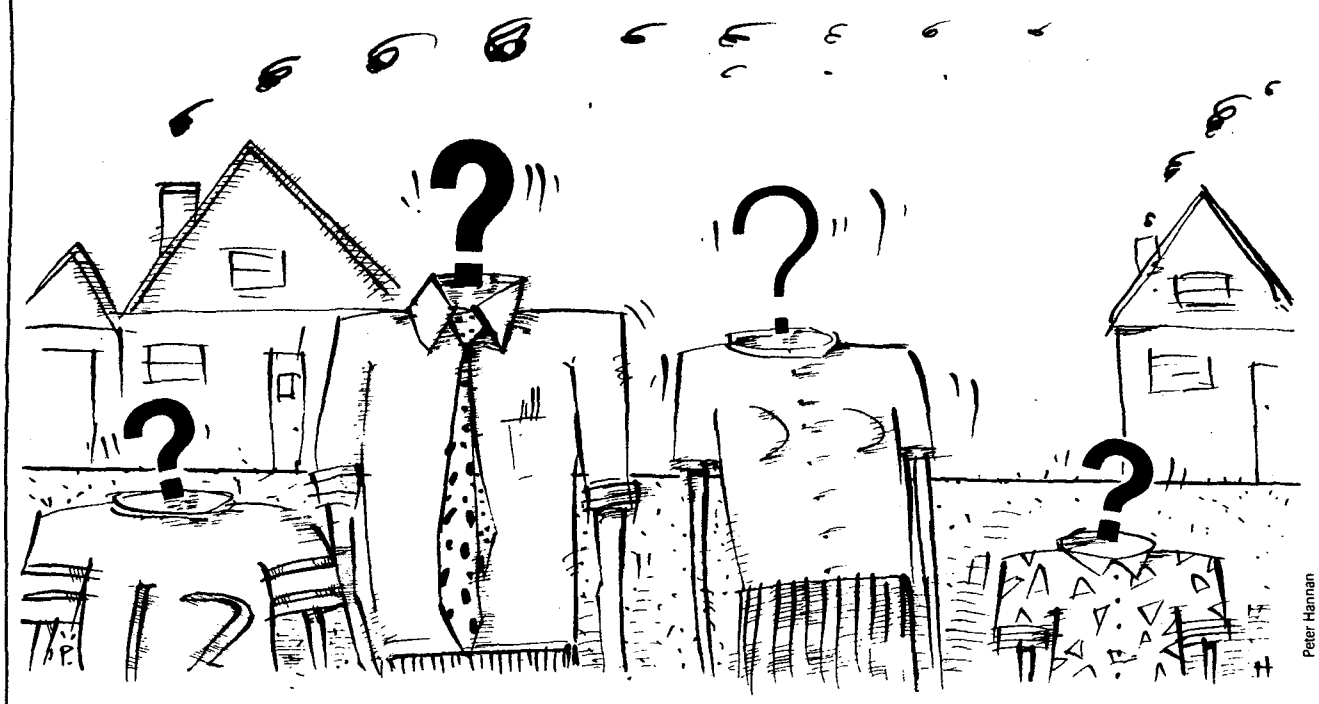

Peter Hannan

Who are the 'new-collars'?

By David Moberg

Consider a hypothetical family, Kevin and Sheila Hope. They're white, in their early 30s, live in a modest suburb, have two small kids. He works as a photocopy machine serviceman; she works part-time as a secretary. They both went to college but didn't finish. They stretch hard for the mortgage on their small home, but they have a VCR, a Japanese car and a small four-wheel drive pick-up truck that can serve for family camping trips. They shop at Sears, flip through mail-order catalogues, listen to Bruce Springsteen. Although their fathers were in unions, Kevin and Sheila never encountered one first-hand or considered joining. Indeed, the Hopes don't belong to any organization, except for a nominal church membership.

INSIDE STORY

They're too busy, they say, trying to make ends meet, worrying about juggling child care, about future jobs and about paying off credit card bills.

The Hopes are a "new-collar" family, to use the term coined by Ralph Whitehead, public service professor with the University of Massachusetts at Amherst. They are part of the "baby boom generation who finished high school but probably didn't finish college," said Whitehead. He added that they "work in a middle-level job in the service economy, better than busing dishes but not as good as a coat-and-tie professional."

Since Whitehead first used the phrase "new collar" two years ago, it has been widely adopted—the American Federation of State, County and Municipal Employees (AFSCME) now dubs itself "the new collar union," for example—and sometimes given broader meanings than Whitehead intended.

"The phrase 'new collar' put a simple and even visual handle onan array of economic findings that add up to an increasingly grim picture of where young adults in America stand economically," Whitehead said recently. "It's become a convenient shorthand for younger adults struggling with lots of economic pressures their parents *didn't have to deal with.*" Such pressures might include declining real incomes or living standards with high costs of housing or child care.

Older new collars: Even older people are tuned into the stresses. While leading a discussion of Ohio voters 55 years or older last July, Whitehead asked what were the problems of the people's children and their friends. "Within 90 seconds, there was a chorus of voices laying out crisply a whole set of problems," including child care, home prices, college costs, job security, salary and health care. "These problems are so pervasive in the first-hand experience of young people and second-hand experience of older people, it's a lot harder for a conservative today to wave printouts and claim everything is hunky-dory," said Whitehead.

In terms of the hard scramble to keep up with expectations, the new-collar and young blue-collar family may not be very different, Whitehead said. "The big difference of new-collar worker and blue-collar worker is pretty simple: The new-collar worker has not yet had the voice and clout of the institutionalized world. The blue-collar worker lives in a world pretty extensively defined by institutions, and traditions have been stable. That stability and institutionalization is dissolving. The new-collar worker is already in a highly fluid work setting." It's a setting that may involve social relations with clients, although the factory model is also being introduced to many service jobs, Whitehead said.

But their work experience may lead many of these new collars to feel "very conscious that they're not part of the old production or union system," said Stanley Greenberg, president of the Analysis Group polling firm. "They may even feel alienated from that and feel very little identification with people in production."

The average new-collar voter may not be suffering like dislocated steelworkers, foreclosed farmers, unemployed black youth or those who have fallen through the shredded social safety net. "For younger adults the fear isn't that they'll lose their job but that they'll lose their good babysitter," Whitehead said. "It sounds cavalier to compare a babysitter with a job, but if you have a congenial babysitting arrangement and lose it, it's a hardship."

New-collar politics: The Republicans would like to claim a triumphant *economy next year, and the Democrats would like to point to the dark and dreary prospects of a slumping economy, Whitehead said. "But there's a good chance that neither party will have that opportunity. The economy seems to be in a gray area. The new bread-and-butter issues [of health care, education, housing and child care] give the Democrats an ability to talk sense to people about the economy while it's in this gray area," rather than to pray for recession, gloom and doom.

But these new-collar workers "really don't know where they fit into the American social and political scheme," Whitehead said. They have not been influenced directly by unions, the Democratic Party or a workplace sense of solidarity. "These people do not have an ideological objection to government involvement," he said. "But these are people who are affected a little bit more than others might be by the Republican cry of tax and spend, tax and spend. They have not experienced a lot of direct government benefits. To a large degree you want to get an idea of concrete needs these people have and work with them for ways to meet those concrete needs. If those ways involve government action, fine, as long as government action is a result of some careful consideration. They want a public sector that's high on protein and low on fat [and bureaucracy]."

Whitehead's work has captured the fancy of many political professionals. But the new collars remain elusive. "There isn't a politically identifiable new-collar person," Columbia University political science professor Ethel Klein says. "We've identified the commercial market but not the political market." That is, advertisers can segment them effectively, but they are a fuzzier, less-predictable political category. Partly it's because so many of them are "increasingly tuned out of politics" and incredibly cynical about government, Klein said—or about any large institutions, according to Greenberg.

"I think Ralph's right that there's a value structure, style of life and set of expectations," Klein said. "It makes sense that these people would somehow constitute a potential political pool that we haven't identified; but because they're alienated, they're hard to reach. There's something here, but we don't know what it is yet."

A different approach: "The [new collars'] consciousness is reasonably unformed," Greenberg said, "and as a result these voters are largely available to be influenced. There are a lot of issues on which they're predisposed to vote Democratic." But they demand a different approach. For example, "I don't think it makes a lot of sense for Democrats to call for a massive program of federally-funded child care," Whitehead cautions. "To too many people that sounds like public housing for kids." Instead, he said, political leaders need to understand the needs, experiences and aspirations of this amorphous bloc and try to work with them.

Politically the biggest division among new collars may be family structure, Greenberg said. There is a big gulf between the 30-year-old nurse with two kids whose husband is also a new-collar worker, for example, and the nurse who is a single mother. The latter may be most sympathetic to Democrats. "People experience a lot of their marginality through kids," Greenberg said, but the new collars may not respond to traditional appeals for empowerment or social welfare. And much as they recognize the reality of the new family structure, they cling to many older familial values.

Whitehead's work has helped push Democratic presidential candidates to talk more about education, health and child care this year, and he has certainly helped many organizers better understand this new social segment, Citizen Action co-director Heather Booth said. But new collars are hard to reach because they are beyond old pulls of party or union or New Deal ideology. They also are not a coherent bloc, like blacks, Jews, seniors, union members or other traditional Democratic constituencies.

Yet Whitehead demonstrated that this large, growing body of relatively young voters has not been lost to Democrats. And his work has pushed political strategists to pay more attention to the experience and culture of voters, to listen to what they say they need and want. That is not a bad first step. □

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Bork and Reagan: Is the president unleashing a constitutional crackpot?

The best argument against Bork can be found in his own writings

By John B. Judis

WASHINGTON

THE KEY QUESTION THE SENATE JUDICIARY Committee will face this month is what kind of Supreme Court justice would Robert H. Bork be: a precedent-minded judicial moderate in the tradition of Lewis Powell and John Harlan or a radical reactionary intent upon reversing a generation of constitutional rulings.

Bork claims to be a conservative and a traditionalist—a follower of English Whig Edmund Burke—but an examination of what he has written as a professor and what he has decided as a judge suggest otherwise. Bork is a constitutional crank whose nomination could transform the Rehnquist court into a right-wing Star Chamber.

The most important source of Bork's opinions is the articles he has written for popular magazines and law journals over the past 25 years. Some of these opinions—like Bork's 1963 *New Republic* article in which he opposed a law forbidding racial discrimination in public accommodations—have proved embarrassing, and Bork has tried to deflect criticism by dividing his legal career into three parts.

The first, lasting through 1968 and spanning his study at the University of Chicago Law School and his teaching at Yale Law School, Bork identifies with the search for a universal and transcendent right. The second phase, spanning his years at Yale and as solicitor general for the Nixon administration, Bork identifies with the search for a theory of judicial restraint, which he articulated in a provocative essay in the *Indiana Law Journal*. And the last, consisting of Bork's tenure at the American Enterprise Institute (AEI) and as a judge on the U.S. Court of Appeals in Washington, D.C., he identifies with a Burkean conservatism that eschews grand theory.

In each career phase Bork has rejected some elements of his political philosophy, but he has retained other important ones. Thus, in spite of his denials, the latter-day Bork's decisions as an appeals court judge have reflected the radical right-wing economics of the Chicago School, and his judicial pronouncements continue to reflect the provocative views expressed in his 1971 *Indiana Law Journal* article. The three phases of Bork's thought are not like three successive houses that have been constructed anew, but rather a baroque monstrosity that has been successively redesigned. Additions have been built, but it has retained its original foundations.

The Chicago School: In his earlier articles, including the *New Republic* piece, Bork was seeking an underlying rationale—a universal right—that both summed up and transcended the rights specified in the Constitution. He praised former Justice Arthur Goldberg's concurring opinion in *Griswold vs. Connecticut*, in which Goldberg used the Ninth Amendment ("The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people") to justify the expansion of rights. Bork declared, "The idea of deriving new rights from old is valid and valuable."

In looking for a transcendent right, Bork was guided by the University of Chicago's Law and Economics Doctrine, which tried to base social and political, as well as economic, decisions on free-market criteria. The Chicago Doctrine was—and is—a contemporary version of the pro-business judicial creed that prevailed on the Supreme Court in the early 20th century and that used the 14th Amendment ("nor shall any state deprive any person of life, liberty or property without due process of law") to strike down any regulation of business.

In a December 1968 *Fortune* article titled "The Supreme Court Needs a New Philosophy," Bork suggested that a transcendent "presumption in favor of human autonomy" could be used to defend not only the kind of non-political speech that the court already protected, but also the "freedoms" of producers to set prices and rents and to concentrate and consolidate. Bork, a long-time foe of the Sherman Anti-Trust Act, was moving toward a legal philosophy that could eliminate entirely government's claims on private producers.

But in the next few years he moved toward a jurisprudence that stressed "judicial restraint" and opposed "judicial imperialism."

Judicial restraint: Bork was not the first legal scholar to argue for judicial restraint, a time-honored constitutional position whose proponents have been liberal and conservative, depending upon the extra-constitutional philosophies that they believe need restraining. Thus the pro-New Deal, pro-free speech Hugo Black saw himself as a "strict constructionist" arguing against judicial conservatives who wanted to bend the First or the 14th Amendment to fit their authoritarian or pro-business proclivities.

Bork's argument for judicial restraint, spelled out in his *Indiana Law Journal* article, was perfectly sound and respectable. The court, he argued, served as a check upon majority tyranny, but it could only perform that function if it is "controlled by [constitutional] principles exterior to the will of the justices." If they began to improvise principles and rights, the court would merely be replacing majority tyranny with minority tyranny. But Bork's application of judicial restraint has been idiosyncratic.

Bork makes his strongest case for judicial restraint in criticizing Justice William O. Douglas' majority opinion in *Griswold vs. Connecticut*, the 1965 case in which the Supreme Court threw out Connecticut's laws prohibiting contraceptive sales on the grounds that the law violated the right of privacy. *Griswold* was the constitutional precedent for the court's 1973 *Roe vs. Wade* decision granting women the right to abortion.

Douglas' argument rested on two dubious constitutional points: First, he claimed that the First, Fourth, Fifth and Ninth Amendments have cast doctrinal "penumbras" (shadows) that "create zones of privacy." In other words, the right of privacy is assumed by these amendments even if it is not explicitly stated by them. Second, Douglas claimed that the 14th Amendment's guarantee of liberty "protects those personal rights that are fundamental, and is not confined to the specific terms of the Bill of Rights." In other words, the right of privacy is a fundamental liberty protected by the amendment.

The problem with Douglas' argument is that it reads prevailing social notions into the Constitution the same way the Supreme Court of 80 years ago read prevailing economic ones into the Constitution. Where Douglas saw a right to privacy in the 14th Amendment, those justices saw a "liberty of contract." Indeed, as Bork had argued in *Fortune*, the right to privacy could easily be extended to entrepreneurs.

But Bork exploited the weakness of *Griswold vs. Connecticut* to argue that the very conflict on which it and later *Roe vs. Wade* was based—individual rights versus legislated religious morality—was not susceptible to constitutional adjudication. He compared the conflict between the state that wants to bar contraceptives and the couple that wants to use them to the conflict between the state that wants to regulate pollution and the consumer who resents the resulting higher prices. Bork also extended the concept of judicial restraint to cases where its use was not justified.

Limited free speech: In his *Indiana Law Journal* article, Bork conceded that it was impossible to decide most constitutional cases strictly on the basis of what the framers thought. Neither they nor the post-bellum authors of the 14th Amendment would have ruled against school segregation, for instance. But Bork insisted that each amendment expresses certain "core values" from which decisions can be derived, irrespective of a judge's political believes or values. As legal philosopher Ronald Dworkin has demonstrated, however, the judges have to choose the level of generality at which a provision's core values are expressed. In making that choice, a jurist inevitably introduces his own politics and values.

Bork's analysis of the 14th Amendment is a case in point. In justifying *Brown vs. Board of Education*, Bork uncovers a "core idea of black equality against government discrimination." But Bork rejects the idea that the amendment's unspecific requirement of equal protection applies to any groups but blacks. Thus he rules out the use of the 14th Amendment to protect political rights of disenfranchised city dwellers in the court's one-man, one-vote reapportionment decisions. And he rules out the use of the amendment to protect women against discrimination. He also argues that it only applies to discrimination against blacks by government. Thus he criticized the court for ruling against racially restrictive real-estate covenants in *Shelly vs. Kraemer*.

Bork's analysis of the First Amendment is even more idiosyncratic and reactionary. Completely eschewing judicial restraint, Bork ignores the amendment's literal text and insists that it is necessary "to construct our own theory of the constitutional protection of speech." Bork's own theory, rooted in his political propensity, is that the amendment covers only "explicitly political" speech. "There is no basis for judicial intervention to protect any other form of expression," he wrote in the journal.

Bork also contends that the amendment does not apply to speech "that advocates forcible overthrow of the government or any violation of law." Applying this to the civil-rights movement, Bork would have jailed not only those who committed civil disobedience, but those who advocated it as a form of protest.

Crabby neo-conservative: The *Indiana Law Journal* article remains Bork's creed. In an October 1985 interview with *Conservative Digest*, Bork said, "I finally worked out a philosophy which is expressed pretty much in that 1971 *Indiana Law Journal* piece which you have probably seen." He has not repudiated his interpretation of the First or 14th Amendment. He has not even modified his view that the First Amendment protects only political speech.

In his confirmation hearings for the Court of Appeals in 1982, Judiciary Committee Chairman Strom Thurmond asked Bork whether he still held that the Constitution protected only explicitly political speech. Bork replied, "It seems to me that the application of the concept of neutral principles to the First Amendment reaches the result I suggested." In short, Bork said that since appeals court judges rule on precedent, his own views were not relevant. He did not say he had changed his view.

In the past decade Bork has grown less theoretically inclined. He has absorbed Burke's anti-intellectualism rather than his gradualism and respect for historical prece-

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