

1110, to include the Kline provision. Kopp's assessment was that "[t]he Democrats want to save Tony Kline. They can't do it." Perhaps Kopp is right, and I hope he is, but Kline and Escutia have some unlikely GOP allies in the campaign to rescue the state's most notorious scofflaw.

The issue is simple: Are judges obligated to follow the law? As Hamilton stated in *The Federalist* No. 78, "the power of the people is superior to both" the judiciary and the legislature. Moreover, "[t]o avoid an arbitrary discretion in the courts, it is indispensable that [judges] should be bound down by strict rules and precedents, which serve to define and point out their duty

in every particular case that comes before them." Kline's arrogant conduct flies in the face of Hamilton's wisdom. As Golden Gate University law professor Myron Moskovitz wrote in the *Los Angeles Daily Journal*, "[t]he mantra of judicial independence should not be used to cloak judicial lawlessness."

Conservatives must have the will to take back from activist judges the powers they have arrogated to themselves. It is time we all got off our knees and reasserted our sovereignty. We are not servants; judges are not our masters. Conservatives, wake up and take the right side on this fundamental issue. The CJP's desperately-needed action against Kline deserves GOP support. ☐☐☐

THE MIDNIGHT ECONOMIST

Zero Measures and Equality Policies

Be careful what you wish for ... look before you leap ... and other clichéd truisms we forget at our peril.

W I L L I A M R . A L L E N

MARRIAGE COUNSELORS and others have warned us to be careful in determining what we want, for we might get it. It is safe, even if non-operational, to hope broadly and amorphously for "happiness" or "satisfaction," but there can be disaster in the details. Indicators and policies which initially seem appropriate and fair can camouflage booby traps. The traps can be found in various measures and procedures of "equality."

1. Consider employment. Everyone likes high employment, and rejoices over a low unemployment rate. If a small rate of unemployment is good, then a *zero* rate would seem best. But, in fact, zero unemployment is neither feasible in the method used in measuring it nor desirable by all criteria.

You may have had a job this morning and quit it to seek and accept another job this afternoon. But during the five minutes during which you left the one job and crossed the street to begin the new job, you were offi-

cially unemployed. Or you may spend weeks investigating job opportunities; such a costly search for market information can be a rational investment, but the Bureau of Labor Statistics counts you among the unemployed. We can avoid such transitory unemployment only by prohibiting employees from leaving jobs, prohibiting employers from terminating jobs, or requiring the unemployed to take the first available job, regardless of its nature and the terms.

2. Another seductive *zero* measure is found in the balance of international payments. Actually, since each individual transaction is balanced in the double-entry accounting record, *total* "credits" necessarily equal *total* "debits." But in looking at certain *sub-categories* — most obviously, trade of goods and services — we almost always have imbalance. While, as every mercantilist knows, it is nice to have an export surplus of merchandise and bad to have an import deficit, a zero balance might be deemed an "equilibrium."

This is not sophisticated analysis — and thus politicians and editorial writers clutch it to their bosoms. A

In UCLA's Economics Department, William R. Allen warns of spurious measures and distinguishes equity from equality.

perfectly balanced trade in commodities, either bilaterally country-by-country or overall vis-à-vis the rest of the world, is not to be anticipated. Obviously, it would be an astonishing coincidence to have balanced trade with every other country. And if total imports from the rest of the world is greater than our total exports, that means (a) foreigners are contributing more output to our standard of living than we are supplying to theirs, and (b) we have a net inflow of foreign capital — we get, on balance, both their goods and their capital.

3. Still another balance of dubious value is in the federal government *budget*. Balance has returned after being AWOL for nearly 30 years, but the common hysteria over the deficit was largely unwarranted — and thus the re-establishment of balance is only a limited victory.

Few commentators on the budget tell us that the *size* of the budget is vastly more important than its *imbalance*. And, in extolling the balancing, they tell us nothing of the *nature* of taxes or the *direction* of spending — or of government-imposed *mandates* which do not show up in the budget. Nor do they point out that those past deficits were *not* associated with higher interest rates and inflation rates. And they certainly do not explain that, in a real and significant sense, the budget is *always* balanced: government spending represents absorption of the community's wealth, sequestration of national income, so government spending is taxation.

4. Wartime is propitious for "*equality*." One common way to rally the boys 'round the flag is to share equally key commodities which supposedly are in short supply. The pie is divided by issuing ration coupons: each person is assured the same amount of rutabagas. This seems manifestly fair: nothing else is quite as equal as equality. It is also a highly inefficient (read: wasteful) means of rationing — and since most goods are scarce, they must be rationed somehow.

In an open market, people are free to spend their limited income as they please, buying those things which are relatively most attractive to them. Preferences differ, and I should like to give you my *pro rata* share of rutabagas for your allotment of persimmons, and that pleases you. The total quantities of rutabagas and of persimmons would not thereby be affected, but each of us would gain by a distribution of the goods in accordance with our relative preferences. (We are not permitted by Big Brother to swap coupons.) "Share alike" is a lousy way to run an economy when people are blessed with different tastes.

5. One technique of "balance," "fairness," and

"evenhandedness" beloved by college kids is "grading on the curve." With a symmetrical bell-shaped curve of grade distribution, there will be the same proportion of As and Fs, a larger proportion of Bs and Ds, with Cs being the greatest share. Ah, but for every soothing ointment, there is an intruding fly.

THESE IS the question of how large the individual grade categories should be. Should As and Fs each make up 10 or 15 or 18 percent of the grades? While young scholars profess to believe I should be obliged to award at least 18 percent As, they demur over the 18 percent Fs. But there is the prior question of where it is writ in stone that I must give X-percent As (and Fs), no more, no less. If everyone in the class does absolutely first-rate work, then everyone should receive an A; if no one does first-rate work, no one should receive an A. Except by coincidence of class performance never witnessed by me, an "even" distribution of grades would be a travesty.

6. Vague notions of fairness permeate the question of who should be admitted into state universities. The romantically naive of the community suppose that academic admissions go to those who are most competent, most accomplished, and presumably most promising. In the political real world, there are criteria of race and nationality and economic status.

It is now proposed that the University of California admit the top four percent of *each* high school, ranking to be determined by grade averages in college prep courses. However, not all high schools are equal: a student in the top four percent at Rural High or Inner City High is not as well equipped for college as the top four percent at Beverly Hills High. It is a source of embarrassment and frustration that high schools show great variance in the quality of their graduates. But the resulting problems and complications are not adequately resolved by merely accepting inequality of qualifications and by permitting mismatches of colleges and their clients, admitting students who are characteristically doomed to failure and resulting alienation.



We all seek with clear minds measures of "balance" and "zero" magnitudes of seemingly undesirable variables, and we pure-heartedly support "level playing fields" and "equal treatment." But in a complex world of numerous criteria and standards and perspectives, there can be many a slip between disembodied ideal and concrete reality.

CPB

Those Dubious 'Down Ballot' Polls

To think any sizable number of Californians have an actual preference much before Election Day among candidates they couldn't pick out of a police roundup is silly.

T I M W . F E R G U S O N

AS VARIOUS papers print opinion-poll numbers this fall, the most dubious are likely to be those for the "down ballot" races: lieutenant governor, secretary of state, attorney general, controller, treasurer, insurance commissioner, and school superintendent. To think that any sizable number of California voters, oblivious as they are to the daily functioning of Sacramento, have an actual preference much before Election Day among candidates they couldn't pick out of a police roundup is silly.

But the more interesting question is: how do six million people actually come to a decision in these races? The campaign noise levels are so high by the time most of these hopefuls get their commercials on the air that it's hard to imagine even a hit ad leaving much of a mark. (And when was the last time you heard anyone besides a political operative mention in conversation, "I'm going to go for Schmoe in the secretary of state's race"?)

Yet even the silliest of these posts have some significant duties, such as sitting on the UC board of regents, or the board of equalization, or even the debt advisory commission. The narrow 1994 defeat of Tom McClintock for controller was probably the worst political news of that year — and evidence that ticket splitting goes on among the constitutional offices. So what makes the difference? You'd think that after a primary in which, for example, Michael Capizzi stunningly bombed out in his race for AG, someone would want to find out why.

Apparently no exit polling has sought to find out. A *Los Angeles Times* poll staffer says it has never asked. The Field Poll didn't return *CPR's* call. McClintock, who had some witty ads that year but not enough money to get them up in major markets, thinks voters do absorb material in the days before a vote, starting with the ballot designations and qualification statements. There they must look amid the buzzwords for cues as to real differences in beliefs. The major press usually weigh in

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with summary articles, too often just made up of quickie bios and talking points from the candidates. TV and radio, of course, can be expected to offer nothing.

This may be why the vote for third parties is typically higher in the down-ballot races. When in doubt, vote Libertarian (or Green, or whatever) to know what you're choosing. Let's see whether the newspapers will surprise us with some genuine analytical coverage that spotlights issues, ambitions, and interests at stake in the lesser posts this time. Maybe post it on their web sites?

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Speaking of McClintock, he got a respectful *L.A. Times* article atop A3 on a Sunday as he led the fight for a car tax repeal. That kind of attention might have helped in 1994, when, thanks to a letdown by business donors, he couldn't stay competitive in crucial Los Angeles County. Kathleen Connell — "businesswoman and New Democrat" — got a free ride from the press four years ago when she beat him. Wonder whether her history as a terror on wheels to her staff and others over her first term will draw notice as she seeks re-election with another huge warchest?

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Another disadvantage McClintock had in 1994 was that even the GOP-oriented prison guards union wouldn't back him because it knew he was serious (and consistent) about curbing the state payroll. But as the exposures of brutality and coverup at Corcoran State Prison and elsewhere emerge in papers like the *Times*, and threaten to tarnish Dan Lungren's candidacy, the pact that many Republicans made with that devilish donor is not looking so smart.

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Lungren ought to hope Mario Obledo keeps making news. The health and welfare secretary during the Jerry Brown/Gray Davis administration dropped all pretenses of open democracy when he forced the removal of