" and "innovative" projects that condition students to the welfare-state version of the world.

. . . .

Behind much "community service" rhetoric is a misconception of the function of a market economy in rationing time and resources. More important, there is a fundamental misconception of what America is all about. It is about the freedom of ordinary people to lead their own lives as

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House Speaker Newt Gingrich is an example of one prominent politician who has expressed concern about the possibility that the National Service Initiative will result in government “burning up the oxygen” (*i.e.*, financial and human resources) that private nonprofit organizations need to maintain healthy and functional independent operations.²³⁴ Clinton himself has tip-toed delicately around the question of why the National Service Initiative required a statute to protect the labor market from being undermined by large-scale government-sponsored activity, while the Initiative at the same time did not require that nonprofit institutions be afforded similar protection against damage resulting from government encroachment in their domain.²³⁵

they see fit.

It is not about such notions as compulsory “volunteers” or about calling people “selfish” for pursuing their own interests and aspirations instead of being pawns in somebody else’s grand schemes.

See also Marci McDonald, *Fighting Over Ayn Rand*, U.S. NEWS & WORLD REPORT, Mar. 9, 1998, at 54, 57 (describing how the Ayn Rand Institute raised contributions by 30 percent by having students protest “citizen service” at the Philadelphia volunteer summit).

234. *See, e.g.*, Town Meeting, *supra* note 14, at 858-59:

I have two concerns that I think are a different direction, philosophically. One is that I . . . would give . . . a tax credit to give the money directly to charities so that charities could do it directly. . . . [W]e want to have less Washington-based bureaucracy and fewer decisions made in Washington. And we want to strengthen the private charities.

So if you said to me . . . would I rather strengthen AmeriCorps or the Salvation Army, the truth is . . . the kind of groups that aren’t restricted by legitimate Government restrictions but are able to go in in a much more spiritual basis and a much more directed basis and help people change . . . [result in] a stronger, healthier society by getting it totally out of Government.

235. Clinton recognized that national service could undermine the power of the labor unions by providing a cheap source of labor that competed for certain employment opportunities. In order to allay that concern, the statute gives labor unions direct input in shaping and vetoing various Corps activities. *See, e.g.*, 42 U.S.C. 12526(d) (1995) (“The Corporation shall by regulation establish standards for the information required to be contained in an application . . . including, at minimum, assurances that . . . the entity carrying out the program will consult with the appropriate local labor organization.”); *see also id.* 12544(d)(2).

Clinton has tried to sidestep the issue of impact in the volunteer sector by maintaining that volunteer resources are not limited and that they can expand to accommodate national service without imperiling existing private volunteer programs. *See, e.g.*, Clinton, Remarks Honoring the National Volunteer Action Award Recipients (Apr. 22, 1994), in PAPERS 762 (1995):

Community service is neither a program nor a panacea; it really is a way

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It is possible that private nonprofit programs, however, will face pressure from some potential donors and volunteers to seek and accept federal aid, and that fiscal shortfalls may eventually occur if National Service became a large enough movement; many people could eventually refuse to donate to private nonprofits on the theory that they "already donate" to charity through government taxation.²³⁶ Additionally, many potential youth (and adult) volunteers will be diverted from independent nonprofit volunteer programs over time, because the youth will be enticed or compelled into participation in the federal national service scheme.

Potential participants for such traditional (and entirely voluntary) adolescent nonprofit programs as Girl Scouting, Boy Scouting, 4-H, and religious proselytizing organizations may,

we live our lives. It stems from a refusal to accept things as they are, a personal commitment to . . . live up to . . . God-given potential.

Service, like life, is a series of challenges. . . . In just a few months our Nation's and our generation's answer to history's challenge will begin working in communities all across America. They'll be members of AmeriCorps, our new national service initiative. *They won't replace the efforts we honor today, but they will expand them.* Working mainly through local nonprofit groups, AmeriCorps will provide the kind of commitment and energy and daring that makes heroes and communities and that makes a difference.

. . . "Each time someone . . . stands up for an ideal or acts to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current which can sweep down the mightiest walls."

Id. (emphasis added). The question still remains: is it possible that government generated "ripples" and "currents" may overwhelm those emanating from "a million different centers" in the private nonprofit sector?

236. To appreciate this, simply do what the author has done on numerous occasions and try raising funds for an organization such as the Boy Scouts of America. If a large number of people are contacted, it is almost inevitable that someone will say that they "already donate" either to a nonprofit and/or religious institution sponsoring scouting, and/or that they "already donate" to the United Way (which diverts some of the money it receives as charity to one of its recipient organizations, the Boy Scouts of America). Furthermore, most people will only tolerate so many requests and a certain level of contribution each year, so there is fierce competition in the nonprofit sector for charitable dollars; the nonprofits are under constant pressure to respond to donors by justifying the mission of the organization and the way that money is spent to fulfill that mission.

To imagine an effect with a magnitude somewhat analogous to that of having to compete directly with government taxation for nonprofit activity, consider the probable impact upon the private nonprofit sector if charitable contributions to religious and service institutions lost tax-exempt status.

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over time, become increasingly depleted in numbers and manifest reduced energy and enthusiasm, especially if the national service becomes widespread and/or mandatory in the same fashion as it is in other countries.²³⁷

Even if the government nonprofit system works just as efficiently as the private nonprofit model from a logistical standpoint, Dr. Sobus²³⁸ has suggested another reason for why there still may be a reduction in the total quantity/quality level of volunteer activity. After conducting a social psychology analysis of the likely impact of mandated government community service on the general population, Dr. Sobus concluded that compulsory service learning “is unlikely to foster long-term prosocial attitudes” and that it “should be expected to undermine positive attributions, stifle feelings of self-determination, and ultimately make self-generated acts of community service more scarce.”²³⁹

President Clinton and Retired General Colin Powell disagree with the above analysis; their theory is that (1) government intervention will raise the level of volunteerism without interfering with private nonprofit activity because of a “multiplier effect” associated with government sponsorship,²⁴⁰

237. For example, consider a hypothetical young man who belongs to the Church of Jesus Christ of Latter-Day Saints who is compelled to do two years of national service. When considering the opportunity to voluntarily serve for *two*-years as a missionary for the Church, the young man would be artificially confronted with the cost of doing *four* years of total nonprofit activity. Even if the heightened economic and logistical deterrents were overcome and a choice was made to embark on a mission, the missionary might well be emotionally fatigued and less energetic after having already completed two years of forced non-profit activity. “When people are forced to serve . . . it takes the fun out of it . . . (I) f it is required, you don’t feel like you’re giving anything.” Sobus, *supra* note 163, at 158 (quoting Eric Felton, *Mandatory Volunteering? Schools Accused of Requiring Involuntary Servitude*, WASH. TIMES, Aug. 16, 1994, at A8 (quoting a student in the Bethlehem compulsory community program)).

The artificially high marginal cost of voluntarily serving a mission after being compelled to render national service would likely deter some would-be missionaries who might have been persuaded to go on the mission if the activity represented only two cumulative years of nonprofit activity. The same types of considerations might, for example, also deter participation in Catholic orders or Salvation Army missions.

238. Dr. Mark S. Sobus, a law school graduate from the University of Nebraska who also holds a Bachelor, Masters, and Doctoral degree in Social Psychology, has delivered one of the more articulate pedagogical and psychological criticisms of the coercive “service learning” movement. *See* Sobus, *supra* note 163, at 153 n.a.

239. *Id.* at 182.

240. First Anniversary, *supra* note 184, at 1347:

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and (2) youth that are compelled to good deeds will get a taste of service and like it so much that they will eagerly generate more service in partnership with the government and throughout the remainder of their lives.²⁴¹

V. CONCLUSION

The National Service Corps is a unique and carefully designed institution, designed to incorporate the strengths of many other nonprofit institutions that have traditionally been very successful in shaping American society. The designers of the Corps apparently studied numerous organizations that have been successful in instilling attitudes, values, and beliefs, and then synthesized them into a government-run organization. Although it remains to be seen whether the National Service Initiative will improve the total quantity and quality of performance in the nonprofit economic sector, it does seem very likely that the Corps will serve as a very effective device for inculcating a world view into Corps participants.

If the National Service Corps survives the Republican Congress and/or the President who is elected in the year 2000,²⁴² the Corps will then be positioned for expansion into an institution that will fulfill a role much more significant in

[I]nvestment in AmeriCorps goes far. A team of noted conservative economists found recently that every dollar of Federal money invested returns at least \$1.60 to \$2.60 . . . for the taxpayers in public benefits. And of course, that doesn't calculate the long-term benefit of increased education. . . .

. . . .

. . . . The one thing the GAO didn't do [in its report showing that the money spent for each volunteer is much more than \$4,000—the amount the White House says it costs] is to consider all the people that are kicking into the program; they leverage the private money.

241. See, e.g., *supra* notes 112, 235.

242. Clinton has already had a showdown with the Republican Congress over the funding issue. See Clinton, Statement on Signing the Omnibus Consolidated Rescissions and Appropriations Act Of 1996, (Apr. 26, 1996), in PAPERS 637 (1996) (“The Congress, in a bill I vetoed, sought to kill AmeriCorps, the National Service Program. This bill retains it, as I had insisted, funding the Corporation for National and Community Service at \$402 million.”); see also Clinton, Message to the House of Representatives Returning Without Approval the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, (Dec. 18, 1995), in PAPERS 637 (1996).

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future society than the general public today has even begun to contemplate.²⁴³ Should the Corps survive as an enduring entity, the next critical fork in its evolutionary path will relate to the issue of whether there will be compulsory participation for youth in all of the public schools. Courts must further evaluate the constitutionality of national service and states must render some assistance in proffering their educational systems for assimilation into the National Service Corps. Furthermore, additional and more focused public dialogue should present the issues surrounding the Corps to the public so that the public can be better educated about the very important policy choices that are implicit to the National Service Initiative.

Regardless of how the national service agenda unfolds, and regardless of one's views toward nationalized volunteerism, it is clear that national service and Clinton's general efforts to work closely with the nation's youth will continue to raise important political, economic, religious, and philosophical issues for the foreseeable future. Those of any political persuasion who manage the long-term future of religious institutions, proselytizing orders or missions, nonprofit youth groups, humanitarian efforts, charitable foundations, educational institutions, and/or political organizations simply cannot afford to disregard the implications of the National Service Initiative or of the National Service Corps.

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243. This is particularly true if tax incentives and other rewards are given by the government for cooperation with the National Service Corps. Former Senator Wofford, for example, introduced a bill that would have used federal money to create incentives for local schools to incorporate mandatory community service into the integral design of school curriculums. See Brennan, *supra* note 144, at 254-55.

APPENDIX A: COMMAND STRUCTURE
OF THE NATIONAL SERVICE CORPS

The command structure of the National Service Corps, described in more detail below, consists of (1) the President of the United States, (2) a Board of Directors, (3) a Civilian Community Corps Advisory Board, (4) a Chief Executive Officer, (5) a Director, (6) a Permanent Cadre of Supervisors and Training Instructors, (7) Superintendents, (8) Unit Leaders, and (9) Corps Members.

1. *President of the United States*

The President of the United States exercises ultimate control over the national service organization in much the same way that control is maintained over the armed forces and other federal bureau/department heads. The President must submit nominations for the key political appointments within the Corps to the Senate for confirmation into the posts. This nomination process includes direct appointment of all members of the Board of Directors,¹ direct appointment of nearly all members of the Civilian Community Corps Advisory Board (with indirect appointment of a few of the most insignificant members through appointments made by the President's direct nominees),² and direct appointment of the Chief Executive Officer.³

2. *Board of Directors*

"There shall be in the Corporation a Board of Directors . . . appointed by the President, by and with the advice and consent of the Senate . . ."⁴ "[The Board shall] review, and advise the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws . . ."⁵

1. See 42 U.S.C. § 12651a(a) (1995).
2. See *id.* § 12623(a), (b).
3. See *id.* § 12651c(a).
4. *Id.* § 12651a(a).
5. *Id.* § 12651b(g)(5)(A).

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3. *Civilian Community Corps Advisory Board*

“[A] Civilian Community Corps Advisory Board [shall] . . . advise the Director concerning . . . the development and administration of the Corps.”⁶

By law, “[t]he Advisory Board shall be composed of the following members:”⁷

- (1) The Secretary of Labor.
- (2) The Secretary of Defense.
- (3) The Secretary of the Interior.
- (4) The Secretary of Agriculture.
- (5) The Secretary of Education.
- (6) The Secretary of Housing and Urban Development.
- (7) The Chief of the National Guard Bureau.
- (8) Individuals appointed by the Director from among persons who are broadly representative of educational institutions, voluntary organizations, industry, youth, and labor unions.
- (9) The Chief Executive Officer.⁸

In 1997, the individuals filling positions one through seven and position nine, in order from top to bottom, were Alexis Herman, William Cohen, Bruce Babbitt, Dan Gickman, Richard Riley, Andrew Cuomo, Air Force Lieutenant General Edward Baca, and Harris Wofford.⁹

4. *Chief Executive Officer*

“The Corporation shall be headed by an individual who shall serve as Chief Executive Officer of the Corporation, and who shall be appointed by the President, by and with the advice and consent of the Senate.”¹⁰

“The Chief Executive Officer shall be responsible for the exercise of the powers and the discharge of the duties of the Corporation that are not reserved to the Board, and shall have

6. *Id.* § 12623(a).

7. *Id.* § 12623(b).

8. *Id.* § 12623(a), (b).

9. See WASHINGTON INFORMATION DIRECTORY 597, 797, 800, 802-04 (Paul McClure ed., 1997); see also 1997 FEDERAL STAFF DIRECTORY 237 (P. Wayne Walker ed., 24th ed. 1997).

10. 42 U.S.C. § 12651 c(a).

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authority and control over all personnel of the Corporation.”¹¹ Additionally, the Chief Executive Officer shall “establish such standards, policies, and procedures as are necessary or appropriate to carry out the national service laws.”¹²

In 1997, the Chief Executive Officer was Harris Wofford.¹³

5. *Director*

The Director is the first level of leadership representing functional “bureaucracy” within the Corps. The national service statute provides:

[T]he Chief Executive Officer [of the Corporation] shall appoint a Director . . . from among retired commissioned officers of the Armed Forces of the United States.

. . . The Director shall . . . design, develop, and administer the Civilian Community Corps programs; . . . be responsible for managing the daily operations of the Corps; . . . and report to the Chief Executive Officer.

. . . The Director may employ such staff as is necessary to carry out this division.¹⁴

In addition to the above responsibilities, the Director is also responsible for making the practical large-scale arrangements with regard to the procurement of Corps equipment and facilities.¹⁵

In 1997, the Director was Shirley Sagawa.¹⁶

6. *Permanent Cadre of Supervisors and Training Instructors for Community Corps Programs*

“The Director shall establish a permanent cadre of supervisors and training instructors for Civilian Community Corps programs.”¹⁷ The “permanent cadre of supervisors and training instructors for Civilian Community Corps programs” is

11. *Id.* § 12651d(a), (b)(3)(B)(I).

12. *Id.*

13. See WASHINGTON INFORMATION DIRECTORY, *supra* note 9, at 597; see also *supra* notes 144, 243.

14. 42 U.S.C. § 12619(c)(1)(A)-(C).

15. See *id.* § 12621(b)(1).

16. See WASHINGTON INFORMATION DIRECTORY, *supra* note 9, at 597.

17. 42 U.S.C. § 12619(c)(2)(A).

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to be “comprised of males and females of diverse ethnic, economic, professional, and geographic backgrounds.”¹⁸

The statutory language appears to favor a “permanent cadre” that is predominantly and possibly almost entirely military:

[T]he Secretary of Defense shall establish an office to provide for liaison between the Secretary and the Civilian Community Corps.

....

The office shall . . . in order to assist in the recruitment of personnel for appointment in the permanent cadre, make available to the Director information in the registry . . . and . . . provide other assistance in the coordination of Department of Defense activities with the Corps.

....

. . . [T]he Secretary of Defense, in consultation with the liaison office . . . shall develop a list of individuals to be recommended for appointment in the permanent cadre of Corps personnel. Such personnel shall be selected from among members and former members of the Armed Forces . . . who are [or were] commissioned officers [or] noncommissioned officers . . .¹⁹

7. *Superintendents*

The Superintendents are the head commanding officers in the field for the national service corps.

According to statute, “[t]he superintendent of a Corps camp shall select the projects to be performed by the members of the Corps assigned to the units in that camp.”²⁰ Other duties are also detailed:

18. *Id.* § 12619(c)(2)(C)(iii).

19. *Id.* § 12622(a)(1); *see also id.* § 12611 (stating that military officers are to be used).

20. *Id.* § 12617(c)(1).

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The superintendent of each camp shall establish and enforce standards of conduct to promote proper moral and disciplinary conditions in the camp.

. . . Under procedures established by the Director, the superintendent of a camp may—

(A) transfer a member of the Corps in that camp to another unit or camp if the superintendent determines that retention . . . will jeopardize the enforcement of the standards . . . or

(B) dismiss a member of the Corps from the Corps if the superintendent determines that retention of the member in the Corps will jeopardize the enforcement of the standards²¹

8. *Unit Leaders*

The national service law explains the role of Unit Leaders by setting forth the relationships between Unit Leaders, other Corps leaders, and Corps operations:

The Corps shall be divided into permanent units. Each Corps member shall be assigned to a unit.

. . . The leader of each unit shall be selected from among persons in the permanent cadre The designated leader shall accompany the unit throughout the period of agreed service of the members of the unit.

. . . The units of the Corps shall be grouped together as appropriate in camps for operational, support, and boarding purposes. The corps camp for a unit shall be in a facility or central location established as the operational headquarters and boarding place for the unit. Corps members may be housed in the camps.

. . . There shall be a superintendent for each camp. The superintendent is the head of the camp.

. . . [T]he Secretary of Defense shall identify military installations and other facilities of the Department of Defense and, in consultation with the adjutant generals of the State National Guards, National Guard facilities may be used . . . by the Civilian Community Corps for training or housing Corps members.²²

21. *Id.* § 12622(a)(3).

22. *Id.* § 12615(c).

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9. *Corps Members*

“The Corporation shall issue regulations regarding the manner and criteria by which the service of a participant shall be evaluated to determine whether the service is satisfactory and successful for purposes of eligibility for a second term of service or a national service educational award.”²³

Statutory direction is also afforded as to what type of background makes an individual good leadership material:

From among individuals recruited . . . the Corporation may

select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. . . .

. . . In selecting individuals to receive leadership training . . . the Corporation shall make special efforts to select individuals who have served—

(A) in the Peace Corps;

(B) as VISTA volunteers;

(C) as participants in national service programs . . .

. . . .

(E) as members of the Armed Forces²⁴

The leadership concept for the Corps is therefore similar to that of the Armed Forces; members who are enthusiastic about the Corps system are offered a “promotion” if they agree to “re-up” for a second term in the Corps.²⁵ Members of the Corps are to take oaths in order to participate.²⁶

23. *Id.* § 12592(f).

24. *Id.* § 12592(e)(1), (e)(2)(A)-(E).

25. *See id.* § 12592(c) (stating that a second term of service is allowed if the first term is satisfactorily completed).

26. Clinton has personally administered the oath to some Corps members. *See, e.g., Swearing-In Ceremony, 9/12/94, supra* note 2, at 1538:

Now let me ask all the AmeriCorps volunteers here to raise your hand and repeat after me:

I will get things done for America to make our people safer, smarter, and healthier. I will bring America together to strengthen our communities. Faced with conflict, I will seek common ground. Faced with adversity, I will persevere. I will carry this commitment with me this year and beyond. I am an AmeriCorps member, and I am going to get things done.