“What we are really asking is whether a world characterized by the existing distribution of natural endowments...is the best of all possible worlds.”

is decidedly fallen, can answer that a better world than this one must exist. But without such beliefs, the question is harder to answer.

Equally difficult is the problem of whether leveling advantages, as Rawlsian liberalism advocates, could alter someone’s character unrecognizably. A man with brown hair may remain the same person if he dyes his hair red, or even if a pill turns his hair blond. But what if the government gave him a pill to change his personality, making him smarter and easier to work with? If he is not the same man, it seems difficult to say that the original individual has benefitted.

Nelson worries that attempts to answer such questions breed illiberal attitudes, both in academic circles and in the general public. Intelligence pills may be an esoteric example, but he argues that many liberals advocate redistributing wealth or eliminating educational selectivity based on the same denial of merit. Such liberals, he has noticed, increasingly assume they know what is best for others. More pointedly, he offers, it seems counterintuitive to uphold free choice by forcibly redistributing wealth.

If these arguments read like veiled attacks on egalitarianism, Nelson insisted during the interview that they are not. “We can agree to distribute all kinds of ways, for all kinds of reasons,” he emphasized. If one accepts that economic inequality breeds political instability, for example, “that’s a very good reason to mitigate inequality.”

his book critiques the idea that liberalism requires redistribution, not redistribution itself. The two ideas can coexist, and often do, “but they needn’t.” Their exact relationship, absent a link of necessity, becomes “a matter of fine-grained judgment about what kind of society we want to live in.”

A modern, Rawlsian liberal might expect policy decisions to point toward a perfect equality in which all individuals can participate as equals in a liberal state. But as Nelson counters, “It’s not that there’s some kind of cosmic verdict that will tell us what tax policy should be.” By returning to a Pelagian appreciation for human choice and accountability, he believes liberalism can avoid the difficulties of attempting to ascertain such a cosmic verdict.

Governments can compel egalitarian redistributions so long as their subjects consent to be governed in that way, even if an individual’s consent entails mere participation in the society the government administers. Consent need not be necessary for each action the government takes, Nelson suggests. The key lies in respecting the individual’s original consent to be governed.

—JOHN A. GRIFFIN

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TEMPERATE ZONING

Land Use and Climate Change

“T he first man who, having enclosed a piece of ground, bethought himself of saying, ‘This is mine,’ and found people simple enough to believe him, was the real founder of civil society.” So argued Jean-Jacques Rousseau in 1754. And so bemoans anyone who wants to tackle the might of NIMBYism and local property rights in the global fight against climate change today.

To combat the polluting byproducts of civilization’s development, many environmental researchers agree that cities need to become denser. Very often, though, the trickle-up politics of parochial interests and local sovereignty overpower broader societal needs. When environmental theory becomes zoning practice, few suburban homeowners want their neighbors to convert their garages into granny flats, or see tall, multifamily walk-ups replacing bu-
Right Now

Colic bungalows. Far-off hills are fitter for green initiatives.

In response, second-year Harvard Law student Grant A. Glovin argues that there could be a creative legal solution to this conflict of interests that keeps Americans living in sprawling developments and heavily dependent on cars. The winner of the 2018-2019 Environmental Law Institute’s Constitutional Environmental Law Writing Competition proposed applying New Jersey’s Mount Laurel zoning doctrine more broadly, to reduce suburban sprawl and combat climate change.

The Mount Laurel doctrine was the New Jersey Supreme Court’s solution to a separate, but related, social problem: exclusionary zoning practices that promote inequality. The case began when low-income African-American communities started to get pushed out of the suburb of Mount Laurel, near Camden, in the 1960s, after the local government rejected plans for an affordable-housing project. A resulting pair of New Jersey Supreme Court cases, in 1975 and 1983, ruled that local governments could not create negative social externalities through their zoning policies.

According to the Mount Laurel decisions, the constitutional need for a fairer, more socioeconomically and racially diverse society outweighs a local government’s prerogative to push affordable-housing obligations to neighboring towns. Mount Laurel argues that local regulation must promote the general welfare of the state as a whole, rather than welfare within a specific locality, and that adequate state-wide housing for people of all income brackets is part of the state’s general welfare.

Glovin argues that climate change, like affordable housing, should be considered in the same way, and thus could be legally championed by using Mount Laurel as the precedent. He admits that this argument would shift power to local courts and put judges in activist roles, raising the fundamental question of whether the U.S legal structure should be used in this way. But Glovin believes the environmental stakes are high enough to warrant such activism. Otherwise, the status quo will never change: local citizens and their governments will quash zoning proposals for denser housing, thereby keeping greater metropolitan areas both too sprawling and too sparsely populated to support better public-transit systems, leaving commuters car-bound and carbon-dependent.

The legal logic of Mount Laurel has been heralded as both groundbreaking and highly controversial. It underpins New Jersey’s Fair Housing Act and furnishes activists with a powerful legal argument for fairer zoning policies. But it has not been legally adopted beyond New Jersey’s borders—and it has been legally and bureaucratically challenged by townships across that state for decades. (That includes Mount Laurel itself, where the construction of the original affordable-housing project that launched the case was stalled for years.)

Glovin’s legal arguments for widening the Mount Laurel doctrine’s scope are logical and promising, but will likely be politically unpalatable to many. That buttresses one of Glovin’s main points: the parochial entrenchment of local government structures makes it very difficult to solve the inherent conflict between NIMBYism and global environmentalism through existing political structures. For Glovin, this political problem warrants a legal workaround. He writes: “We are running out of solutions to an urgent problem, and judicial intervention appears to be the best remaining hope.”

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The legal logic of Mount Laurel suggests that local regulation must promote the general welfare.

Illustration by Pete Ryan

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