COMMONWEALTH: A Journal of Political Science

EDITOR: Donald G. Tannenbaum (Gettysburg College)

MANAGING EDITOR: James E. Skok (Penn State Harrisburg)

EDITORIAL REVIEW BOARD

Aryeh Botwinick  
(Temple University)

David Butler  
(Nuffield College/Oxford University)

M. Margaret Conway  
(University of Florida)

Lester G. Crocker  
(University of Virginia, Emeritus)

Roger H. Davidson  
(University of Maryland)

Jean B. Fishtain  
(Vanderbilt University)

Richard F. Fenno  
(University of Rochester)

Marianne Githens  
(Goucher College)

Michael B. Grossman  
(Towson State University)

Susan W. Hammond  
(American University)

Dorothy B. James  
(Connecticut College)

Samuel Krislov  
(University of Minnesota)

G. Calvin Mackenzie  
(Colby College)

Michael J. Malbin  
(State University of New York at Albany)

Harvey C. Mansfield, Jr.  
(Harvard University)

Kenneth F. Mott  
(Gettysburg College)

Craig N. Murphy  
(Wellesley College)

Mark P. Petracca  
(University of California, Irvine)

Elmer Piasecky  
(University of Maryland, Emeritus)

H. Mark Roelofs  
(New York University)

Bruce M. Russett  
(Yale University)

Victoria Schuck  
(Stanford University)

J. David Singer  
(University of Michigan)

Alonzo T. Stephens, Sr.  
(Tennessee State University, Emeritus)

Elliott White  
(Temple University)

Aaron Wildavsky  
(University of California, Berkeley)
COMMONWEALTH: A JOURNAL OF POLITICAL SCIENCE

Contents

Volume 4 .......................... 1990
ISSN 0890-2410

Organizational Reform of Public Institutions by Federal Courts:
The Effectiveness of Participatory Approaches
William R. F. Phillips
and Janet Rosenberg ......................... 1

Hegel's Constitutionalism
David Schultz .............................. 26

Man: Body and Will--Hobbes's Theory of Representation
Richard T. Martin .......................... .47

Measuring the Impact of Institutional and Occupational
Affiliation on the Stances of Soviet Officials in the
1980-81 Polish Crisis
Curtis R. Brautigam ......................... 63

PENNSYLVANIA RESEARCH

Party and Political Recruitment: Women and Access
to the Pennsylvania House of Representatives
Robert E. O'Connor .......................... .80
ABOUT THE AUTHORS

Curtis R. Brautigam is an Assistant Professor of Political Science at Chestnut Hill College in Philadelphia. He has presented papers at various conferences dealing with Soviet defense policy and crisis management.

Richard T. Martin is an Associate Professor of Political Science and Department Chair at Slippery Rock University. His most recent publications have been in *American Politics Quarterly* and *Political Psychology*.

Robert E. O'Connor is an Associate Professor of Political Science at Pennsylvania State University. His current research focuses on risk communication, environmental policy, and public attitudes toward new technologies.

William R. F. Phillips is a Professor of Sociology at Widener University. His research interests include law and social policy and urban development.

Janet Rosenberg is a Professor of Sociology at Widener University. Her major interest is in the sociology of organizations and professions. Recent publications include articles in the *Indiana Law Journal* and *Women and Politics*.

David Schultz is an Assistant Professor of Political Science at Gustavus Adolphus College in St. Peter, Minnesota. He has previously published articles on property rights and plant closings, and he is presently working on a book on property rights in American democracy. He is coauthor of *A Short History of the U. S. Civil Service* (University Press of America, forthcoming, 1991).
ACKNOWLEDGEMENT

COMMONWEALTH is published annually under the authorization of the Pennsylvania Political Science Association and sent to all members, individual, departmental and institutional.

Subscription rates for all categories of membership: see separate announcements elsewhere in this issue. Changes of address sent to PPSA Secretary, Dr. Thomas Brogan, Albright College, Reading, PA 19603. Postmaster: send notification about undelivered journals to this address. Second class postage paid at Harrisburg, PA and at additional mailing offices. Copyright 1990 by the Pennsylvania Political Science Association. (ISSN 0890-2410).

COMMONWEALTH will print free of charge camera-ready official announcements of up to one page of the American Political Science Association, as well as the Northeastern Political Science Association and its constituent members, and other organizations whose Journals provide corresponding privileges to PPSA. Contact the Managing Editor.

Advertising and reprint information and rates are also available from the Managing Editor.
OFFICERS

President
Michael Roskin
(Lycoming College)

First Vice President
Thomas Baldino
(Juniata College)

Second Vice President
Zachary Irwin
(Penn State, Behrend College)

Treasurer
Donald Buzinkai
(King's College)

Secretary
Thomas Brogan
(Albright College)

Past President
Donald G. Tannenbaum
(Gettysburg College)

EXECUTIVE COUNCIL

1988-1991
Nicholas Berry
(Ursinus College)
Joan Hulse Thompson
(Beaver College)

1989-1992
Albert Dalmolen
(Mansfield University)
Joseph Melusky
(St. Francis College)

1990-1993
James M. Hoefler
(Dickinson College)
Richard Martin
(Slippery Rock University)
As editor of this journal I have been faced with many decisions in the course of completing work on any issue: publish or not publish? call for additional reviews? edit extensively or leave most editing to the author? which reviewers' suggestions are central to the emergence of the best possible piece on a subject and which are more peripheral? and so on. However important such decisions are, they must necessarily emerge out of a careful consideration of the submitted articles themselves. If a manuscript is not ready for publication, editors and reviewers can do little more than suggest to an author possible routes for improvement; on the other hand, if it is clearly a fine work which advances knowledge of its subject in a scholarly way, then we need do little more than acknowledge and applaud the author's accomplishment. And if manuscripts are not submitted, then we are simply left to twiddle our thumbs until some appear. In sum, we are necessarily (and properly) subject to the call of our authors.

Since the first issue of COMMONWEALTH appeared, several people (including the experienced editors of some other state journals) have most amiably suggested that pressure will soon build a need for more frequent publication, perhaps to twice a year or even more often at some time in the not-too-distant future. This may indeed come to pass, although I think I have my hands sufficiently full with an annual at this point. At the same time, I am committed to the proposition that no worthwhile piece submitted to COMMONWEALTH ought to go unpublished. Should these two perspectives ever conflict, my sense of professional responsibility will doubtless lead me in the direction of expansion. The key factor to note at this juncture is that quality must precede quantity; in order to feel sufficient pressure to publish more frequently, an increasing number of solid, acceptable manuscripts must be submitted by those out there who are doing the research and writing, especially on Pennsylvania politics, an important staple of each issue. We are here and waiting.

Still, I have continued my efforts to gain greater visibility for COMMONWEALTH at state, regional and national political science meetings. In pursuit of this goal, I accepted an invitation from APSR Managing Editor Samuel C. Patterson to join a workshop for political science journal editors he organized at the 1990 Annual Meeting of the American Political Science Association in San Francisco. The workshop was composed of the editors of several of the top national and international political science journals, and as the only panelist from a state journal, I spoke on "The Role of
a State Journal Editor." I was also able to touch base with some authors and members of the Editorial Review Board and to tell prospective authors about COMMONWEALTH. In the past such activity has borne fruit in the form of new submissions, and I hope this trend continues.

Now, however, let me direct your attention to the fine collection of research pieces which constitute Volume 4. They range from the exploration of some unique participatory techniques that federal judges have devised to promote reform in complex bureaucratic institutions, through studies of the meaning and importance of Hegel's constitutionalism and the dynamics of Hobbes's concept of willing, to a sophisticated application of the bureaucratic politics/interest group approach to the behavior of key Soviet officials during the Polish crisis of the early 1980's. Volume 4 concludes with a study of Pennsylvania politics which addresses the question, why has this Commonwealth elected so few women to its state legislature? Like several of our past studies of Pennsylvania politics, the answer to this question has significance far beyond the borders of this one state, particularly as state legislatures have become such important arenas for the resolution of major issues that specially impact on women.

I cannot conclude without expressing my gratitude to the authors, members of the Editorial Review Board and other reviewers, colleagues in the Pennsylvania Political Science Association, editors of other journals, and numerous others who have contributed immeasurably to this enterprise. My thanks also to my editorial assistant, Jennifer Franchetti of Gettysburg College, for her second go-round in that job. And special appreciation is due our new Managing Editor, James Skok of Pennsylvania State University at Harrisburg. Readers may remember him as the author of the article on Pennsylvania politics in Volume 3. Charged with the responsibility for turning approved manuscripts into a finished journal, his contribution is essential to the final product. Besides riding herd on all those involved in the production process, he has been, like our previous Managing Editors, a valued source of advice and assistance.
PENNSYLVANIA POLITICAL SCIENCE ASSOCIATION
DEPARTMENTAL MEMBERSHIP FORM

Commemorating its Fiftieth Anniversary, PPSA has established this new category of membership. For a most reasonable charge, on a single form, an entire department can now join PPSA. Membership includes, for each member of your department whom you list, the full benefits of individual PPSA membership, including:

- personal copies of Commonwealth
- the new Pennsylvania Political Scientist (our expanded Newsletter)
- advance Call for Papers for the Annual Meeting

Every member department is specially recognized by being listed in COMMONWEALTH, thus marking its role in supporting PPSA; current departmental members are already so listed in this issue.

Departmental Membership annual dues, depending on highest degree granted in Political Science on your campus:

- Doctoral-granting schools $100.00
- Masters-granting schools 75.00
- Bachelors-granting schools 50.00
- Two-year campuses 25.00

To enroll prior to the Annual Meeting, mail by April 1 to:

PPSA Treasurer, Dr. Donald Buzinkai,
King's College, Wilkes-Barre, PA 18711.

CHAIRPERSON'S NAME: _____________________________

ADDRESS: _________________________________________

____________________________________________________

____________________________________________________

CITY, STATE, ZIP: _________________________________

Check enclosed, sum of: ______________

Please list current faculty members in your department who are to receive all mailings on a separate (letterhead) page, alphabetically, with academic rank next to each name.
To Individual Members: Remember, when you join the Pennsylvania Political Science Association, the oldest state political science association in the United States, membership includes *COMMONWEALTH*: A JOURNAL OF POLITICAL SCIENCE.

If you will not be able to attend the meeting this year and want to maintain your individual membership (enabling you to receive the next issue of *COMMONWEALTH*, the new *Pennsylvania Political Scientist* and all other mailings), please complete the form below and mail it in, postmarked before April 1.

**Note:** If your department has enrolled as a Departmental Member, you are already a member and need not personally enroll or pay additional dues to receive all benefits of membership. In addition, as long as your department continues as a Departmental Member, it will not be necessary for you to remember to renew each year in order to continue to support PPSA and receive all benefits. If your department has not yet enrolled, PPSA encourages you to share the Departmental Membership Form in this issue with your Chairperson.

**Membership Rates:**
- Individuals: $5.00
- Students: $3.00
- Institutional and Library: $12.00
  (Add $1.00 for foreign countries)

**Mail To:**

PPSA Treasurer, Dr. Donald Buzinkai,
King's College, Wilkes-Barre, PA 18711.

**NAME:**

**ADDRESS:**

**AFFILIATION:**

**CITY, STATE, ZIP:**

Check enclosed, sum of: __________
Since the 1950s Federal Courts have become extensively involved in the reform of public institutions in response to the complaints of minority and disadvantaged groups. Many judges, cognizant of the unusual and complex nature of their task, have chosen novel participatory forms of case management. Using the case literature, this paper tries to identify the major forces which influence this choice, and explores the conditions under which participatory structures may or may not be instrumental in achieving institutional reform. Toward these ends, we propose several hypotheses as the basis for future systematic study of the development and outcomes of these non-traditional methods of case management.

Since the 1950's, minority and disadvantaged groups have used the federal courts to obtain relief from violations of their constitutional or statutory rights by public institutions. This represents a historic change in the operation of the judiciary and, therefore, in the American political process. School systems, police departments, prisons, and facilities for the mentally ill and retarded have been among the institutions whose practices have been challenged. The basis for these challenges include federal laws section 1983, 1981 and 1343(3) as well as the Eighth and Fourteenth Amendments to the Constitution (Turner, 1979; Sullivan et al, 1980; Blackmun, 1985). Through these cases, the federal courts have becomes involved in the complex and extensive reform of public institutions. This activity, normally or previously left to the legislative and administrative branches of government, challenges traditional conceptions of the operation of the federal courts (Cox, 1976; Johnson, 1981).
Commonwealth

During the 1980's, in part because the Reagan administration acted to restrict access to the federal courts for reform purposes (Rosenberg, 1986), fewer such cases were initiated. Nevertheless, relevant court actions continue and may still be the basis for significant social change. The recent suit filed in Philadelphia challenging the funding practices of the Commonwealth of Pennsylvania regarding public programs for retarded adults may be the beginning of new rounds of important litigation in that area of the law (Hinds, 1989). In addition, the current Americans with Disabilities Act which, at this writing, has passed the House and Senate and is supported by President Bush, may provide a substantial basis for extensive court activity (New York Times, 1989; Holmes, 1990a and 1990b).

Political administrations and public sentiments change, but as long as the courts remain sensitive to certain standards of decency, they will need to respond to challenges to existing institutional practices (Eckland-Olson and Martin, 1987). Phillip Cooper (1988), in his study of Federal judges and institutional reform, concludes that regardless of ideology, judges "... simply are not in a position to refuse to respond to proper cases instituted by appropriate parties under provisions of statutory or constitutional law. ...The notion that the controversial remedial decree cases are simply manifestations of a liberal federal judiciary intent upon playing guardian without regard to the consequences of their wide-ranging decisions simply does not withstand empirical analyses." (p. 328) The recent Supreme Court ruling in a Missouri case, that Federal judges may order local governments to increase taxes to remedy constitutional violations like segregation, is a case in point (Lewis, 1990).

Courts and Organizational Processes: Toward a systematic Analysis of Institutional Reform Cases

Because of the non-traditional and complex nature of these institutional reform cases, conventional methods of adjudication have often been regarded as inappropriate or inadequate. If the policies and procedures of complex bureaucratic institutions are found to be in violation of the law, simple remedies are not easily determined, much less implemented. Consequently, many judges have responded by devising unusual court arrangements to accomplish reform. In effect, they have created, under the aegis of the court, new organizational structures within which it can be decided what reforms are needed and how they can be achieved.

A number of observers have noted that in the majority of these cases, some form of participatory organizational structure has been chosen (Columbia Law Review, 1978; Diver, 1979; Rebell and Block, 1982; Weinstein,
1980). Participatory organizational structures are those forms of court orchestrated decision making which include direct formal involvement of all or most of the parties to the case in the determination of the problems to be addressed and the development and implementation of a plan for solving them. Participatory structures can be of various types. For example, in the initial stage of remedy finding, when the plan for reform is developed, judges often encourage plaintiffs and defendants to reach negotiated settlements among themselves which the court can then support. Thus Rebell and Block (1982), in their analyses of sixty-five cases of court involvement in educational policy making, found that in 87% of the cases where reform decrees were issued, some "mode of participation played a significant role in shaping the remedy." (p. 61) Masters may be appointed by the court to preside over multi-group negotiations leading to a consent agreement. Sometimes parties other than the plaintiffs and defendants, organized into task forces, panels, or special committees, may be given responsibility for aspects of the implementation of the decree (Dentler and Scott, 1981). In some cases, a judge may preside directly over a courtroom that is transformed into a quasi-open, town meeting-like forum to receive reports, resolve problems and hear grievances by community groups and individuals (Yeazell, 1977; Rosenberg and Phillips, 1981-82). All of these procedures have developed within the unique context of the federal courts and, as a result, they are shaped and limited by legal traditions, rules of procedure and prevailing beliefs about the proper role of courts in the political process.

Many scholars have expressed their general approval or disapproval of this participatory development. Some have seen these new decision-making forms as necessary and as a sign of the judicial system's vigor and flexibility (Yale Law Journal, 1963; Hill, 1969; Virginia Law Review, 1971; Cox, 1976; Robbins and Buser, 1977; Eisenberg and Yeazell, 1980; Oakley, 1980; Katzmann, 1980; Greanias and Windsor, 1981; Johnson, 1981). Others have seen in them a serious threat to the American system of checks and balances (Glazer, 1975 and 1978; Berger, 1977; Roberts, 1977; Nagel, 1978; Mishkin, 1978; Boatright, 1980).

In this paper, our approach is analytic not evaluative. Specifically, we are concerned with the following questions: why and how do these participatory organizational forms develop and what is the relationship between these forms and successful organizational change? Our goal is to identify the structural forces which contribute to the establishment of participatory structures and to examine the role participatory decision-making forms play in the achievement of the objectives of the plaintiffs. Underlying these questions is a general issue of interest to students
of organizational change: to what extent do emergent decision-making forms develop in direct response to organizational goals?

This paper is also an attempt to better understand an aspect of the judicial process discussed by Cooper (1988). In his Remedial Decree Model, Cooper distinguishes between four analytic categories intended to describe the process by which remedial decree cases develop and are resolved: the trigger phase, the liability phase, the remedy phase and the post-remedy phase. Our study is an effort to clarify what we believe are certain general processes which occur during the last two phases. Although we understand the distinction between remedy formulation (the remedy phase) and implementation (the post-remedy phase), we, like Cooper, see these processes as intertwined and reciprocal. As attempts to implement initial decrees experience the complexities discussed in this paper, new decrees are formulated leading to new implementation procedures. Our focus is on the structure of relations between persons selected by judges to oversee and facilitate these phases in the remedial process.

It is also our intention to help in the understanding of the judge’s complex role. As Cooper (1988) argues, "... the truly hard choices (judges must make) come from the effort to meet the elements of remedial adequacy while balancing those demands against the need for limits to discretion, both the more formal doctrinal constraints and the less formal judgmental factors associated with a prudent sense of the court’s relationship to the community and its administrative and elected officials." (p. 350)

Our exploration of these issues is based on an analysis of a series of case studies of court-ordered institutional reform covering a range of locations and institutional types. (Yale Law Journal, 1975; Horowitz, 1977; Harris and Spiller, 1977; Stanford Law Review, 1977; Berger, 1978; Columbia Law Review, 1978; Boatright, 1980; Reynolds, 1979-80; Rebell, 1981; Rosenberg and Phillips, 1981-82; Rebell and Block, 1982; Kirp and Babcock, 1981; Rothman and Rothman, 1984). To date, no comparative study of the development and effects of different court methods of adjudication in institutional reform cases has been conducted. Of course, existing studies do not necessarily constitute a representative sample of all institutional reform cases. Nevertheless, by studying the court cases that have attracted the most scholarly attention, we hope to identify the most important variables which determine the dynamics or outcomes of these cases in general. From our analysis of these cases, we have derived a series of hypotheses which we believe can constitute a substantial basis for future systematic analysis. In each case, the hypotheses follow the discussion of the relevant research.
The Formation of Participatory Structures

Participatory structures in institutional reform cases appear to develop as a result of three major forces: 1) the multiparty nature of the cases, 2) the role played by secondary parties, and 3) the non-traditional quasi-legislative and/or quasi-executive function required of the court. We believe that these are the primary forces which influence the majority of judges to select participatory forms of case management regardless of the judges' initial intentions or preferences. In addition, we believe that throughout the course of institutional reform cases, these forces have a cumulative effect. That is, decisions made to extend participation at one stage of a case, tend to increase the likelihood of expanded participation at later stages.

Multi-party complexity. In contrast to traditional cases in which the defendants and plaintiffs are likely to be single parties, institutional reform cases typically have a multi-party structure (Chayes, 1976; Diver, 1979). Recognizing the multiple interests to be accommodated and the complexity of both the substantive and human problems to be resolved, courts have often departed from traditional forms of adversarial procedure and established structures of case management that seem better able to accommodate differing interests and handle complex conflict between parties.

Named defendants often include officials from a variety of municipal and state governmental agencies whose interests and objectives are incompatible. In such cases, the likelihood of conflict between defendants is high. For example, in *Hart v. Community School Board* (1974), a Coney Island school desegregation case, the original defendants insisted that the racial segregation of schools in the district was the direct result of municipal and federal policies affecting neighborhood residential patterns. Consequently they enjoined the Mayor, the city, and both local and federal housing authorities as co-defendants. Ensuing negotiations were marked by disagreement and the resistance of the defendants to make joint commitments to a comprehensive plan that would effectively alter the racial distribution of families in the district. In another case, *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* (1971), involving the rights of retarded children to a public education, two of the defendants, the state and the Philadelphia School District were battling in state courts over the alleged failure of the state to remit millions of dollars of special education funds to the Philadelphia District. During negotiations to develop a plan for the education of retarded students in Philadelphia, these two parties agreed on virtually no issue of importance related to the reform of education for the class that had brought the suit (Rosenberg and Phillips, 1981-1982). These may be extreme cases, but conflict among defendants is not
Commonwealth

unusual. It frequently occurs when named defendants are constrained by the demands of different constituencies or by dependence on different funding sources (Kirp et al, 1979; Rosenberg and Phillips, 1981-82; Rothman and Rothman, 1984), or when battles for jurisdiction over institutional functions obstruct agreement within defendant ranks as in the case of Chance v. Board of Examiners (1971; see Rebell and Block, 1982).

The roster of plaintiffs is likely to be even longer than the list of defendants and represent an even more diverse set of interests. In one case, Rizzo v. Goode (1976), involving claims of racial discrimination in the staffing of a municipal police department, the plaintiff list included the State of Pennsylvania which represented all citizens, a sub-class of black citizens, thirty-two community agencies as well as the Southern Christian Leadership Conference (Cox, 1976). One would hardly expect all of these groups to have the same objectives in joining the suit or to be satisfied with an identical remedy. Often subgroups of a class, although enthusiastic about joining a suit to force the reform of an institution, have, in reality, different policy objectives or priorities which reflect the interests of the particular constituencies of each group. For example, state and local chapters of The Association of Retarded Citizens and the NAACP, both important participants in institutional reform litigation, have taken different positions in cases concerning both legal strategies (Kirp et al, 1979; Rothman and Rothman, 1984). In one case, a subgroup of the plaintiff class had such serious policy disagreements with other plaintiffs that it disengaged itself from multi-party negotiations to pursue its own interests through another round of litigation (Rosenberg and Phillips, 1981-82).

As we have suggested, when cases involve this many parties with differing points of view and interests, traditional court procedures are usually viewed as inadequate to secure institutional changes and, at the same time, satisfy all parties. Instead, there are strong pressures to design some method of handling cases to facilitate integration of the views of all parties in the final plan. Therefore:

Hypothesis A. The greater the number of named parties in a case, the more likely a participatory structure will be designed.

Hypothesis B. The more divergent the interests among plaintiffs or among defendants, the more likely a participatory structure will be designed.

Secondary Parties. The relaxation of rules of standing and the willingness of judges to allow interest groups to intervene in institutional
reform suits further increase the pressure to change traditional court procedures (Cox, 1976). There are many groups with political, economic or professional interests in a case that seek a formal role by petitioning the court for intervenor status, or join the case as co-plaintiffs or co-defendants.

For example, Pennsylvania v. O'Neill (1979) was originally a case in which a group of black men assembled by the NAACP sued the Philadelphia Police Department, alleging discriminatory hiring and promotion practices. Later, the Commonwealth of Pennsylvania and the Guardian Civic League, a black policemen's group, became plaintiffs, while the Fraternal Order of Police, a police union traditionally dominated by whites, joined the Police Department as co-defendant (Reynolds, 1979-80).

Economic interests may be dominant in such cases as those in which labor unions have participated. In Horacek v. Exon (1975) a union joined the plaintiffs, asserting that a proposed reduction in staff at a Nebraska institution for the mentally retarded would deprive residents of their constitutional rights (Harvard Law Review, 1977), and would, incidently, mean a loss of jobs for union members. In PARC v. the Commonwealth of Pennsylvania (1977) the local chapter of the American Federation of Teachers (AFT) petitioned for and was granted standing as a neutral party because of its concern with the integrity of its contractual relations with the Philadelphia School Board. The AFT chapter had complained that the appointment of a master with the authority to oversee the hiring, training and supervision of special education teachers would usurp the functions of the school district and that the transfer of such broad discretion to a master would conflict with its collective bargaining agreement. During the proceedings the chapter was represented by counsel, and was assigned a seat on the panel charged with monitoring the implementation of the remedial plan.

Experts or professional groups, perceiving themselves to have significant interest in a particular case, have also played important roles as amici, witnesses and court-appointed masters. Many cases involve complex substantive issues over which there is considerable debate. Issues such as the following have been integral to certain cases: what method of instruction will achieve the optimum results with retarded school children; what kinds of therapeutic services are necessary for the mentally ill; what techniques will lead to truly integrated schools; and how can humane but secure prison facilities be designed? Typically, judges are not experts on these questions and often welcome the participation and advice of professionals. They have even instructed defendants to obtain expert assistance with the formulation of remedial plans (Columbia Law Review, 1978; Horowitz, 1977). For example, in Pugh v. Locke (1976) the judge, unconvinced of the ability or the
willingness of officials to effectively plan for the reform of the prison system in Alabama, went so far as to order the Corrections Department to confer with the Department of Correctional Psychology at the University of Alabama (Stanford Law Review, 1977). Judge Garrity, in the Boston desegregation case Morgan v. Hennigan (1974), found it necessary to appoint a panel of six experts, four as masters, which was charged with developing a plan to desegregate the Boston schools and to coordinate the activities of the school district with local universities (Kirp and Babcock, 1981; Dentler and Scott, 1981). In other cases, during the implementation of complex reform plans experts frequently have been appointed as special masters, that is, as officers of the court with considerable power to negotiate a remedy, design a remedial plan and monitor the reform process (Harris and Spiller, 1977; Nathan, 1979; Kirp and Babcock, 1981; Levine, 1984).

Plaintiffs also regularly enlist the support of experts to strengthen their position and to bring pressure to bear on the decision of the court from interested professional associations or powerful advocacy organizations. The American Psychological Association, the American Ortho-psychiatric Association and the American Civil Liberties Union were invited to enter Wyatt v. Stickney (1971), an Alabama mental hospital case, as amicus curiae, with rights to present evidence and cross examine witnesses. Their representatives also participated in negotiations and helped to formulate the standards of constitutionally acceptable service that were later stipulated in the final decree (Yale Law Journal, 1975). Some of the same organizations took part in the proceedings in Morales v. Turman (1973), a Texas case challenging the conditions in reformatories for delinquents (Diver, 1979), and later formed a powerful coalition to support the plaintiffs in the Willowbrook case, NYSARC and Parisi v. Rockefeller (1973), a case concerned with conditions in an institution for the mentally retarded (Rothman and Rothman, 1984).

In the Wyatt case, the primary function of these organizations was to provide professional assistance to the plaintiffs. At the same time, local chapters of these national groups saw an opportunity to gain greater influence over practices and over the appointment of personnel in the mental health system of Alabama (Drake, 1981; Eisenberg and Yeazell, 1980; Yale Law Journal, 1975). In the Morales case, members of the American Ortho-psychiatric Association claimed that the Texas juvenile justice system failed to train, test, or prescreen their correctional staffs, that they used force routinely as the only means of controlling their residents and that they seriously limited the juveniles' contact with professional psychologists (Diver, 1979). Here, too, a professional organization secured a role in a case not only to insure the civil
Rights of the plaintiff class but also to insure their own professional presence in the prison system.

Pressure to create inclusive participatory structures are particularly strong during the implementation phase of these cases. In most traditional suits, court involvement ends with a decision. But in institutional reform cases, judges retain jurisdiction during the complex process of transforming the decree into new institutional practices. The political struggles that were evident earlier in the case are reactivated and sharpened as the parties cope with organizational redesign. Since decrees essentially provide the direction rather than the specific means of attaining the desired reforms, and since there is no one certain way to achieve objectives, the focus shifts to evolving institutional polices (Chayes, 1976; Kirp and Babcock, 1981). The choices that are made have implications for the control and distribution of resources in the organization which is the target of reform. Consequently, groups attempt to position themselves to protect the interests of their constituencies during what is often an intensely political and protracted process of organizational change (see Yeazell, 1977; Kirp, et al, 1979; Rosenberg and Phillips, 1981-82; Rothman and Rothman, 1984; Johnson and Canon, 1984).

Finally, the issues posed in these cases have often led to the involvement of the federal government as an active party. In some cases, judges or plaintiffs have asked the Civil Rights Division of the Department of Justice to enter as a friend of the court (Diver, 1979; Weinstein, 1980). In others, departments of the federal government have initiated civil rights cases or have joined a case in support of one or another party. In the past, the then-Department of Health, Education and Welfare's Office of Education participated in school desegregation cases, and the Law Enforcement Assistance Administration has been involved in early cases of prison reform. The Civil Rights Division of the Justice Department has been influential in an amicus role in civil rights suits, many involving institutional reform (Diver, 1979). However, it should be noted that until 1980 the Justice Department usually entered to support the claims of the plaintiffs and encouraged broad reform. Under the Reagan Administration, the Department was more likely to support the claims of defendants. It argued for less comprehensive remedies, and it actively worked for less intrusive involvement of the federal courts into the operation of state and local institutions (Fiss and Krauthammer, 1982; Greenhouse, 1985). Early indications suggest the Bush Administration may follow suit.

It should also be noted that there is a tendency in these cases toward a snowball effect. That is, when a judge establishes a decision-making structure that incorporates the participation of many parties, he or she tends to become more aware of the complexity and the systematic nature of the problem to be
addressed. This, in turn, tends to create ever-increasing pressures for the participation of groups in further stages of the case. Apparently this is what happened in the Wyatt case and in Pugh v. Locke. In each of these cases, the judge was persuaded that, given the persistence of inhumane and deplorable conditions and the continuing indifference and apparent incompetence of government officials, nothing short of system-wide reform involving the input of many groups could insure even minimal standards of treatment (Yale Law Journal, 1975; Robbins and Buser, 1977; Johnson, 1981). As more parties became involved in these situations the social policy issues expanded and, consequently, the number of involved community groups increased.

Although expanding participation can be controlled or limited by the judge, given the nature of these cases as outlined here, even judges with an ultra-traditional point of view find it difficult, if not impossible, to resist the pressures toward a more participatory structure (Yudoff, 1981). It is improbable that any judge hearing these cases can avoid consideration of the various competing interests. At the same time, he or she can not help but be impressed by the enormity of the task of successfully achieving genuine institutional reform. Faced with this problem, judges seek evidence and supporting arguments from many participants and welcome an agreement developed by them which the judge can then ratify. Our hypotheses, therefore, are:

Hypothesis C. When parties other than the original plaintiffs or defendants are permitted to have formal roles in a case, the likelihood that a participatory structure will be designed increases.

Hypothesis D. The more the number of groups or agencies that perceive themselves to have an economic, professional or political interest in the outcome of a case, the more likely a participatory structure will be designed.

The quasi-legislative or quasi-executive function of the court and questions of legitimacy. Judges who are convinced of the necessity for comprehensive institutional reform confront questions of whether or not the court has a legitimate role in these cases and what it might be. Issues of legitimacy are raised, for example, when a federal judge believes it necessary to issue complex, affirmative decrees consisting of 21 pages of standards governing the treatment of mentally handicapped clients as was done in the Wyatt case (1971; see Lottman, 1976; Drake, 1981), or specifies that standards of sanitation, nutrition, personal hygiene, medical and rehabilitative services must be met to insure the constitutional rights of prisoners as in Pugh v. Locke.
Such comprehensive remedies do raise questions about the extent to which a
federal court can command the behavior of government officials in state
jurisdictions and the degree to which a judge may preempt the legislative and
executive functions of government in specifying social policies for local
institutions.

There is also the issue of the courts' capacity to enforce decrees in a
political environment dominated by principles of separation of powers and
complicated by the defendants' real control of the operation of institutions
and by legislative power over state revenues and their distribution. In reality,
the Federal courts have limited power to directly intervene in the operation of
state institutions and possess relatively few means of assuring the compliance
of defendants. Therefore, in order to legitimate what is viewed by many to be
a problematic enterprise, judges may introduce a participatory structure for
adjudication that is more compatible with the democratic legal maxim "what
touches all should be approved by all." (Richardson, 1983) As
Schattschneider says, "democracy not only implies a set of procedures but is
also a moral system." (1969, p. 43) This moral system involves an attitude
toward people deeply embedded in the American polity which posits that
decisions based on democratic procedures have added moral authority.
Further, by accepting the agreements arrived at by the litigants and their
respective supporters, the judge can effectively distance himself or herself
from the details of political bargaining and avoid the appearance of arbitrarily
expanding the policy-making function of the court. Judges are also influenced
by the widely held utilitarian belief that representational systems are more
effective in arriving at workable agreements related to controversial social
policy than are unilateral systems (Lipsky, 1971; Van Meter and Van Horn,
Therefore:

Hypothesis E. As the power of the court to command
institutional change becomes more problematic,
participatory structures will be more frequently employed as
a means of legitimating court processes and outcomes.
Hypothesis F. The more a court's actions become
preemptive of traditionally-defined legislative and executive
governmental functions, participatory structures will be
more frequently employed as a means of legitimating court
processes and outcomes.
Participatory Structures and Pressures for Change

Given that participatory structures are created by the forces outlined above, our next question is: are they truly conducive to the achievement of organizational change? The answer to this question appears to depend on one's point of focus and on the amount and immediacy of change one expects.

Participatory Structures as Conducive to Change. Participatory procedures have led to the establishment of routine methods of dispute resolution which have diminished the intensity of conflict among the parties (Rosenberg and Phillips, 1981-82). These procedures also tend to create regular avenues of communication between the parties inside and outside of the court and provide for an institutionalized means of examining alternative program choices. To the extent that such procedures promote cooperation and lead to a reconciliation of problems, they facilitate organizational change.

During both the trial and implementation phases of litigation the involvement of many interested groups often brings to light damaging facts about defendant institutions that are disseminated through the media. The spread of this information is often instrumental in creating a constituency sympathetic to reform. It does not help the defendants, for example, as in the Wyatt case (1971), when prestigious organizations such as the American Association on Mental Deficiency, the American Civil Liberties Union, The American Orthopsychiatric Association, the American Psychological Society, The National Association for Mental Health, and the National Association for Retarded Citizens, jointly file a friend of the court brief describing the death and debilitation of institutionalized children and adults that have resulted from the alleged indifference and brutality of staff and the lack of administrative supervision (Yale Law Journal, 1975).

Public concern can turn to outrage in response to testimony concerning the resistance of officials to change or to reports by court-appointed monitors of inhumane conditions still uncorrected, or worse yet, to horror stories of victimization and neglect (Yale Law Journal, 1975; Harris and Spiller, 1977; Dyer, 1979; Woestendick, 1984; Rothman and Rothman, 1984). Such reports give more credibility to the plaintiff's concerns and legitimate to the public and to potential critics the interventions and the sanctions imposed by the federal courts on institutional administrators who apparently fail to meet their constitutional obligations.

As Schattschneider points out, "...all political conflict consists of two parts: the actors at the center of the conflict and the audience or spectators who are drawn into the conflict. The spectators are an integral part of the situation, for as likely as not, the audience determines the outcome of the fight." Hence, "...the outcome of all conflict is determined by the scope of its
contagion." He further argues that "the most important strategy of politics is concerned with the scope of conflict. So great is the change in the nature of any conflict likely to be as a consequence of the widening involvement of people in it that the original participants are apt to lose control of the conflict altogether." (Schattschneider, 1975, pp. 2-3)

With open participatory structures, defendants do not "lose control of the conflict altogether," but they do lose their ability to operate free from public scrutiny. Since the court maintains jurisdiction in the majority of institutional reform cases, it becomes increasingly difficult, given the attendant publicity, for the defendants to resist cooperation indefinitely. This does not mean that, by itself, participatory structures of adjudication guarantee that the defendants will meet the demands of the plaintiffs, but it does mean that it will be increasingly difficult, as time passes, for them to ignore the remedial mandates of the court.
Therefore, we hypothesize:

Hypothesis G. If a participatory structure institutionalizes routine procedures for the resolution of disputes between the parties and regularizes avenues of communication, organizational reform is more likely to occur.
Hypothesis H. If, through a participatory structure, the plaintiffs use the mass media to create a sympathetic political constituency then organizational reform is more likely to occur.

Participatory Structures as Impediments to Change. Though on-going systems of participation can help disadvantaged classes achieve some of their objectives, the very inclusiveness of the system that allows for this can also significantly impede the process of reform. By creating a participatory structure in which all relevant (and some not so relevant) parties are included, the judge may in effect create a decision-making structure, under the aegis of the court, which simply replicates the political relations among the groups outside of the court. In doing this, often the same power inequities which contributed significantly to the plaintiff's grievances in the first place are reestablished in another form. Inclusive decision-making bodies, however well-intentioned their creation, may not inherently be able to solve the problems of organizational change unless those bodies are part of a clearly focused, positive plan for change which alters the balance of power between the parties to the case. In other words, it is the way the court structures the participation process rather than the group participation itself which most clearly affects the likelihood of implementation. Important elements of an
effective structure include attention to the parties to be represented, and to the mission of the decision-making groups which are formed, as well as their prerogatives and authority.

Two contrasting examples which illustrate the operation and interaction of these structural elements are the Willowbrook case (NYSARC and Parisi v. Rockefeller, 1973; also see Rothman and Rothman, 1984) and the PARC case (PARC v. Pennsylvania, 1971; also see Rosenberg and Phillips, 1981-82). As mentioned earlier, Willowbrook involves the reform of a state system for care and habilitation of retarded citizens, and PARC concerns the reform of special education services in an urban school district. In each case the judge faced similar problems: a need existed for vast reorganization of a complex service bureaucracy that had a history of resisting significant change. Both judges were committed to the principle of multi-party participation in the planning and implementation of change and both established representative panels to facilitate this process. The panels however, differed in their membership, the degree of authority they were given, and, consequently, the outcome of their activities.

The Willowbrook case was filed in federal district court in 1972. Its purpose was to reform the New York state system for the care of retarded citizens, close down massive state institutions, and provide care in the community for the majority of former clients. Intense professional and political conflict among the parties delayed the adoption of a consent agreement until 1977 (Rothman and Rothman, 1984).

Finally, under pressure from the court, the parties agreed to the establishment of a review panel consisting of seven members: two appointed by the defendants, three by the plaintiffs, and two neutral persons approved by the major parties but actually chosen by the plaintiffs. The panel was charged with refining the remedial plan and auditing the performance of the Department of Mental Health, the state agency responsible for implementing the decree. A sufficient budget to cover the costs of operation was charged to the State of New York, professionals were hired to do the actual work of the panel, and its members were compensated at a fair rate for their time.

During the three years of its existence, despite internal disputes among its members, the panel was effective in changing the organization of service to the retarded. The group, dominated by professionals sympathetic to a policy of deinstitutionalization, worked out orderly operating procedures, kept close watch on Willowbrook and other state facilities, and took aggressive action to force change in the face of what they considered bureaucratic resistance and indifference to continued abuse of clients. Their complaints to the court, and the notoriety given the situation through shrewd use of the press, finally made it obvious that it was no longer politically feasible to resist change. Under
pressure, the Governor replaced the administration of the Department of Mental Health with personnel pledged to policies compatible with the consent decree. For a time, less contentious relationships among the parties and a less adversarial approach to the issues resulted in an acceleration of plans and actions that substantially altered the policies and institutional practices related to serving New York’s retarded population. By 1980, when the review panel was abolished by the State legislature in a move to reassert the power of the bureaucracy, the majority of mentally retarded clients had been moved into community settings or somewhat less restrictive environments.

A panel was also appointed in the PARC case. In this case, a consent decree was arrived at in less than a year, guided by a state administration in sympathy with the objectives of the plaintiffs. However, five years later, according to the plaintiffs, the Philadelphia school system still had not implemented important stipulations of the decree. Consequently, the judge, after formal hearings, reorganized the system of implementation. As one part of the reorganization, the Special Education Action Committee (SEAC) was established. Its official charge was to act as an ombudsman in disputes between parents and schools or between all other parties involved in special education. It was also required to keep records and report to the court on the progress made by the schools in planning and instituting new programs for retarded students. These reports were made on a regular basis during open implementation hearings held in open court. Bowing to objections from defendants, the judge refrained from charging SEAC with responsibilities for monitoring the implementation process (Rosenberg and Phillips, 1981-1982).

The panel was co-chaired by a parent who played a major part in the movement to reform special education and a liaison officer from the Philadelphia School District’s Office for External Operations. Other members included three parents of retarded children, the executive director of the Philadelphia chapter of the Association for Retarded Citizens, a state education adviser, a representative of special education classroom teachers, a special education supervisor from the school system, a representative of the Association of School Administrators, a member from the Philadelphia School Board, and an administrator from the Office of Mental Health and Mental Retardation. The panel was provided space and supplies by the school district. It operated with volunteer help from its members and others and had a budget to hire two clerks on a per diem basis as needed.

The membership of the panel was structured to insure the broadest formal participation of parties claiming a serious interest in the case. However, because of the diversity of their interests and a split in the leadership of the group, the panel could not reach agreement on the scope of
its activities, the establishment of operational guidelines, or on any major
policy issues involved with remediation of the system. Its deliberations were
marked by continued conflict and its procedures became a target of struggle
for control among the major parties. The members had relatively open access
to the court; they could communicate directly with the judge and could speak
freely in open court hearings. But they had no specific authority to
recommend policy or independently collect data that could be used in court
to assess the progress of reform. SEAC continued for almost three years.
However, long before it was officially dissolved by the court, factions of the
plaintiffs had withdrawn their representatives and its operations were
virtually at a standstill. Not given the power to monitor change, blocked from
free access to the schools, given little authority or budget for operations, the
SEAC panel, though representative and, in that sense, participatory, never
became an effective instrument for implementing the decree.

A comparison of the two cases suggests the following: In both
Willowbrook and PARC, the judges were seriously committed to the reform of
the defendant institutions, and were sensitive to the political situation in their
decisions about implementation. But beyond this, the cases clearly differ. In
Willowbrook, the implementation process was far from smooth and was
subject to complex political forces. Nevertheless, because of the composition
of its membership and because it was given sufficient autonomy, resources
and authority, the panel was able to play a more effective role in the change
process. Its leadership clearly supported the guidelines of reform implicit in
the consent agreement and, with the approval of the court, organized the
panel to counterbalance the power of state authorities and to challenge
bureaucratic efforts to slow or block implementation.

The PARC panel was unable to do this. The seats on that body were
assigned to insure the representation of the widest number of possible
interests. Nonetheless, a weak and divided leadership, a lack of authority to
monitor the schools and a very limited budget created a situation in which the
plaintiffs were given no means of probing the bureaucracy to more rapid and
comprehensive change in educational programs. In short, when considering
the organization of the panel, the critical issue of unbalanced power, the
problem at the heart of the plaintiff class’s inability to press its claims through
conventional legislative and administrative forums, was not taken into
account. Consequently, the panel was simply a recreation in microcosm of the
political situation that existed before the case was brought to court, one in
which adversarial relations flourished without a structure of inducements
designed to encourage the parties to arrive at a consensus on step-by-step
objectives and reasonable means of achieving them. Therefore, we
hypothesize:
Hypothesis I. If a participatory structure is designed so that it simply replicates the political relations among the parties outside of the court, then organizational reform is less likely to occur.

Designing Participatory Structures to Insure Institutional Change. Although organizational change may not always be desirable or necessary for the achievement of the legitimate goals of the plaintiffs, it is not our intention to judge in which cases change is required. Rather, our aim is to clarify the conditions which encourage or retard organizational reform, assuming that this change is more consistent with the law and constitutional principles.

We have argued that when a participatory structure within the court mirrors the political situation outside of it, the plaintiffs are at a distinct disadvantage. This handicap further aggravates an already disadvantageous position created, in part, by the political nature of reform cases. Deference of one branch of government to the prerogatives of others is essential for the functioning of our political system, and accounts for some of the restraint and cautious use of judicial power in the management of institutional reform cases. Consequently, though judges are willing to remodel court procedures to accommodate the special nature of the cases, they are sensitive to "the limits of their capacity to refashion the existing order." (Yudoff, 1981, p. 969) Nevertheless, when the court couples a failure to send unambiguous signals to the defendants concerning expectations about the extent and timing of change with a structure of participation that too closely resembles the political arrangements that helped to create the original problem, it is clear that, other things being equal, attempts at significant reform can be stalled, if not aborted. Consistent with this conclusion is a finding reported by Bullock (1984) in his detailed analysis of several non-judicial civil rights policy implementation cases. Among the major variables which are found to be most associated with successful implementation is the extent to which policy goals are clear, precisely stated in terms of quantitatively measurable standards, and focused on specific effects rather than general intents.

Creating a participatory structure of decision-making which simply reproduces the power relations among the parties outside of the court may also contribute significantly to extensive delay in the resolution of institutional reform cases. As Pressman and Wildavsky (1973) point out in another context, when powerful parties have a veto power which enables them to block the implementation of complex policy, then delay and departure from agreed-upon plans are bound to result. The same is true in court reform. Cases often drag on for many years without adequate implementation plans.
much less actual institutional change. This protracted delay usually benefits the position of the defendants.

There are two basic reasons for delay in the resolution of institutional reform cases. First, it occurs because of the political and organizational complexity of the reform process and second, it is sometimes used as a tactic by one or another party as a component of an overall case strategy.

These cases go through many phases and the parties’ willingness to negotiate and reach agreement does not remain steady throughout (Johnson & Cannon, 1984 and Cooper, 1988). The adoption of consent agreements, for example, does not guarantee that programmatic changes will be adopted and implemented. As in other organizational contexts, there is a remarkably loose fit between plans and action. State officials under pressure to accept consent agreements often have little intention, or for that matter capacity, to implement the organizational changes implicitly or explicitly agreed to. The agreement may simply signal the postponement of conflict. As a result, the implementation phase can go on for years without significant change in the target organization and with continuing violations of the plaintiff’s rights (see Bardach, 1976).

Between the time it takes to reach agreements and to effect complex bureaucratic change, unanticipated events inevitably occur that influence the stability of the relationships among the parties. Objectives of subgroups within the parties may change in response to new developments (Dentler and Scott, 1981; Rosenberg and Phillips, 1981-1982; Rothman and Rothman, 1984). Leadership changes can result in the formation of new coalitions realigning factions of either or both parties. As a result, matters that seemed to have been previously settled may be reopened and seemingly trivial issues politicized. In sum, the process of implementation can be both chaotic and iterative. Participants may enter the decision-making process and then leave for a variety of reasons.Plans, though rooted in formal agreements, are, in reality, tentative. They are affected by so many political, legal and economic contingencies and may be modified so often, that at any given time there may be no clear relationship between the original remedy as expressed in the court decree and the practices that exist in the defendant organization.

This pattern of delay and instability is far more burdensome to plaintiffs than to defendants. The former are generally in weaker positions because of limited financial resources and their dependence on public law centers, professional advocacy groups, and support of the Federal government. As mentioned earlier, the Federal government was a major supporter of plaintiffs pressing for institutional reform during the 1960’s and 1970’s. The withdrawal of its support and its reversal of position concerning school desegregation, affirmative action, prison reform and the treatment of
handicapped people has weakened and jeopardized the position of plaintiffs whose cases were seemingly resolved prior to the Reagan and Bush incumbencies (Rosenberg, 1986). In the late 1970's, the Burger Court had already added to the increasing burden of plaintiffs by decisions which limited the "availability, scope, and duration of remedial orders." (Cooper, 1988, p. 342)

A major political shift can, of course, benefit plaintiffs, as it did in earlier decades. However, the shift in the 1980's has resulted in a loss of power and resources that formerly gave plaintiffs significant leverage in negotiating disputes with powerful state authorities. Parties that negotiate from significantly weaker positions than their adversaries can rarely achieve their objectives regardless of the forum in which they operate (Merry and Silbey, 1987). Consequently, court-created participatory structures may have less value for plaintiff groups now than in the past.

Clearly, the risks and costs associated with the extraordinarily long process of institutional reform, though a strain on the resources of all parties, are more easily absorbed by defendants than by plaintiffs. With easier access to money, legal expertise, and supportive constituencies, institutional defendants can not only tolerate delay but may welcome it or use it as an effective means of exhausting the relatively meager resources of weaker parties. Or, they can play for time, hoping that political shifts and changing public sentiment will relieve them of the necessity of implementing unwelcome change. Therefore, our hypotheses are:

Hypothesis J. Within a participatory structure, the more explicit the expectations for organizational reform and the more explicit the timetables for reform established by the judge, the more likely organizational change is to occur.

Hypothesis K. If the management of a participatory structure allows for repeated delays in implementation, then organizational reform is less likely to occur.

Conclusion

We have focused both on the factors which are associated with the development of participatory structures in institutional reform cases and on the variables which influence the extent to which these structures are effective in implementing change. Our review of existing case studies suggests that although a variety of factors tend to create strong pressures for the adoption of participatory methods of case management, there is no clear connection between the use of participatory methods, as such, and institutional reform.
In fact, under some conditions, participatory structures can actually be used to reinforce the prevailing practices of defendant organizations. Of course, the outcomes of these court cases, because of the characteristics we have outlined, are likely to be strongly influenced by a variety of political forces both inside and outside the court (Cooper, 1988). While each case has unique characteristics and its own tangle of complexities, the method of management and implementation employed by the court remains a significant element.

Our aim in this paper has been to describe the form of case management which appears to develop most frequently, to explore the reasons why it develops, and to locate its role in the larger realm of political forces. We do not mean to imply that the form of case management is the sole or even the primary force determining outcomes. Far-reaching political conflicts such as these are subject to many influences. Nevertheless, our hope is that future research will be able to specify more precisely the conditions under which participatory structures can and cannot serve as effective means of accomplishing change. We have offered several hypotheses drawn from an analysis of a number of case studies to serve as a basis for the achievement of that goal.

REFERENCES


EKLAND-OLSON, Sheldon and Steve J. Martin. 1987. Organizational Compliance with Court Ordered Reform. Presented at the annual Law and Society Association meeting, Washington, DC.
GLAZER, Nathan. 1975. Toward an Imperial Judiciary. The Public Interest. 41: 104-120.


Hegel's Constitutionalism*

David Schultz
Gustavus Adolphus College

This paper examines the historical, philosophical, and theoretical importance of Hegel's concept of constitutionalism by indicating its role in his theory of the modern state. Hegel's view of constitutionalism is distinct from contemporary applications of the term, is crucial to his attempt to reconcile the discontents of Modernity, and is used to forge an ethical community in the modern state.

Introduction

Crucial to the interpretation of any political theory is an understanding of the meaning and function of its key concepts. However important this hermeneutical task, Leon Goldstein once remarked regarding Hegel's political philosophy that

(there is an aspect of futility which attends every attempt to offer an account of what Hegel meant by such terms as 'state' or 'freedom' which do not accord with the dominant interpretation (Goldstein, 1972, p. 60).

One central concept in Hegel's political philosophy is the term "constitution" (die Verfassung). When reading Hegel it is apparent that contemporary (Liberal) meanings of "constitution" as a Grund Norm (Kelsen, 1967), Rule of Recognition (Hart 1961, pp. 92-97), or set of rules to organize the government (Dworkin, 1978, pp. 39-45; Hart, 1961, p. 92) do not adequately describe the way Hegel used the term. Hegel sometimes uses the concept to apply to more than the polity or government while at other times, such as in "The German Constitution," he employs a more restricted or 20th century Anglo-American use of the term.
Given that "constitution" is an important yet ambiguous concept in western legal and political thought as well as in Hegel’s writings, \(^1\) it is surprising that there is no extended (English) discussion of a term so critical to an understanding of Hegel’s political philosophy. Only two writers, Pelczynski (1964) and Avineri (1979) devote any serious attention to Hegel’s constitutionalism, yet neither offers a sustained analysis of the subject. Other works, such as Verma (1974) and Cullen (1979) are representative of much of the Hegel scholarship that does mention his constitutionalism, but at best they only gloss the *Philosophy of Right* or a couple of other works, without providing a comprehensive review of Hegel’s thoughts on the subject elsewhere in his writings.

This article offers an extended analysis of the meaning and role of "constitution" derived from a broad range of Hegel’s writings and placed within the context of his overall philosophy. It begins with Hegel’s perception of the historical and philosophical context of his constitutionalism and the problems it addressed. The second and third sections review Hegel’s constitutional typology, with special attention to the role of what Hegel calls the "rational" constitution in the modern state as it expresses universally valid principles embodying both freedom and a sense of moral community and unity. Finally, the conclusion suggests that Hegel’s concept of constitutionalism is relevant to contemporary legal debates in Liberal regimes over such issues as separation of powers and legal positivism.

**Constitutionalism: Ancient and Modern**

For Hegel, one of the greatest failures and virtues of Kantian philosophy and politics, and perhaps one of the main characteristics of Modernity, involved the attempt to split, distinguish, or "dirempt" (*entzweien*) morality from politics or law (Hegel, 1975, p. 76; Ritter, 1984, pp. 152-156). Since the dissolution of the "ethos" or ethical unity of the Greek polis, there has been a gradual diremption of ethics from law and the emergence of particularity and subjectivity as the dominant characteristic of the Modern World (Hegel, 1967, paragraph 124; Smith, 1989, p. 46). This split started in the Roman and Christian Worlds (Hegel, 1912, pp. 480-483), where abstract legal right and spiritual particularity were set in opposition to the universal (Hegel, 1912, p. 363). It continued to develop in the Middle Ages and the Germanic and Modern World, and reached its zenith in Kant’s critical philosophy (Barraclough, 1984, pp. 355-406).

One result of this rise of particularity and the breakdown of the ethical unity of the Greek polis was the emergence of two political traditions — Christian commonwealths and secular states — resulting in a split or
"antithesis" between church and state and between secular positive and spiritual religious laws (Hegel, 1912, pp. 436-440, 478-480). These two types of states suggested distinct political functions and different relationships between the individual and the polity. Thus, in the Christian commonwealth, the state had a genuine concern for the moral generation of its citizens, but its political structures did not allow for individual secular or positive freedom. On the other hand, the secular (Modern Liberal) state gave citizens "positive" or formal (Kantian) political freedom, yet the division of ethics from politics left the individual without a "real" social or moral context in which each could participate with others to achieve moral freedom (Hegel, 1975, p. 76). Consequently, this state failed to provide the grounds for the real ethical unity and freedom of its members. In this Modern state, bourgeois life, while evolving and creating a sense of rational freedom (Hegel, 1912, p. 440), was still entirely negative, private, and devoid of any semblance of ethical unity. It lacked the force of natural law which would promote the ethical life of citizens and produce true freedom (Hegel, 1975, pp. 112-114). This resulted in alienation and the merely formal unity of opposites such as the individual and the state, united solely by social contracts.

According to Meinecke and Reidel, much of Hegel's political and philosophical writings were devoted to overcoming a number of the antitheses found in Modernity and Kantianism, such as this divorce of legality and politics from ethical freedom (Meinecke, 1957, pp. 1-3; Reidel, 1984, pp. 9-17). Hegel sought to "sublate" (aufheben) these basic contradictions and transcend the formalism of Kantian ethics and politics that presented individual freedom as the isolated self-legislation of moral maxims. His attempts to do so included the rejection of Kantian Understanding (Verstand), as he thought it the basic cause of such political contradictions. He appealed to Reason (Vernunft) to reconcile the oppositions produced by this formalism and to ground Kantian freedom in a series of universal rational principles that harmonized one's freedom with that of others. Reason also mediated the antinomy between Natural Law and the Modern (secular) state by making the rational state provide the ethical community (Sittlichkeit) and political institutions necessary for the concrete expression and articulation of one's abstract right. Thus, Hegel sought to resurrect the standpoint of the ethical life he thought was destroyed by Kant by retaining and enlarging his concept of freedom and by resurrecting a tradition of politics derived from Aristotle that made politics a branch of ethics (Ritter, 1984, pp. 163-165; S. Smith, 1989 p. 136).

Among the political mechanisms used to forge this reconciliation, Hegel appeals to constitutionalism as a means to promote a "rational harmony" that overcomes the many contradictions (Meinecke, 1957, p. 357; S. Smith, 1989,
p. 218). At least four particular perspectives influenced Hegel’s use of the term.

First, like many other thinkers throughout western history, Hegel’s appeal to lawgivers and constitutions was designed to encourage political unity and the creation of a Modern German state. With Hegel, this practical concern with Staatsräson took on particular importance during the early 19th century as a sense of German nationalism and desire for statehood emerged. For example, in expressing admiration of Machiavelli for being concerned with the unification of the Italian state, Hegel stated that the Florentine had been misunderstood.

This book (the Prince) has often been thrown aside in disgust, as replete with maxims of the most revolting tyranny; but nothing worse can be used against it or the writer, having profound consciousness of the necessity for the formation of the State, has here exhibited the principles on which alone states could be founded in the circumstances of the times. (Hegel, 1912, p. 506)

His respect for Machiavelli stemmed in part from Hegel’s perception that there were parallels between the fate of Germany (Austria and Prussia) in his time and the Italian republics in Machiavelli’s time, and that the latter’s writings expressed clear insight into the needs of statecraft (Harris, 1972, pp. 439, 470). Thus, Germany’s development of a true constitution would be crucial to its political self-awareness, its salvation as a state and to Hegel’s status as a lawgiver.

Second, Hegel’s understanding of the role of constitutions in politics and statecraft drew upon his understanding of Ancient Greek politics and of intellectual traditions found in Germany, France, and England. Hegel distinguished Ancient from Modern constitutions: the former expressed ethical unity while the latter stressed particularity and individual freedom (Hegel, 1967, p. 176; S. Smith, 1989, pp. 47, 154-155). Hegel sought to combine both unity and particularity in his constitutional theory.

For example, Hegel understood the essence of the Greek spirit as residing in the political and ethical unity of the polis. His attempts to reconstitute an ethical life in the modern state are based upon the unity he saw in the Greek politeia (Inwood, 1984). Greek ethos or customs provided for an objective morality in the law that made clear the duties of each citizen in the polis. (Hegel, 1967, p. 351) Thus, while the Athenian constitution gave individuals power, the polis promoted objective freedom (Hegel, 1967, p. 334) as it directed and encouraged that power to serve the commonweal (Hegel,
Greek constitutions made explicit the objective morality or laws of the polis, and encouraged the interests of the community to predominate over the particular interests of the citizens (Hegel, 1967, pp. 332, 351).

Hegel stated that while subjective freedom is the basis of the modern world, the constitutions of the Greeks did not even recognize this particularity and had they done so it would have served to destroy the unity of the polis (Hegel, 1967, p. 333). Subjectivity was the "antithesis" of the unity of the Greek polis, and in the cases of the Sophists, Socrates, and Antigone's dispute with Creon, Hegel demonstrates how subjective questioning, expression, and familial duties conflicted with the ethos of the polis (Hegel, 1967, pp. 334, 351, 353; Hegel, 1977, pp. 261, 284; Steiner, 1986, pp. 20-42). The clash between the objective unity of the Greek constitution and the rise of the inner world of subjectivity eventually produced a "rupture" that was the downfall of the polis (Hegel, 1967, p. 354).

While Hegel admired the unity of the polis, his political theory is no throwback to the Greeks. Hegel's comments indicate a keen sense of history and historical development and his views do not suggest that ancient political ideas and structures could be removed from their historical context and placed elsewhere. Recreation of the Greek constitution was impossible and incompatible with the modern expression of subjectivity and freedom.

A third influence on the formation of Hegel's constitutionalism is found in the German political and legal tradition out of which he wrote. For example, Kant states that

A constitution allowing the greatest possible human freedom in accordance with laws by which the freedom of each is made to be consistent with that of all others...is at any rate a necessary idea, which must be taken as fundamental not only in first projecting a constitution but in all its laws. (Kant, 1933, p. 312)

Similarly, Kant indicates that protecting republican forms of government, including and especially the freedom of a civil community's members, is the primary task of a constitution (Kant, 1982, Part II, p. 96; Kant, 1979, pp. 99-100; Kant, 1985, pp. 93-94; Kant, 1974b, 169). Kant even argues that "the preservation of the state constitution is the highest law of a civil society... (and) only by the state constitution does civil society maintain itself." (Kant, 1974a, p. 191) A Constitution, besides fostering freedom, also preserves peace, and it is important to a state's existence and articulation of itself (Kant, 1985, pp. 94-95). Kant even argued that a constitution is indestructible, a product of culture (Bildung), and it helps to "artificially raise
David Schultz

to its highest power a species predisposition to the final end of destiny," i.e., freedom (Kant, 1974a, p. 189; Kant 1974b, p. 177). A constitution civilizes us and makes it possible for us to live in a civil community as rational and free beings.

Fichte follows Kant's idealism as he argues that a constitution is important to the articulation of freedom. In a work written soon after the French Revolution and replete with the author's enthusiasm for its politics, Fichte argues that a science of rights determines how a community of free beings is possible (Fichte, 1970, p. 126). Important to the creation of that community is a constitution which realizes the "Conception of Rights" of individuals in the sensuous world (Fichte, 1970, p. 278). A "rational" constitution ensures that civil officers follow their duties and protect the property rights and personal liberties of each citizen (Fichte, 1970, pp. 218, 255). It is important to the freedom of individuals, but such freedom is only possible in a community that is protected by laws of a state.

Kant and Fichte agreed that freedom was the goal of, and impossible without, a (modern) constitution. Their views had an obvious influence upon Hegel, yet he did not adopt them uncritically (S. Smith, 1989, pp. 70-75). Hegel rejected Kantianism (this included Kant, Fichte, and other Kantians) as a formal theory of philosophy and politics that failed to produce true unity or ethical freedom. Separation of powers, for example, does not produce freedom but instead supports disunity and provides merely the semblance of a formal (and negative) freedom. What the Kantians ignore is that their constitutional ideas are the product of the Understanding producing diremptions or antinomies such as viewing the state and civil society as distinct entities. Separation of powers breaks up the essential unity in the state, and between the state and civil society.

As this example indicates, Kantian and Modern constitutionalism, while articulating freedom and Moralität, was devoid of the real ethical freedom and unity found in the Greek constitutions. To Hegel, a constitution, like a monarch, should express both unity and particularity, and it should not be viewed as a formal universal document confined only to the political apparatus of the state. Constitutions have a content and history that are more than the mere product of human artifice. They must be seen as evolving and changing throughout time. Hegel's constitutionalism thus sought to reconcile the split between law and ethics that had emerged since the rise of Modern Natural Law and secular states, and which had become more acute since the French Revolution.

A fourth influence was Montesquieu, whose effort to reconcile the unity of the Ancients with the particularity of the Moderns provoked Hegel's thinking (Hegel, 1964, pp. 35-36). Montesquieu shared with the Greeks the
view that constitutions express an organic social unity, yet he also made some changes in the essence of that unity that seemed to allow for a greater sense of freedom than envisioned by the Greeks. Montesquieu wanted to use a constitution to mediate the split between unity and freedom in the Modern era, thus anticipating Hegel.

*The Spirit of Laws* classifies constitutions into monarchy, aristocracy, and democracy with honor, moderation, and virtue representing the respective animating forces of the states having these constitutions (Montesquieu, 1975, pp. 19-25). A nation’s spirit, embodied in its culture, was also found in the constitution, and the constitution itself was part of the organic whole of the state. Like Hegel, Montesquieu saw a constitution as a product of a nation’s manners and as something that structured its political and cultural relationships into an ethical whole. Additionally, like Hegel, Montesquieu argues that reconciling freedom with the contradictions of the power of the Modern state was a primary goal of political science (Keohane, 1980, pp. 396-400). Hegel himself said,

Thus Montesquieu, in his charming book *L’ Esprit des Lois*, of which Voltaire said it was an esprit sur les lois, regarded the nations from this important point of view, that their constitution, their religion, in short, everything that is to be found in a state, constitutes a totality (Hegel, 1974, p. 399).

Hegel appears to acknowledge and agree with Montesquieu that the constitution is part of the organism of the state (Hegel, 1975, pp. 128-129).

However, Hegel and Montesquieu do differ on numerous points. Hegel (1967) rejected Montesquieu’s separation of powers theory as unwise for the state because of the disunity it encourages. And despite parallels between Hegel and Montesquieu in their use of certain political concepts, their notion of constitution is not the same. Montesquieu did not view a constitution in the historical and developmental fashion that Hegel did, nor did he see the role of the constitution as including the reconciliation of the state and civil society and the articulation of the conditions necessary for moral freedom. Montesquieu’s influence upon Hegel, although perhaps present, was in no way controlling and did not define the way Hegel sought to reconcile the opposition between Ancient and Modern constitutionalism, or between unity and particularity. Hegel’s reconciliation of these contradictions took another direction in his construction of the rational constitution.

**Positive and Rational Constitutions**

32
Unlike Montesquieu, who saw the spirit of the nation's laws as residing in its manners, Hegel saw the soul of the state in its constitution. For Hegel, "it is only the constitution that the abstraction of the state attains life and reality." (Hegel, 1912, pp. 92-93; Hegel, 1964, pp. 220-221) A constitution is a means to unite or overcome the dichotomy between the amoral political activity of the secular state and the ethical mandates of the Christian commonwealth based in natural law. A constitution's main feature of interest is the self-development of the rational, that is, the political condition of the people; the setting free of the successive elements of the Idea: so that several powers in the state manifest themselves as separate. (Hegel, 1912, p. 96)

A constitution can give birth to a state and provide both ethical and political unity. It is the "coping-stone of the fabric of the state," and its existence and enforcement are necessary if the state is to be viewed as more than theoretical (Hegel, 1912, pp. 92-93; Hegel, 1982, p. 191; Hegel, 1964, pp. 180-182, 251).

While the constitution is the lifeblood of the state and its enforcement makes a state "real," not all constitutions guarantee that a state will be rational. Hegel did not view every constitution of identical value, as capable of reconciling the contradictions of Modernity, or as equally effective in providing for the ethical unity and freedom of its citizens. Some constitutions are better representatives of the development of "rationality" of a people than others and can better promote the function of fostering an integration of abstract right into a moral community.

Throughout Hegel's writings there are critiques of the French, German, and English constitutions, as well as that of Wurtemburg, indicating how each was deficient in either promoting real moral freedom or in bringing unity to the state (Avineri, 1979, pp. 208-220). In these critiques he categorizes all constitutions and constitutional law into two groups, rational and positive.

For example, Hegel states of Wurtemburg that

the Assembly did not reject the King's constitution on the grounds that it was contrary to the rights that the subjects could claim in a political constitution of the strength of the rights of reason. On the contrary, it rejected it on the ground that it was not the old constitution of Wurtemburg. (Hegel, 1964b, p. 274)
Further, Hegel comments on England that

the reason why England is so remarkably far behind the other civilized states of Europe in institutions derived from true rights is simply that the governing power lies in the hands of those possessed of so many privileges which contradict a rational constitutional law and true legislation. (Hegel, 1964c, 300)

Both passages reflect his view that these constitutions were deficient. Hegel reaches this conclusion by distinguishing rational from positive constitutions.

A positive constitution does not promote a genuine synthesis of moral and political freedom (while a rational constitution does). Further, a positive constitution appeals not to reason but to past historical practices to justify itself. Positive constitutional law "has history as its basis" and not reason or freedom (Hegel, 1964b, p. 300). A positive constitution grants rights solely because these rights existed in the past and not necessarily because they contribute to rational freedom.

However, constitutions are not necessarily categorized as positive (and irrational) because they are supported by past practices. Hegel asserts that constitutions in part are the product of a cultural-historical process and that the traditions of a nation are important in forming rational constitutions (Hegel, 1982, p. 180). Yet while constitutions are made in history, a positive constitution is one which fails to respect moral autonomy and the rationality of a people, in either the Kantian sense of autonomy or the sense of freedom that Hegel develops in the Philosophy of Right. Instead, they are composed of particular privileges that are supported by mere appeals to custom, authority, or legality. Positive constitutions, such as the one the Estates Assembly of Wurtemburg would have preferred, contained provisions and privileges devoid of moral content or respect for individual freedom. They are obeyed and enforced by coercion or out of respect for convention rather than out of regard for the freedom and rationality of the people of Wurtemburg (Hegel, 1964b, pp. 150-151, 274).

Elsewhere in Hegel's attack on the English constitution, he declares that it is not rational because it is composed of many privileges (Hegel, 1964, p. 300). Thus he states that

the constitution of England is a complex of mere particular Rights and particular privileges: the Government is essentially administrative—that is, conservative of the
interests of all particular orders and classes. (Hegel, 1912, p. 566)

His criticisms of the English Reform Bill were not based on the view that the working class should be denied the franchise. Rather, he saw the Bill as another positive or legal enactment that would do no more than grant more privileges and particulars without contributing to moral freedom. These privileges would just add to the other positive rights the other classes enjoyed. The Bill was not rational because it would neither strengthen the state, integrate individuals into an ethical community, nor enhance means or provide structures for individuals to express a their autonomy and have it recognized by others. It would only fragment the English state even more.

He also condemns the constitution of the French Revolution as a failure because it set up "an atomistic principle that insisted upon the sway of individual wills" (Hegel, 1912, p. 563). The constitution, although part of the revolutionary process that launched the struggle of rational law and freedom against ancient privilege and dogmatic authority, eventually failed because it did not remove and incorporate the particular wills of individuals and groups in the moral community of the state (Hegel, 1964, p. 282).

In general, a positive constitution is a product of the Understanding which perpetuates the split between ethics and law, and it fails to provide a context for the two to be united in a way that gives individuals a real social and not a simply formal or atomistic sense of freedom. Such a constitution fails to raise questions about the ultimate rational validity it should embody (Hegel, 1964, p. 116).

A rational constitution, on the other hand, is not the historical sum of individual rights which are granted simply because they were previously awarded or demanded. Rather, it respects and furthers individual autonomy in the context of a community morality (Sittlichkeit) by seeking to overcome the opposition between politics (law) and ethics (Natural Law), the individual and the state, and the opposition among and between different individual wills characterized by Kantian freedom. A rational constitution promotes the "self-development of the successive elements of the Idea (of freedom)" through the articulation of universally valid principles. A rational constitution "contextualizes" human affairs, gives a sense of order to civil society, and reconciles the contradictions or conflicts between the precepts of the state and civil society.

In rational constitutions the private interests and privileges of citizens and organizations are incorporated or organized into a moral community of shared beliefs that makes possible mutual recognition, respect, and a context for a meaningful public life (Hegel, 1964, p. 153; S. Smith, 1989, p. 128). They
direct all particulars into the organic whole that is the state, yet do not deny freedom, but rather enhance it. They do not have as their final goal the articulation of formal Kantian autonomy; instead they enable individuals to express their freedom in a political setting where individuals are required to recognize the freedom of others if one's own freedom is to be recognized and actualized. This freedom can only be secured in the ethical life of the community which is secured by a state that is not neutral concerning the moral character of its citizens (Kelly, 1978).

Although a rational constitution often labels particular privileges as positive, this does not mean that Hegel advocated a dissolution of private civil rights and the establishment of the totalitarian state. Personal or abstract rights have meaning, but only when they are integrated into a larger whole and directed towards the progressive emancipation of human nature. Personal privileges are only undesirable when they either fail to support the ethical community, are expressions of sheer legality, or when the privileges are only the formal expressions of ethics and not a contribution to the unity of the state and constitution or the development of real individual freedom (Hegel, 1975, pp. 126-128).

If in the sphere of the state the mere expression or legalization of positive personal privileges is not rational, in civil society such expressions are proper and to be encouraged (Hegel, 1964, p. 116). Particularity is the province of civil society, not the state. Thus, Hegel's concept of Recht or right included respect for rule of law, individual liberties, including property ownership as a means to translate abstract right into something embodied and capable of mutual recognition (Hegel, 1967, pp. 40-46), and for democratic decision-making and a somewhat limited government (Hegel, 1964, p. 62). Recht or "Right therefore is by definition freedom as idea" that contains both a negative and restrictive factor and a positive factor that embodies the 'law of reason' which entails the correspondence or reconciliation of one's will with those of others (Hegel, 1967, p. 33).

Hegel further says that the state should maximize citizens' liberties by promoting a limited government to minimize the ruler's authority to that which is necessary to maintain the state (Hegel, 1964, pp. 154-155; Hegel, 1912, pp. 92-93). There are "Laws of Rationality" which must respect Real Freedom; this includes the freedom of the trades and professions; the use of abilities without restriction; and competition for admission to all state offices (Hegel, 1912). Elsewhere, he indicates support for trial by jury, freedom of the press and thought, and parliamentary style government (Knox, 1970, p. 22).

Rational constitutions, while expressing universal principles of reason, must also be viewed in light of a nation's manners, traditions, and history with
constitutional provisions and particular individual rights rooted in the evolving culture of a country. In the same way that abstract right must be embodied in property to be expressed, respected, and made actual, rational constitutional principles must similarly be embodied in a nation's specific culture, history and institutions if they are to be expressed, respected, and made actual.

A rational constitution is the best or most appropriate constitution to extend freedom to all individuals within a specific country at a specific historical moment. The constitution of the French Revolution, for example, had elements of rationality because it granted freedom to all. It extended freedom further than the old constitutions of France which had become positive documents that restricted freedoms to a few. However, some constitutions (such as the one Napoleon gave to Spain) can be overly rational and unsuited to the manners or rationality of a country and its people.

Rational Constitutions and the Organization of Society

It is not so clear that to Hegel a constitution is a universal and transhistorical political arrangement limited to the traditional governmental functions of the polity, but his usage of other political terms suggests that "constitution" might have a broader meaning than we normally assign to the term. Goldstein (1972, p. 64) demonstrated that Hegel does not use the term "state" to apply merely to the political or governmental apparatus of a country. Hegel's "state" includes what some anthropologists would consider a nation's entire culture that contains its laws, arts, morals, etc. If "state" has a broader meaning does "constitution" have an equally broad meaning? At some places in Hegel's writings the answer appears to be "yes" while in others "no."

In one work Hegel claims that the king of Wurtemburg proposed a new constitution that added popular representation and proclaimed universal principles of justice (Hegel, 1964, p. 271). He states in the same essay that the Assembly rejected this constitution. Similarly, writing on the German Constitution and the English Reform Bill Hegel indicates that a rational constitution is something that men consciously create much in the same way Napoleon wrote a constitution for Spain (Hegel, 1967, pp. 286-287). These passages suggest that Hegel believed constitutions were written and not customary. They imply that a constitution is something one can deliberate upon and construct in the same way social contract theorists thought a civil society could be created by men in the state of nature.

Further, there is strong temptation to read Hegel's use of "constitution" as a political document structured only to arrange the political offices of the
government. Hegel states that the "constitution of the state is, in the first place, the organization of the state" and the state is divided to include both legislative and executive powers (Hegel, 1967, pp. 174, 176). He explicitly indicates that the Executive, Legislative, and the Crown are the three political divisions of the state, suggesting that his notion of constitutions is limited to the governmental apparatus. Finally, in reference to the constitutions of the ancient world he lists them as including monarchy, aristocracy, and democracy (Hegel, 1967, p. 176). This language supports the contention that Hegel refers to constitutions as merely a device to organize the government and its subparts and that he is following contemporary usages of constitutionalism.

Although Hegel does discuss constitutions in reference to a state's political apparatus, he should not be read as limiting them to those institutions. His notion of constitutionalism is much like the Greek notion of polity (or the modern notion of political culture) where constitution has a much broader notion of organizing the entire state where the state is understood in the larger sense Goldstein indicated (Smith, 1989, p. 155). A constitution directs and organizes the manners and culture of a nation. It is not made entirely by free and deliberate choice; it is also a product of a state's culture, history, and tradition.

A state is an individuality, of which you cannot select any particular side, although a supremely important one, such as its political constitution; and deliberate and decide respecting it in that isolated form. (Hegel, 1912, p. 95)

A constitution is tied to a nation's manners and its task is to organize those manners along with the political functions of the state.

Hegel questions the view that a rational constitution is simply a product of men's minds and agreements. He indicates that to view the subjects and the prince in a state of original independence (in a state of nature) is a false distortion of the "substantive unity" that actually exists between them (Hegel, 1964b, pp. 280-281). A contract is a private affair not suited to be a political bond. A contractarian depiction of politics views political relations as "a casual tie arising from the subjective needs and choices of the parties" (Hegel, 1964b, p. 281). True political bonds are actually "objective, necessary, and independent of choice and whim" (Hegel, 1964b, p. 281). The use of social contract metaphors to describe political legitimacy is erroneous because they depict politics as a series of relationships that are more appropriately found in civil society. Real political bonds start not with isolated men but with men in a social setting. Contrary to social contract theorists such as Hobbes, the
David Schultz

state does not erode natural liberty but instead promotes real freedom that can only be found in the ethical life of the state.

Hegel said that a "constitution should not be regarded as something made;" its creation is the work of centuries and its development depends upon the self-consciousness of a nation (Hegel, 1967, pp. 59, 178-179). A rational constitution develops as part of the history, culture, religion, philosophy, and traditions of a nation but it is not simply a positive enactment of historical claims. Even though a rational constitution can develop over time it is neither the mere sum of past practices or outgrowth of other forces in a nation. While it can be written and deliberated over, it is not the product of subjective whim or choice, but of conscious individuals acting within the historical process. It is both a product of tradition and choice and the organizer of a state. It is an outgrowth of a state and is as unique to a state as its own borders and geography. In effect, there is a dialectical process involved where both choice and tradition work together to produce a constitution that represents a specific level of consciousness of freedom for nation.

The constitution is a part of the state yet it stands above it linking the parts into an organic whole for a common purpose. Hegel put it this way:

The constitution of the state is, in the first place, the organizer of the state and the self-related process of its organic life, a product whereby it differentiates its movement within itself and develops them into self-subsistence. (Hegel, 1967, p. 174)

Elsewhere Hegel elaborates upon this point and describes the dialectical relationship between the state and the constitution.

Thus in historical research the question may be raised in the first form, whether the character and manners of a nation are the cause of its constitution and laws, or if they are not rather the effect. Then, as a second step, the character and manners on the one side and the constitution and the laws on the other are conceived on the principle of reciprocity: and in that case in the same connection as it is a cause will at the same time be an effect, and vice versa. (Hegel, 1982, p. 218)

All rational constitutions are both the cause and effect of nation's manners. A constitution is inextricably linked to the manners of a state, giving
Commonwealth

the latter a sense of organization and unity. A rational constitution embodies the formal abstract rights into the political structures of a nation. A country's manners and culture give a content to these rights and structures such that the latter transform formal (theoretical) rights and constitutional provisions into something with a substantive content. A rational constitution overcomes the opposition between tradition and choice, or between views that the state is either natural or the product of artifice, and produces a real and rational moral community for individuals to express their freedom. It is, then, a prerequisite for the articulation of a moral community.

A rational constitution provides a unity that is impossible with a positive constitution, and it provides the community necessary for individuals to move beyond formal Kantian autonomy and achieve real political freedom. A rational constitution is thus crucial to Hegel's attempts to overcome the alienation present in the modern liberal state by morally contextualizing human freedom and affairs. For example, Hegel claims that a rational constitution organizes the state's activities to create a "single individual whole" (Hegel, 1967, p. 174). The constitution is described as an organism and organizer of the state (Hegel, 1967, p. 164). A constitution is both part of the total organism that makes up a nation; it is what holds the state together and transforms it from a mere abstraction or theoretical state into an actual state. As part of an organism, a constitution grows and changes with the rational consciousness of the state. It develops through the "elaboration of the laws and the advancing of the universal business of government" (Hegel, 1912, pp. 92-93). It grows and changes as the state enforces and amends it.

A rational constitution stands within and on top of the state to direct both the political (governmental) and nongovernmental activities of a national into a rational whole. It grows with its citizens and it can only be judged rational when its provisions are retrospectively compared to a nation's developing self-consciousness of freedom. A constitution is rational when its provisions are promoting freedom that is compatible with the level of consciousness of freedom a people has at a specific historical moment.

It now makes sense and it is possible to understand what Hegel meant when he said that the constitution Napoleon gave Spain was more rational than the one they had, yet they were not ready for it (Hegel, 1967, pp. 193-194). The point of that comment was to indicate that rational constitutions are not a priori abstract principles that can be lifted from one state or set of circumstances to another. A rational constitution can not be written for a state but must be a self-conscious part of the culture and choices of a people. It cannot be transplanted but is organic and native to a state; and the freedoms that it embodies are not the universal, formal product of abstract reasoning, but are the outgrowth of a nation's manners and
traditions. In short, there is a historical yet self-conscious aspect to the development of these rights (Hegel, 1967, pp. 286-287). Thus, Napoleon could not properly impose a rational constitution (by French standards) on Spain because Spaniards had not developed a culture that was ready for it. Giving them this rational constitution was irrational because it did not reflect the historical choices and traditions of Spain at that time in history.

Conclusion

Hegel's theory of the modern state attempts to reconcile the antinomies of the modern world produced by the dissolution of the Greek polis, the emergence and development of the modern concept of freedom, and the articulation of Kantianism that drove a wedge between ethics and law. Crucial to the modern state's success in bringing together these antinomies is the articulation of a rational constitution that incorporates or sublates the modern spirit of freedom within Greek-like notions of community to produce a sense of real freedom and unity that transcends what is found in most actual states, past and present. While abstract right and civil society are incorporated into the state to produce an ethical community, it is really the constitution, or the constitutional state, as the "coping stone" of the state, that makes possible the essential unity of the state and civil society that both preserves and transcends modern freedom and brings a unity to the split between ethics and law. Hegel's articulation of the rational constitution brings together many constitutional traditions he saw in the West. It reconciles the demands for unity, for freedom, and for constitutions to be viewed as a product of both will and history. It incorporates the notion of separation of powers and seeks to develop the role of the constitution as important to statecraft.

Finally, Hegel's constitutionalism stands as a criticism of many important trends in Anglo-American constitutional and legal thought; i.e., separation of powers, legal positivism, the role of the judiciary, and the separation of law and morality (Stoner, 1989, pp. 10-13). Separation of powers brings a disunity to the state, and forces different branches of the government to oppose one another, thus making it difficult to bring about a unity that is necessary for the establishment of an ethical community. Moreover, separating legal and moral norms perpetuates Kantian formalism and perpetuates the political and ethical alienation of the individual from the state. Thus, Hegel would describe modern (Liberal) constitutionalism as a deficient product of the Understanding that perpetuates oppositions and contradictions, such as those between state and civil society, law and morality, and perhaps majority rule and minority rights. It also sets in opposition
economic and political freedom, encourages social alienation, and denies a real sense of community and freedom. Demands for the state and law to be neutral leave no constructive room for the state to promote moral autonomy. Thus, Hegel would contend that the state must not be indifferent to the character of its citizens if it wished to articulate a moral community. Instead, the state has a positive and important role in fostering moral values. Yet, while the state would not be neutral regarding ethical concerns, it would be neutral in its particular enforcement of these norms and would probably have to respect some version of what we call equal treatment under the law.

Hegel's constitutionalism, then, while often overlooked, is crucial to his theory of the modern state and in trying to strike a balance between the formal autonomy of Liberalism, and the ethical community of the Greeks. It seeks to resuscitate a substantive unity that had been lost since the downfall of the Greeks, while placing that unity within the spirit of the modern world.

NOTES

* Revised version of a paper presented at the 1989 Annual Meeting of the Northeastern Political Science Association Convention, Philadelphia. I would like to thank both members of the panel, as well as Donald Tannenbaum and the two anonymous COMMONWEALTH referees for their thoughtful criticisms and comments.

1. cf. McIlwain, (1940) for a useful study of the different meanings of constitutionalism in western legal thought.

2. Barraclough (1984, p. 395) makes the interesting observation that throughout the 18th century the general perception of Germans was that political life was dead in Germany and that the bureaucratic state was seen by many (perhaps even Hegel) as alien and foreign to the individual. In short, the state and its associations failed to contribute to any semblance of a moral life for its citizens.

3. cf. S. Smith (1989, p. 11 and chapter 2) where he claims that Hegel's philosophy "grew out of the attempt to overcome the phenomenon of the divided self." This "divided self" was, of course, the product of the West's diremption between ethics and law, the material and the spiritual, etc.

4. Harris (1972, p. 477) claims that Hegel perceived himself to be a German Machiavelli.

5. Hegel distinguished civil society from the state and argued that one of the important contributions of modernity was the discovery of the former and its relative independence from the latter. Thus, as one long commentary suggests (Hegel, 1967, pp. 164-174, paragraph 270),
Hegel did not even advocate the union of church and state. Instead, he viewed their disunion as the best thing that could have happened to either and for freedom and rationality. Hegel's political philosophy sought to bring unity to the state and civil society, not to submerge or collapse civil society into the state. Civil society was important to the articulation of modern individual freedoms that the Greeks did not recognize. Since ancient constitutional structures did not allow for the emergence of civil society and the articulations of freedom found in the Modern state they would be unsuitable candidates or paradigms of the rational constitution that Hegel was proposing.

6. The focus here is on Kant and Fichte. While relevant, I must omit the influence of other German constitutionalists such as Fries, Haller, and Savigny.

7. In Fichte's later writings (for example, Fichte, 1889) the enthusiasm for freedom faded. But in these later writings the role of the constitution as central to the creation of the German state became more important.

8. cf. Montesquieu (1977) where the comparison between Persia and Paris is meant to stress the difference between different cultures and to show how the manners of a nation, including its laws and thoughts on justice, are the product of its particular manners and geography. Thus, each nation has its own unique "spirit."

9. In fact, Hegel (1975, pp 116-122) rejects the notion of separation of powers as the product of the Understanding and as encouraging ethical and political disunity.

10. Absent also from Montesquieu's writings is a discussion of civil society or a distinction between the state and civil society. Yet Kohenne (1980, p. 418) claims that Montesquieu's discussion of law and property "forshadows Hegel on civil society and the state." She also notes other parallels between the two thinkers such as their commitment to republicanism and some type of hybrid liberalism, and their conclusion that intermediate institutions were important to the functioning of a constitutional government. For a fuller discussion of Hegel's use of Montesqueuils concepts see Mosher (1984).


13. Note that the exact status of the Crown and the role of the Monarch changed considerably in Hegel's writings; thus, a full examination of the role of the Monarch would require an extended discussion (Ilting, pp. 25-43).

14. cf. Hegel (1983, p. 156): "Now, because the constitution of the state has a connection with religion, philosophy too has a connection through religion with the state."

15. cf. Kelley (1978, pp. 135-136) who claims that "Hegel's neutral state is not a liberal minimal state, minimal and responsive to the caprice of its rights-holders." The neutrality of the state lies in the direction of particularities towards a basic unity in the state. In other words, neutrality lies in the state's undifferentiated treatment of different estates, not in the state refraining from directing these estates towards a specific end or sense of unity.

Note that S. Smith (1989, p. 130), following Kelley, also suggests that the Hegelian reconstruction of the ethical standpoint of politics would necessarily make it impossible for the state to be neutral vis-a-vis its citizens.

REFERENCES


Commonwealth


Man: Body and Will—Hobbes's theory of representation

Richard T. Martin
Slippery Rock University

This article examines the nature of the will and its connection to representation in Hobbes's political philosophy. The argument is that Hobbes's notion of willing is not an empty formalism but hinges upon a dynamic and fluid account of human nature which informs the sovereign and its subjects concerning the dangers of representing and being represented. The position taken stresses Hobbes's use of the metaphor of the stage in his account of representation. In conclusion, the argument is advanced that Hobbes's position is flawed by an emphasis upon an individualistic subjectivity which makes representation subject to insurmountable difficulties.

Introduction

Hobbes is often taken as the model case of a voluntarist account of political obligation (for example, Hirschmann, 1989). A voluntarist account emphasizes the role of free will or voluntary acts in the consensual act of creating political obligations. Consequently, one must come to terms with Hobbes's view of the faculty of the will as making possible the acts of authorization (Martin, 1980) to create the artificial person who would represent its creators. But the nature of the will itself is, for Hobbes, a consequence of his view of human mental processes (Trainor, 1985). In turn, Hobbes's theory of representation depends upon an imaginative use of the metaphor of the stage which flows from his attempt to forge a linkage between the judgments emerging from those mental processes and the acts of the sovereign. That theory of representation succeeds or fails largely on the cogency of his account of the will.

I shall attempt to show how it is that Hobbes best helps us understand the dilemmas of representation if he is read as providing an account of the mental life of prospective subjects characterized by the turmoil of "decaying
senseness," "imagination," "deliberations," and other "seemings." This interpretation is in contrast to the rigid and mechanistic interpretations of Hobbes popularized by those who see Hobbes as providing a prescription for proto-totalitarianism (Macpherson, 1964; Pitkin, 1964).

It ought not be surprising that Hobbes's conception of the will is given little attention. Considerable attention is lavished upon literary issues in political theory in general, and Hobbes is no exception (Johnson, 1986; Whelan, 1981; Danford, 1980). But very little is made of Hobbes's account of mental faculties. This is likely due to the assumption current among most commentators that Hobbes proceeds deductively from intuited postulates (Bluhm, 1971; Sabine, 1973, pp. 424-5; Berns, 1963; Pitkin, 1964). Hobbes is generally seen as the great political geometrician. Using external preferences for peace and orderly commerce, Hobbes is supposed to arrive at a coherent, rigid set of formulae for absolutism (Warrender, 1971; Jacobson, 1971). This paper offers an account of the will contained within Hobbes's account of mental processes.

Hobbes's conception of the will is rarely dealt with systematically. Where there is attention to the will in Hobbes's theory, it is usually in isolation (Riley, 1982, Chapter 2; Sibley, 1970), or as the prelude to the act of covenancing (Trainor, 1985; Martin, 1980). Often, the place of the will in Hobbes's theory is ignored altogether. This is most notable in Macperson's (1964) influential and mechanistic account of Hobbes's psychology.

The most comprehensive exposition with respect to Hobbes's theory of representation is the body of works by Hanna Pitkin (1964, 1972). Pitkin argues that "the very problems that he solved formally, on a logical plane . . . can in fact be solved empirically by the very aspects of representation that he overlooked." (Pitkin, 1964, p. 918) She concludes that although Hobbes was "sincere...[h]is definition is not so much false as incomplete. It stresses only the formal aspects of what it means to represent someone." (1972, p. 35)

Hobbes does, in fact, take into account precisely those empirical aspects of representation. This view is based upon using Hobbes's discussion of human mental processes as a context for the faculty of willing and the consequent creation of a representative sovereign understandable to Hobbes only through the surreal appeal to a metaphor — that of the stage, no less (Dallmayr, 1969).

Hobbes's Method

The focus of this paper is Hobbes's 1651 masterwork, *Leviathan*. This work brings together Hobbes's thoughts in what he felt to be their most cogent form. To understand the order of the *Leviathan*, one must recall what
Hobbes himself says about his project. In his "Introduction," Hobbes makes the famous analogy of the human body to a machine: "for seeing life is but a motion of limbs." (p. 19) This is usually understood as if Hobbes had said that life is but a motion, instead of an alternative possibility that motion is all of life that we see. What follows in Hobbes supports the alternative interpretation that the analogy with motion suggests the difficulty of understanding the passions of others. In turn, this leads to a summation of the difficulty for rulers:

He that is to govern a whole nation, must read in himself, not this or that particular man; but mankind; which though it be hard to do, harder than to learn any language or science; yet when I shall have set down my own reading orderly, and perspicuously, the pains left another, will be only to consider, if he also find not the same in himself. (pp. 19-20)

The problem as Hobbes sees it is that we can not "see" beneath the surface of any human. The only recourse we have is to examine our own mental processes, our consciousness, in an imaginative attempt to comprehend what might be going on in the minds of others.

Mental Processes

Hobbes begins that imaginative effort in the first five chapters of the Leviathan. He deals in turn with "sense," "imagination," "trains of imaginations," "speech," and "reason" before coming to the "will" in chapter six. It is important then that we follow him in an "orderly and perspicuous" fashion.

A thought is for Hobbes a representation of something outside of us. A conception is then dependent upon a sense. "Imagination . . . is nothing but decaying sense." (Hobbes's emphasis, p. 23) Hobbes is suggesting that through introspection we may find a series of pictures, symbols, or signs which, though dependent upon sensory experience themselves gradually, fall away from that which produced it. As we recall the decay, inexactiy, we have memory. The important point is that the pictures in our minds are never a match for reality. They are mere representations, and hazy at best.

In Hobbes's view, understanding is something not unique to human beings as it can be "raised" in other animals such as dogs through custom or habit. In this connection Hobbes first mentions the will as something recognized by men or dogs as belonging to the master. Understanding insofar as it is special to humans "is the understanding" not only of the master's "will,
but his conceptions and thoughts, by the sequel and contexture of the names of things into affirmations, negations, and other forms of speech." (p. 27) Anticipating the relationship of subject and sovereign, Hobbes notes that humans can guess accurately at the conceptions of others by way of the context in which the motions of others take place. We must, however, supply the context ourselves. This context is the train of thoughts we have within us. Hobbes calls this train of thoughts "mental discourse" implying an exchange within our conceptions, themselves decaying sense. We talk to ourselves, "re-presenting" the actions, words, and deeds of others in a conscious empathetic act. Thus, we may be said to "understand" another, but only through the process of representation.

Chapter 5 of the *Leviathan* is pivotal to Hobbes's argument. The mental discourses which go on within us are, of necessity, based upon sensory experiences. These sensory experiences are manifestly different for each of us. Further, if we assume (and Hobbes is not explicit about this) that our mental talents are different, then even if we were to have the same experiences, our "decaying sense" would shape them differently. The question which arises is how is it possible for us to communicate well enough to enter into a civil society?

In his effort to answer this question, Hobbes's treatment of the human faculty of reason seems to go off in a different direction than his analysis of our mental discourses. Whereas our mental discourses are profoundly individualistic in nature, reason would seem to operate the same way in each of us. Reason is for Hobbes an adding and subtracting, "done by words ... conceived of the consequence of the names of all the parts, to the name of the whole." (p. 41) Reason then "reckons consequences," but those consequences are the products of "general names agreed upon for the marking and signifying of our thoughts." (p. 41) Marking indicates for Hobbes an agreement with one's own self. Signifying indicates an agreement with others. Obviously, we might have difficulty remembering our own markings; but how difficult it must be to reach those agreements with others, particularly in the state of nature. Still, Hobbes asserts that reason does function for each of us. This is an assumption which is ultimately unprovable in Hobbes's own view but necessary if communication is to be at all possible. Reason is necessary, after all, for the laws of nature without which agreement to the political covenant would be problematic.

The end result is that if we all think about the same thing, reason functions in such a way that we all reach the same conclusions. But, of course, we cannot, in Hobbes's view, know for certain that we are thinking of the same thing. Thus, we still need to be able to will.
The Will

In our mental discourses we are unsure of even that which we would mark for ourselves; still, we need to act even though we are faced with the terrible dangers of the state of nature. (pp. 98-99) The concept of will must perform a crucial function for Hobbes, given his account of our mental processes. If we were merely mechanically reasonable then the will could be interpreted mechanistically too. But we are passionate as well, and given our fear of death, Hobbes needs to give an account of the will which is compelling both in its correctness as well as in its ability to sway us when our passions are not so consumed by those fears pushing us into civil society. Hobbes needs to convince us that we will in a way that always dictates obligations and that we always will no matter what the circumstances. Fear and necessity do not provide an excuse for voiding obligations later on.

Thus, Hobbes asserts:

and because *going, speaking*, and the like voluntary motions, depend always upon a precedent thought of *whither, which way*, and *what*, it is evident, that the imagination is the first internal beginning of all voluntary motion. (p. 47)

The appetites for Hobbes signify those things we voluntarily move toward or avoid. Hobbes's account of deliberation suggests again the difficulty of acting:

*Deliberation*, when in the mind of man, appetites, and aversions, hopes, and fears, concerning one and the same thing, arise alternately; and divers good and evil consequences of the doing, or omitting the thing propounded, come successively into our thoughts; so that sometimes we have an appetite to it; sometimes an aversion from it; sometimes hope to be able to do it; sometimes despair, or aversions, hopes and fears continued till the thing be either done, or thought impossible, is that we call *DELIBERATION*. (p. 53)

Finally, Hobbes stipulates the will is "the last appetite, or aversion, immediately adhering to the action, or to the omission thereof." (p. 54) Without forgetting that some motions are involuntary, as are some appetites or aversions, we must be equally on guard against talking as if the will is produced by reason. The will is ultimately a passion, an appetite, and thus, a
conception. Conceptions were defined at the outset by Hobbes as "seemings." When we deliberate, we work on "seemings" again. We conclude our deliberations always choosing a "seeming good." (p. 55) We are, Hobbes emphasizes, probably incorrect in our assessments. And, then, for Hobbes, once deliberation is over, an end is put to the liberty we had. (p. 53)

What is the liberty we lose? Hobbes calls liberty the "absence of external impediments." (p. 103) The will puts an end to liberty by completing the process of deliberating, thus rendering impediments or their absence irrelevant. For instance, if a robber demands, "Your money or your life," (p. 110) a certain impediment exists to one's liberty. But Hobbes insists the will might choose either alternative. Even if the reason counsels surrender, the will must put an end to our deliberations. Once it has done so, we are without the liberty to choose otherwise. The die is cast.

Hobbes's will then acts. As in Bergson's metaphor, the will for Hobbes performs "often like a coup d'état." (Arendt, 1978, 101) By putting an end to deliberation rather than merely being the end, the will, in Hobbes's account, carries more importance both in theory and in the practice of convincing passionate readers. Arendt (1978, p. 26) argues that Hobbes needs to supply the will with power. It is in this sense of the will as a mental coup d'état that Hobbes is able to supply the will with that power—in the sense of power as the capacity for action.

The will's power has, as well, important consequences for Hobbes's theory of right. A right is the "liberty to do, or to forebear." (Hobbes, 1962, p.103) If the will renders impediments to our liberty irrelevant, what is the relationship of a "right" to the will? Hobbes asserts that if one wills a motion, the motion may be either done by right or not, apparently regardless of the presence or absence of external impediments. This approach makes a right irrelevant as well unless we think of right as something to be willed. A right becomes the capacity to choose. When we give up rights, as in covenancing, we "forebear" (p. 103) our liberty to choose. In this light Hobbes's definition of a contract, a "mutual transference of right" (p. 106) becomes a mutual transference of will. One agrees that one ought not will the dissolution of the political covenant.

Accordingly, a covenant for Hobbes is a promise, indicated by such phrases as "I will give, I will grant." (p. 106) When I "will" give or grant a thing, I put an end to my liberty, by putting an end to deliberation. My deliberation comes to an end as each act of the will takes place. Thus, when our reason informs us through the laws of nature that we must honor our covenants, the obligation is empowered by our will.

Is the will free then? To answer this we first have to be careful of suggesting that an action be both voluntary and involuntary. If we think an act
is involuntary because the will is somehow frustrated, then we fall into what Hobbes would consider an absurd manner of speech. He makes it clear that aversion and fear can produce voluntary actions as completely as could, say, lust. (p. 54) Thus, the freedom of the will may remain a philosophic problem, but it is surely a political fact.² Hobbes's assertion of the freedom of the will explains how necessity and fear do not render our covenants invalid. The great practical application of this conclusion is to be found in Hobbes's conception of representation.

Representation

Hobbes's discussion of representation depends on two distinctions and a metaphor, all from Chapter 16 of Leviathan.³ The first distinction is between natural and artificial persons. For Hobbes, a person is "he, whose words or actions are considered either as his own, or as representing the words or actions of another man, or of any other thing, to whom they are attributed, whether truly or by fiction." (Hobbes, 1962, p.125) A person may either act or represent. If a person acts, i.e., if a set of words or deeds are to be considered to be of the person performing them, then the person is a natural person. On the other hand, if a person represents, i.e., if his words or deeds are to be considered of another, then the person is a "feigned or artificial person." (p. 125) Thus, a natural person acts, and an artificial person represents the actions of a natural person.

The parallel distinction between artificial and natural persons is that of the author and actor. For Hobbes, the "owner" of an action is the author of a action. The acts of an author are analogous to the possessions of a landowner. They are his, and actions or deeds pertaining to them are done by right. On the other hand, an actor performs a particular deed. If the deeds or actions belong like a possession to the actor, then the actor is also the author of the action, and, we may assume, a natural person. But if the actions of an actor belong to another, then the actor is an artificial person and, we may assume, merely carrying out a representative function. Furthermore, an action is always said to be carried out by an actor. The trick is determining who the author of an action is. Presumably one may carry out one's own deeds. Thus, one might be both actor and author of a deed. Moreover, it might even be said that one who performs one's own action is both a natural person and an artificial person. This could be claimed insofar as anyone who acts bears a persona, a face, or a mask. Thus, anyone who acts does not intend to reveal himself utterly. Everyone is then an actor and, therefore, artificial. The implication of Hobbes's distinction reveals something important about the
way he regards public life. Politics is not, for Hobbes, a place of intimacy as it is for Burke or Rousseau. It is a realm of conflict, competition, and tragedy.

Hobbes is clear about the importance, the difficulties, and the dangers of this authorization which creates the representative. There are two aspects of any authorization that must be understood: they are not limiting nor are they escape clauses, for both are inappropriate to our considerations. First, the author of an action may not be said to be responsible or "obliged" for actions which are not his, i.e., which he did not authorize. As Hobbes puts it: "For no man is obliged by a covenant, whereof he is not author." (p. 126). Secondly, an actor is, likewise, not responsible for actions performed within an authorization duly covenanted.

It is through this "miracle" of authorization, an act of willing, that representation may be created. In only this fashion, so far as Hobbes can see, can each member of a multitude each be represented by a single person. Of course, this requires the authorization of each and the understanding of an actor as to the nature and scope of the authority in question. To unravel these knots Hobbes leads us to the metaphor of the stage:

The word person is Latin...which signifies the face, as persona in Latin signifies the disguise, or outward appearance of a man, counterfeited on the stage; and sometimes more particularly that part of it, which disguiseth the face, as a mask or visard: and from the stage, hath been translated to any representer of speech and action, as well in tribunals, as theatres. So that a person, is the same that an actor is, both on the stage and in common conversation; and to personate, is to act, or represent himself, or another; and he that acteth another, is said to bear his person, or act in his name; in which sense Cicero useth it where he says, Unus sustineo tres personas; mei, adversarii, et judicis: I bear three persons; my own, my adversary's, and the judge's; and is called in divers occasions, diversely; as a representer, or representative, a lieutenant, a vicar, an attorney, a deputy, a procurator, an actor, and the like. (p. 125)

On the stage the intention of an actor is to reveal the meaning of the author. By hiding behind a mask the actor directs the attention of the audience towards the words and motions prescribed by the author. In this way the author is able to transmit his meanings to others through the performances of intermediaries. This is the case even if, as I have noted before, the author is the actor as well. For politics the metaphor of the theater
suggests that meanings of actions may be hidden. They may be superficial or deep. There may be problems of interpretation. There may even be different legitimate interpretations of a particular action. The problem of interpretation is not the sole responsibility of any single partner in this process. It is possible that an author may be unclear in his authorization. The Leviathan as a whole speaks to the need for care in such matters. The actor, for his part, may be careless or stupid in his interpretation of his role. And, of course, the audience may not be paying attention to the play. This is not an easy way to get one’s point across. It is, in Hobbes’s view, the only way.5

If we assume that the author is careful in giving instructions to the actor, then we can determine when the author is being represented by the actor and when the author is bound by the deeds of the actor on his behalf. It ought to be clear that any actor will bring an interpretation to an authorization. A great actor is notable for the ability to suggest the full meaning of a playwright. The greater the actor, the more we see of the playwright. By the same token, the worse the actor, the less we see of the author. Equally obvious, some deeds are inappropriate to a particular authorization, some actors’ interpretations would be too incongruous. Imagine King Lear doing pratfalls or a stuttering Henry V. If we are aware that a playwright is not responsible for a foolish actor, then we understand the lack of obligation when any actor performs actions outside his authorization. The formula for Hobbes is that one is only bound by one’s own authorizations and actions.

When Hobbes cites Cicero’s assertion that as an actor "I bear three persons: my own, my adversary’s and the judge’s" (p. 125), he implicitly raises the question of who shall judge whether an authorization is enacted or not?6 In the metaphor of the theater we can imagine an audience throwing rotten vegetables at an actor only because the author is hidden behind the curtain. Clearly, the actor may be blameless, or he may not be. It is possible to imagine the audience demanding their money back rather than having to bear Lear played as a fool. The problem is persistent.

If the audience is learned, then they may know the text of the play themselves. In this case they may reasonably be expected to evaluate the deeds of the actor within the guidelines established by the script. This is obviously an uncommon instance in the theater and in politics. Still, an audience may make a tentative judgment to blame the author, or the actor, depending upon the context provided. There is, however, one person who probably knows for certain whether or not the actor is in character — the playwright.

Every playwright must be somewhat tolerant of an actor’s weaknesses, strengths, and personal interpretations of a role. But no playwright ought to be condemned when his authorization has clearly been violated. The creation

Richard T. Martin

55
of a sovereign is akin to the creation of a role by a playwright. The difference is the stakes are higher for citizens than for playwrights. Therefore, we can reasonably assume that all citizens will be careful in their authorizations; otherwise, why would they flee the state of nature? What would they have gained?

Applying the analogy of the theater to the relationship of citizen and sovereign, the sovereign must surely be granted as much room for interpretation as any actor. Hobbes had already established that a covenant without the means for its performance was not binding: "Right to an end, containeth right to the means." (p. 109) This suggests as well that within the authorization granted him in the original covenant a sovereign must have the means to carry out the authorized actions. This accounts for the extensive nature of representation for Hobbes. He is willing to admit of many different interpretations of a role.

The direction of the argument should be clear by now. The sovereign is terrible. So terrible is he that he can create peace where there was none. The limits of his authorization though are clear: he may do whatever he thinks is useful "for their peace and common defence." (p. 132) The sovereign is like any actor who may interpret his role but, at the same time, may not do that which is outside his authorization. Spelling out the analogy with the stage the playwright could say, "This man we call Lear, knowing full well that he is not Lear but merely that he carries with him for a time that persona which I have given him." Likewise, the citizen could say, "This man we call sovereign, a mortal god, knowing full well that he is not a god but that he merely carries with him for a time that persona which I have given him."

When an actor violates the role of Lear, we know it, and we do not think of that individual as Lear. By the same token, when an actor violates the role of sovereign, we know it, and we do not call that individual our ruler. We have already established some of the guidelines by deciding when to call an actor by the name of his character or when to ask for our money back, but what of the case of a sovereign who ceases to act out his role? The stakes here are higher, obviously; and as the stakes get higher, the will re-enters Hobbes's politics.

Willing and Representation

I have offered an account of a Hobbesian theory of mental discourse and of representation neither of which appear as formalistic as Hobbes is usually assumed to be. Indeed, the only part of the picture that appears mechanical or formal is the operation of the will. The will is, after all, merely the last appetite before we act. When, however, we tie the operation of the
will to representation, the will assumes its proper emphasis in Hobbes's scheme of things, and then even the will is no longer a mechanical or formal device. Further, this approach enriches our understanding of the nature of representation.

Consider first of all how the act of authorizing is like all actions a result of willing. But this act, because of the radical insecurity of the actor, is a model case against which all other examples of willing must be compared. It is, of course, fear which provides the passion for peace which moves the will, but the will must be seen as fearful too of what is to be created: Leviathan. One cannot help but notice that Hobbes never actually insists upon the actual event of an original covenant. Because of the terror implicit in this act of willing, there is no way to know for certain if the Leviathan will be chosen over the state of nature. Even the choice to create the Leviathan is subject to the vagaries of the will. All that is certain is that Leviathan does exist and the state of nature always threatens.

In this light it is easy to see why Hobbes wishes to stress the compatibility of the state with the will:

Lastly from the use of the word *free-will*, no liberty can be inferred of the will, desire, or inclination, but the liberty of the man; which, consisteth in this, that he finds no stop, in doing what he has the will, desire, or inclination to do. (p. 159)

But all this and the other talk of the compatibility of the will and necessity pale in contrast with the fundamental fact that for Hobbes the will is a passion. Further, for Hobbes the will must act. Lastly, no contract is valid unless it carries with it the means for achievement. This usually is taken to suggest the proper need of the sovereign for absolute power, but it works on behalf of the will as well.

For Hobbes, no sane man can will his own death. Acts of the sovereign which threaten in fact the life of an individual may return that individual back to the state of nature. It is not, however, simply acts which *in fact* threaten which invalidate the political covenant. Like the idiosyncratic theater critic, each of us must decide if the state is carrying out our particular authorization. Each of us must decide what we feel is necessary for our survival. Our judgments are not, as we have established, in any sense mechanically reasonable; they are subject to all the difficulties of mental processes described above. Consequently even the sovereign's factually correct interpretation of his authorization may lead to his plunging society back into the state of nature.
Of course the Leviathan has its tools, such as its awesome power and the right to teach particular doctrines. Control over the socialization process may actually inhibit more would-be revolutionaries than simple fear. But the fact remains that men "will" act and (as suggested above) external impediments and right may be irrelevant to them. For example, when one fears for one's own life, the life of one's beloved, or the salvation of one's soul, then it may not matter what awesome power the sovereign keeps at its disposal. In *De Cive* (1949, p. 98) Hobbes warns sovereigns not to sleep for the assassin might get lucky. In many places Hobbes warns sovereigns to take care to guard against the unreasoning passions of their subjects. These warnings point up the relationship of willing to the process of representation.

Representation can not be considered a lifeless, formal process when those who are being represented are as potentially rambunctious as this. Each part of Hobbes's theory taken individually and superficially may seem mechanical, like a Euclidean/Rikerian nonpolitics of rational calculation and occasional (Arrow's?) paradox. Placed in context it is probably only inertia of an imagination as strong as the one which Hobbes describes that keeps any actor safe on the political stage.

**Subjectivity and Responsibility**

A Hobbesian account of rebels whose motivations are impenetrable even to the most well-meaning sovereign runs the risk of suggesting that empathy is the great, though flawed, political virtue. Ironically, just when Hobbes seems to be rescued from one extreme (Hobbism) he seems to flow into another (subjectivism).

Hobbes's goal is always to provide an uncompromising account of how things are, no matter how unpromising. Further, his account of political thinking — reasoning, re-presenting, and struggling to understand others from behind one's mask — is a convincing account of how things actually are. If so, his insistence on a will which binds us to responsibility for our covenanting can be seen as an attempt to steer clear of the extreme of subjectivism. After all, we are responsible for honoring our promises even to the thief who would spare us for the ransom to follow:

> [I]f I covenant to pay a ransom, or service for my life, to an enemy; I am bound by it: for it is a contract, wherein one receiveth the benefit of life; the other is to receive money, or service for it; and consequently, where no other law, as in the condition of mere nature, forbiddeth the performance, the covenant is valid.... even in commonwealths, if I be
forced to redeem myself from a thief by promising him money, I am bound to pay it, till the civil law discharge me. For whatsoever I may lawfully do without obligation, the same I may lawfully covenant to do through fear: and what I lawfully covenant, I cannot lawfully break. (p. 110)

The success of Hobbes's project depends upon his ability to convince us that in spite of the isolation of our subjective worlds, in our fear, we are still responsible for that which we will. We must pay our ransom to our representatives. As true as this may be when either sheriff or robber comes to collect, probably even Hobbes would be surprised if the individual, once freed from his captors, returned to pay for his promise. No doubt the freed man would find "some new, and just cause of fear, to renew the war." (p. 110)

In the end, Hobbes's insistence upon individual responsibility is due to his inability to conceive of unity except through the will of the representer: only if one voice speaks is there unity for Hobbes. There is no chorus in the Hobbes's theatre. This is the point at which Hobbes fails. It is surely true that fear is consistent with the will. Further, the liberty of the will is also undoubtedly "consistent with the unlimited power of the sovereign." (p. 161)

But this last necessary prerequisite for Hobbesian politics is not adequate when liberty is found only in the silence of the laws (p. 165). On such a stage, no political action would be possible, except, perhaps, retroactive legitimation of revolution.

Hobbes, in the final analysis, rejects the Greeks who found freedom in the public arena where each was accountable publicly, and begins the great liberal turning-away from the public realm. He insists upon obligation and responsibility without appearance, as though we could express our wills through some essentially private practice like voting. Hobbes does not find a way to enable us to fulfill our obligations without feeling them to be ransoms; and, given the individualistic perspectives which result, no doctrines, however convincingly taught, can overcome this failing. (p. 137)

This defect in Hobbes becomes a central problem for his successors in what became the liberal tradition. It has profound consequences today for such practices in liberal democratic societies as voting and the accountability of both government officials and citizens. Additionally this defect is the basis for a sense of ambiguity and cynicism about the roots of liberal governments which has been too easily exploited by critics who favor ideologies of left or right.

NOTES


3. I intend to argue the importance of the metaphor of the stage for Hobbes in the following. The irony of this follows from Hobbes's list of the abuses of language. Surely a metaphor is an inconstant signification (Hobbes, 1962, p. 40). See also Wolin (1960) and Whiteside (1987) for an examination of these issues and difficulties.

4. It is not clear though whether or not one can be mistaken about an interpretation. Significance or meaning can only be given by an author who is also a member of the audience. Still although one may not properly be said to ever be mistaken, Hobbes thinks one can certainly be foolish.

5. After pondering this I wonder if it is not the case that Hobbes would consider it a miracle when representation takes place as the author would hope. Given the events of the Civil War, Hobbes may have thought so.

6. Pitkin (1972, pp. 24-27) deals with the question of how we are to regard Cicero's reference to the orator (lawyer), Anthony, as he prepares a case by listening to his client in private. The orator must imagine the objections of the other actors in the courtroom by asking himself what he would do if he were in their place. Pitkin does not view this metaphor as compatible with the stage. She argues that the orator acts on one's behalf, whereas the actor pretends to be Hamlet (her example). Pitkin is further concerned that this reading of Hobbes admits the possibly of swindle or fraud as the basis of the state. I am arguing here that the metaphor does work in precisely that light. After all, no one really believes that the actor is Hamlet. For further examination of Pitkin's position, see Mansfield (1971).

7. Taking Hobbes's theory piecemeal and out-of-context is, I believe, the problem which undercuts Bluhm and Pitkin. These influential works have helped keep alive what Sterling P. Lamprecht (1949, xv) described in his Introduction to De Cive as "Hobbism".

8. In Dallmayr's (1969) excellent article he argues that Hobbes's view of the mental processes is like Sartre's insistence upon absolute responsibility. From this perspective, Hobbes's fool is akin to Sartre's practitioner of "bad faith".

9. Hobbes's views were, in turn, rejected by the communitarian tradition, beginning with Rousseau, which would revive the ancient quest for freedom in the public arena.
REFERENCES


61


Measuring the Impact of Institutional and Occupational Affiliation on the Stances of Soviet Officials in the 1980-81 Polish Crisis

Curtis R. Brautigam
Chestnut Hill College

Following from the bureaucratic politics/interest group approach to Soviet foreign policy decision-making, the purpose of this article is to determine whether the stances of Soviet officials in the 1980-81 Polish crisis were affected by their institutional, occupational, or ethnic affiliation. The study found that, overall, there was not a strong relationship between group affiliation and tendency orientation. However, the results indicate that there were definite coalitions of groups and individuals espousing differing stances on Poland, and that there was a significant difference between the Politburo and Secretariat and the overall score for all other groups.

One of the fundamental assumptions of the bureaucratic politics approach as developed by Graham Allison (1971) and Morton Halperin (1974) is that the institutional or occupational affiliation of foreign policy decision-makers plays a major role in their articulations of particular foreign policy stances, as illustrated by the well-known maxim "Where you stand depends upon where you sit" (Also see Halperin and Kanter, 1973). In the area of Soviet politics, there have also been numerous studies on the role of institutional and occupational affiliation in determining decision-makers’ stances on particular issues (Aspaturian, 1971; Griffiths and Skilling, 1971; Valenta, 1979). One of the main assumptions of the interest group approach to Soviet politics as developed by Skilling (1983), Schwartz (1968), Stewart (1969), and Langsam and Paul (1972) is that the policy stances of Soviet officials in various policy issues are influenced by their institutional or occupational affiliation. Aspaturian (1971, pp. 585-586) argued that traditional sectors of the armed forces, heavy industrial managers, professional party apparatchiki and ideologues are believed to benefit from
increased international tension, and that the state bureaucracy, light industrial managers, cultural, professional, and scientific groups, and Soviet "consumers" are believed to benefit from a relaxation in international tensions.\(^2\)

In the area of Soviet domestic policy, Jonathan Harris (1984) concluded that Soviet officials' stances on the issue of Communist Party intervention in economic management were dependent on their institutional and occupational affiliation. In his analysis of Soviet public statements on this issue from 1964 to 1966, he found that officials in the state apparatus, Central Committee secretaries in charge of theoretical education and cadre management, the first secretaries of republic Party organizations, Central Committee secretaries in charge of theoretical education and cadre management, the first secretaries of republic Party organizations where nationalist dissent was a serious problem, many first secretaries of regional Party organizations in non-Russian republics, and those regional first secretaries who had previously served as the first secretaries of agricultural regions all opposed Party intervention in economic management. The first secretaries of republic Party organizations where nationalist dissent was not a problem and the regional first secretaries who had previously been first secretaries of industrial regions tended to support party intervention in economic management.

A valuable case study in Soviet foreign policy that has applied the bureaucratic politics approach was Jiri Valenta's study (1979) of Soviet decision-making in the 1968 Czechoslovak crisis. He concluded that intervention in Czechoslovakia was favored by individuals in certain institutional settings (the party apparatus in the Ukraine and republics in proximity to Czechoslovakia, ideologues, and certain sectors of the Soviet armed forces), while individuals in other settings opposed such action (the foreign policy apparatus, other sectors of the armed forces, and those Central Committee departments in charge of relations with non-ruling Communist Parties).

There were also some studies on the impact of the ethnic factor on Soviet decision-making in Czechoslovakia in 1968 (Hodnett and Potichnyj, 1970; Valenta, 1979, pp. 102-104). Both works argued that officials in the Soviet republics in proximity to Czechoslovakia were particularly concerned about the crisis.

However, scholars of Soviet politics have been much better able to relate officials' public statements to stances on domestic policy issues than those of foreign policy. The reason is that Soviet official spokesmen on domestic policy issues are much more explicit in giving policy prescriptions than those on foreign policy issues. Spokesmen on foreign policy issues generally tend to provide definitions of the situation rather than explicit...
policy recommendations. As a result, a scholar would have to infer the spokesman's policy preferences from the public statement. The purpose of this study is to investigate the impact of group affiliation on the stances of Soviet decision-makers and observers on the 1980-81 Polish crisis. The working hypothesis to be tested is that the stances of Soviet officials towards Poland during the 1980-81 Polish crisis are related to their institutional, occupational, or ethnic affiliation.

Methodology of the Study

In this study, a total of 173 statements or articulations by Soviet officials on Poland made between August 31, 1980 and December 13, 1981 were examined. They were taken from a wide range of Soviet publications, as well as English-language translations of the relevant material in the Soviet media.

Soviet officials and spokesmen were classified according to their institutional, occupational, or ethnic affiliation. A total of nine institutional settings were examined. They included: Politburo/Secretariat, KGB, Ministry of Defense, Ministry of Foreign Affairs, International Department, Department of Liaison with Communist and Workers' Parties, International Information Department, trade unions, and Komsomol.

Note that there are important institutional and bureaucratic divisions within these various settings. For instance, the Ministry of Defense is divided into five branches of the armed forces (Ground Forces, Strategic Rocket Forces, Air Defense Forces, Navy, and Air Force), and individuals in each of these branches may have had their own distinct parochial and institutional concerns with regard to Poland. Such distinctions will not be addressed in this study, since the focus will be on each institution as a whole.

The occupational settings that were investigated included ideologists, economists and planners, the cultural establishment, and the writers. The ideologists basically consisted of Party officials or academics who were concerned with questions of Marxist-Leninist ideology. They tended to be agitprop specialists or academics who worked at various institutes, academics, or universities which had departments or faculties concerned with ideology-related matters. Economists and planners were those individuals who were either employed in universities or academies dealing with economic matters, or those engaged in the implementation of economic policy. The cultural establishment included those people concerned with culture, the arts and music. The writers studied were those who were officially members of the USSR Writers' Union.

Seven different ethnic settings were investigated: Ukrainians, Byelorussians, Lithuanians, Latvians, Estonians, other non-Russian republics,
and the RSFSR. These settings were operationally defined so that they only included Party leaders in each particular republic and those individuals who published statements in the republic Party press. 8

**Stances on Poland**

For the purposes of this study, Soviet stances on Poland in 1980-81 were classified according to three different tendencies. A tendency constitutes a mass of common articulations or statements in an issue area which persists over time. 9

Before discussing the various tendencies themselves, note that Soviet discourse on most public policy issues, including the 1980-81 Polish crisis, is very euphemistic. The euphemistic nature of Soviet public statements renders them highly susceptible to all types of inferences. For instance, Soviet policy-makers often demanded that the Polish United Worker's Party (PUWP) authorities "rebuff counterrevolution." This formulation seems to imply the need to use force in dealing with Solidarity.

The several tendencies each represented varying degrees of perception of threat posed by the crisis, as expressed by Soviet policy-makers and spokesmen. They also reflected differing assessments of the ability of the PUWP leadership to overcome the crisis. In order to classify the statements into their appropriate tendencies, they were closely examined for the key arguments and formulations. The "pessimistic" tendency reflected a preponderance of the highest degree of threat perception, along with the most pessimistic assessment of the ability of the Polish authorities to overcome the crisis. The "optimistic" tendency, on the other hand, reflected a predominantly low degree of threat perception, along with a high degree of confidence in the ability of the PUWP authorities to overcome the crisis. The "mixed" tendency fell between these two extremes, often giving equal weight to both the "optimistic" and "pessimistic" tendencies.

Pessimists argued that the "grave" crisis (Moscow home service, 19 July 1981) was the result of "Western interference in Polish affairs" (Petrov, 1980a) as well as "anti-socialist elements" in Poland (Petrov, 1980b) and "revisionists" who prevented the PUWP from rebuffing "counterrevolution" (Losoto, 1981). Some alleged that socialism was "insufficiently developed" in Poland (Kuznetsov, 1981) and denounced the idea of free trade unions and "different models of socialism" (Bugaev, 1981, pp. 173-174). Most pessimists stated that "Poland could rely on its friends and allies" (Ponomarev, 1980), while some argued that the threat to socialism in Poland was not just a matter of concern to Poland, but to the entire socialist community (Sinitsin, 1981).
Proponents of the "mixed" tendency claimed that if "Western interference" was a cause, so were "mistakes by the previous Polish leadership" (Grishin, 1981). They felt Solidarity was divided between influential "extremists" and the rank and file, the former thwarting the efforts of the PUWP authorities, especially the PUWP First Secretary Stanislaw Kania, to resolve a "complex" crisis (Moscow home service, 29 January 1981; Brezhnev, 1982, p. 21; Meeting of the Leaders..., 1980).

Optimists saw the crisis as rooted in errors of "management" and felt that the workers were not opposed to socialism but to its "distortions" (Kharkov, 1980; Moscow home service, 12 October 1980). Poland was a "strong" socialist state where the PUWP was actively working to overcome, and "fully capable of" overcoming, the crisis (Moscow home service, 14 September 1980; "A Friendly Working Visit," 1980). To do so it had to "improve its links with the masses" through limited reform (Legantsev, 1981).

Data Analysis

A total of 185 Soviet statements on Poland during the 1980-81 crisis were subjected to a number of statistical tests both to determine the relationship between tendency alignment (the propensity of an individual to align with a particular tendency) and related institutional, occupational, and ethnic affiliation, and also to highlight differences in opinion on Poland among individuals in the various settings under investigation. For the purpose of the study, the independent variable is institutional, occupational, or ethnic affiliation. The dependent variable is tendency orientation (pessimistic, mixed, or optimistic).

At first, the statements were grouped according to the tendency espoused by the particular spokesman and his/her institutional, occupational, or ethnic affiliation. Then a number of statistical tests were performed on the data. The first statistical test involved the calculation of Cramer's V for each set of institutional, occupational, and ethnic settings. A high value of Cramer's V would indicate a strong relationship between setting and tendency.

The second statistical test of the data involved the calculation of significant differences between the proportions of pessimistic statements for the Politburo/Secretariat and for each of the settings that were investigated. In each of these cases, the proportion of pessimistic statements is equivalent to the ratio of the number of pessimistic statements to total number of statements on Poland. The reason why the Politburo/Secretariat served as the basis of comparison was due to their central role in the formulation of Soviet foreign policy. All of the major decision in the area of foreign policy are
Commonwealth

made by the Politburo. The Secretariat contains various departments concerned with foreign policy matters (International, Liaison with Communist and Workers' Parties, International Information; the last of these three departments was abolished in 1986). (Petrov, 1973; Alexander, 1984, pp. 12-16) The measure of statistical significance used was the Z-score, which involved the difference between two proportions. For the purpose of this study, a .05 level of significance was employed.

The third statistical test involved the calculation of significant differences between the proportions of pessimistic statement for each setting and the pessimistic proportion for all settings as a whole, also by means of Z-scores. Any statistically significant differences in these cases could illustrate important differences of opinion on Poland among the various settings, and could provide important clues as to possible coalitions of institutional, occupational, and ethnic actors that were trying to affect Soviet policy on Poland in 1980-81.

Observations

Institutional Settings. As far as the Politburo and Secretariat are concerned, opinion on Poland was almost equally divided between the pessimistic and the two non-pessimistic tendencies.

Slightly over half of all the statements (51%) by members and candidate members of the Politburo and Secretariat can be classified as pessimistic, while the rest of the statements are divided between the mixed and optimistic tendencies.

As far as individual members or candidate members of the Politburo and Secretariat are concerned, there is a definite division of opinion. Of those individuals who expressed themselves on the crisis more than once, Central Committee secretary Mikhail Suslov consistently expressed pessimistic views on the crisis, and the views of Defense Minister Dmitri Ustinov were almost always pessimistic. The views of Foreign Minister Andrei Gromyko grew more pessimistic as the crisis progressed. CPSU General Secretary Leonid Brezhnev consistently expressed mixed views on the crisis and Central Committee secretary Konstantin Chernenko did so almost as consistently. Central Committee secretary Boris Ponomar cv's statements on the crisis went from optimistic to mixed as the crisis progressed.
Table 1: Tendency Alignment Among Institutional Settings

<table>
<thead>
<tr>
<th>Setting</th>
<th>Optimistic</th>
<th></th>
<th>Mixed</th>
<th></th>
<th>Pessimistic</th>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%&lt;sup&gt;a&lt;/sup&gt;</td>
<td>N</td>
<td>%&lt;sup&gt;b&lt;/sup&gt;</td>
<td>N</td>
<td>%&lt;sup&gt;c&lt;/sup&gt;</td>
<td>N</td>
</tr>
<tr>
<td>Politburo/Secretariat</td>
<td>2</td>
<td>6.9</td>
<td>12</td>
<td>41.4</td>
<td>15</td>
<td>51.7</td>
<td>29</td>
</tr>
<tr>
<td>KGB</td>
<td>0</td>
<td>-</td>
<td>3</td>
<td>100.0</td>
<td>3</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Ministry, Defense</td>
<td>4</td>
<td>11.8</td>
<td>3</td>
<td>8.8</td>
<td>27</td>
<td>79.4</td>
<td>34</td>
</tr>
<tr>
<td>Ministry, Foreign Aff.</td>
<td>3</td>
<td>30.0</td>
<td>4</td>
<td>40.0</td>
<td>3</td>
<td>30.0</td>
<td>10</td>
</tr>
<tr>
<td>Internat'l Department</td>
<td>2</td>
<td>50.0</td>
<td>2</td>
<td>50.0</td>
<td>0</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>DLCWP</td>
<td>0</td>
<td>-</td>
<td>2</td>
<td>100.0</td>
<td>0</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Internat'l Information</td>
<td>3</td>
<td>60.0</td>
<td>1</td>
<td>20.0</td>
<td>1</td>
<td>20.0</td>
<td>5</td>
</tr>
<tr>
<td>Trade unions</td>
<td>1</td>
<td>7.1</td>
<td>1</td>
<td>7.1</td>
<td>12</td>
<td>85.8</td>
<td>14</td>
</tr>
<tr>
<td>Komsomol</td>
<td>0</td>
<td>-</td>
<td>1</td>
<td>25.0</td>
<td>3</td>
<td>75.0</td>
<td>4</td>
</tr>
<tr>
<td>Totals</td>
<td>15</td>
<td>14.3</td>
<td>26</td>
<td>24.8</td>
<td>64</td>
<td>60.1</td>
<td>105</td>
</tr>
</tbody>
</table>

Cramer's V = .494

<sup>a</sup>% is ratio between N of a particular tendency and total N of the setting.

<sup>b</sup>Z-score for this setting vs. Politburo/Secretariat significant at p.05

<sup>c</sup>Z-score for this setting vs. Politburo/Secretariat significant at p.01

<sup>d</sup>Z-score for this setting vs. total significant at p.05

<sup>e</sup>Z-score for this setting vs. total significant at p.01

<sup>f</sup>Cramer's V score does not include figures from Politburo/Secretariat.

Unlike the other institutional settings investigated, the Politburo/Secretariat makes policy; it does not implement policy or discuss policy options (Alexander, 1984).

Sources: See note 5.

In the other institutional settings, there were obvious differences in opinion between individuals in the various institutions that were investigated. Of the few views expressed by the KGB, the proportions of pessimistic sentiment were high; they were likewise high in the trade unions, and the Komsomol, and in the many views put forth by the Ministry of Defense. In contrast they were quite low in the Ministry of Foreign Affairs and the three Central Committee departments concerned with foreign affairs (the International Department, the International Information Department, and the Department of Liaison with Communist and Workers' Parties-DLCWP). Turning to an examination of the Z-scores, we see that opinion among members of the Ministry of Defense and trade unions was significantly more pessimistic than among members of the Politburo/Secretariat, while opinion in the International Department was significantly less pessimistic than that in
the Politburo and Secretariat. The views of individuals in the Ministry of Foreign Affairs and the three Central Committee departments concerned with foreign affairs were significantly less pessimistic than the total of individuals in all the settings under investigation.\textsuperscript{15}

The total proportion of pessimistic statements for all institutional settings did not differ significantly from that on the Politburo and Secretariat, as well as for all the settings as a whole. As for the relationship between institutional setting and stance on Poland, Cramer's V does indicate a moderate relationship.

**Occupational Settings.** Among the occupational settings, the proportions of pessimistic sentiment were high for all settings under investigation except the cultural establishment and writers.

The ideologists and the economists/planners were significantly more pessimistic than the Politburo/Secretariat while the cultural establishment was significantly less pessimistic. If one examines the writers, the results are not statistically significant. Finally, the Cramer's V for Table 2 indicates that there was not much of a difference between the stance on Poland of various occupational settings.

<table>
<thead>
<tr>
<th>Setting</th>
<th>Optimistic</th>
<th>Mixed</th>
<th>Pessimistic</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td></td>
<td>N</td>
<td></td>
</tr>
<tr>
<td>Ideologists</td>
<td>2</td>
<td>1</td>
<td>17</td>
<td>20</td>
</tr>
<tr>
<td>Economists/planners</td>
<td>0</td>
<td>2</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Cultural establishment</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Writers</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>3</td>
<td>5</td>
<td>24</td>
<td>32</td>
</tr>
</tbody>
</table>

Cramer's V = .357

\textsuperscript{a} Z-score for this setting vs. Politburo/Secretariat significant at p.05
\textsuperscript{b} Z-score for this setting vs. Politburo/Secretariat significant at p.01

**Ethnic Settings.** As far as the ethnic settings are concerned (Table 3), the proportions of pessimistic statements were high for the Baltic republics, the other non-Slavic nationalities, and the RSFSR, and moderately high for the Ukrainians. The proportion was low for the Byelorussians.

However, as far as the total for the Baltic republics, the Latvians in particular, and the RSFSR are concerned, the proportion of pessimistic sentiment...
statements was significantly higher than that of the Politburo/Secretariat. This indicates that Party officials in these republics were extremely concerned about the impact of the Polish events in the region.

Table 3: Tendency Alignment Among Ethnic Settings

<table>
<thead>
<tr>
<th>Setting</th>
<th>Optimistic</th>
<th>Mixed</th>
<th>Pessimistic</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Lithuanians</td>
<td>0</td>
<td>-</td>
<td>1</td>
<td>20.0</td>
</tr>
<tr>
<td>Latvians</td>
<td>0</td>
<td>-</td>
<td>1</td>
<td>14.3</td>
</tr>
<tr>
<td>Estonians</td>
<td>0</td>
<td>-</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Total Baltic Reps</td>
<td>0</td>
<td>-</td>
<td>2</td>
<td>14.3</td>
</tr>
<tr>
<td>Ukrainians</td>
<td>1</td>
<td>7.7</td>
<td>3</td>
<td>23.1</td>
</tr>
<tr>
<td>Byelorussians</td>
<td>2</td>
<td>50.0</td>
<td>1</td>
<td>25.0</td>
</tr>
<tr>
<td>Other non-Russian</td>
<td>0</td>
<td>-</td>
<td>1</td>
<td>20.0</td>
</tr>
<tr>
<td>RSFSR</td>
<td>0</td>
<td>-</td>
<td>1</td>
<td>10.0</td>
</tr>
<tr>
<td>Overall Totals</td>
<td>3</td>
<td>6.5</td>
<td>8</td>
<td>17.4</td>
</tr>
</tbody>
</table>

Cramer's V = .424

a Z-score for this setting vs. Politburo/Secretariat significant at p.05
b Z-score for this setting vs. total significant at p.05

Sources: See note 5.

It is surprising that the crisis did not receive extensive coverage in Estonia, where the authorities faced riots in October 1980 and the possibility of a one-hour general strike in Tallinn in December 1981. (Vardys, 1983) However, an article by Estonian Party First Secretary Karl Vaino (1983, p. 51) in Kommunist made an explicit linkage between the November 1981 strike threat and the Polish crisis.

The proportion of pessimistic statements on Poland in the RSFSR was also significantly higher than that for the Politburo and Secretariat. It should be noted that coverage of the crisis in Sovetskaya Rossiya was consistently pessimistic.

As far as the Ukrainians and Byelorussians were concerned, sentiment on Poland did not differ significantly from that on the Politburo/Secretariat. However, the Byelorussian Party leadership expressed views that were significantly less pessimistic than those of all the settings as a whole. This suggests that there was much less concern about the Polish crisis in the two non-Russian Slavic republics bordering on Poland than in the Baltic republics. Also, it seemed as if the Ukrainian Party leadership took on a much lower profile towards Poland in 1980-81 than it did towards
Czechoslovakia in 1968. The Ukrainian Party First Secretary Volodymyr Shcherbytsky made only one (mixed tendency) statement on Poland throughout the entire crisis and he did not participate in any of the negotiations between the Soviet and Polish leaders in 1980-81, unlike his predecessor Petro Shelest, who took part in the 1968 Czechoslovak crisis with the respective Czechoslovak leadership.^{16}

The relationship between ethnic setting and stance on Poland, as indicated by Cramer's V, was not very strong. Thus, it does not appear that the views of all Soviet officials concerning Poland were a function of their proximity to Poland. The hypothesized relationship between ethnicity and views on Poland was not confirmed in this case.

**Overall Results.** Combining the total number of pessimistic articulations for all of the settings investigated and the total number of articulations for all settings with the exception of the Politburo and Secretariat, the proportion of total pessimistic articulations is .703.

This proportion was significantly higher than that of the Politburo/Secretariat at a .05 level of significance. As far as the overall relationship between setting and stance on Poland is concerned, the value for Cramer's V was .111, and this was weak. Thus, considering all of the settings investigated, there is not much of a relationship between setting and stance on Poland.

Table 4: Breakdown of Overall Results

<table>
<thead>
<tr>
<th>Setting</th>
<th>Optimistic</th>
<th>Mixed</th>
<th>Pessimistic</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Institutional</td>
<td>13</td>
<td>17.1</td>
<td>14</td>
<td>18.4</td>
</tr>
<tr>
<td>Occupational</td>
<td>3</td>
<td>9.4</td>
<td>5</td>
<td>15.6</td>
</tr>
<tr>
<td>Ethnic</td>
<td>3</td>
<td>6.5</td>
<td>8</td>
<td>17.4</td>
</tr>
<tr>
<td>Overall Results</td>
<td>19</td>
<td>12.2</td>
<td>27</td>
<td>17.5</td>
</tr>
</tbody>
</table>

Cramer's V = .111

^a This excludes the "Politburo/Secretariat" category.

**Conclusion**

Despite the lack of an overall relationship between setting and stance on Poland, there was a significantly higher level of concern about the Polish crisis in the expressed views of officials in the middle-level bureaucracy than those on the Politburo/Secretariat. In the final analysis, those on the
Politburo/Secretariat who espoused a pessimistic view on the crisis might have been able to draw upon the support of those in the middle level of the bureaucracy to promote their views in the Politburo and Secretariat and prevail in the end. In the final months of the Polish crisis, pessimistic views on the crisis were overwhelmingly dominant in the Soviet media (Ploss, 1986; Cynkin, 1988; Brautigam, 1988, pp. 210-242).

Since Soviet statements on Poland were expressions of how spokesmen in various settings defined the situation, not advocacies of specific courses of action by the Soviet leadership, we cannot directly relate each statement to a specific policy preference. In general, however, a pessimistic tendency was associated with confrontational policies towards Poland, and optimistic and mixed tendencies were associated with more conciliatory policies. Thus, pessimists generally favored a quick resolution of the crisis involving the use of force, as they were obviously more concerned about the impact of the crisis on the coherence and unity of the Soviet bloc, while optimists and those who expressed a mixed tendency favored a more gradual resolution of the crisis by political means (Ploss, 1986, p. 2; Brautigam, 1988 pp. 342-345).

This methodology may be appropriate for studying the stances of officials in other issue areas and determining the composition of various tendency or opinion groupings in these issue areas. Even though this study was one of a foreign policy crisis at the end of the Brezhnev regime, the methodology might be used more successfully if applied to public policy issues facing the Gorbachev regime, thanks to the impact of glasnost and the efforts by Gorbachev to promote pluralism and debate in the Soviet political system.

NOTES

1) Of course, institutional or occupational affiliation is not the only contributing factor to decision-makers' foreign policy stances according to this approach. Factors such as position within the institution and personal interests also play a role. However, institutional affiliation is a major factor. Furthermore, even though the proponents of the bureaucratic politics approach claim that this approach is applicable to the foreign policy of all states, this model has almost exclusively been used in the U.S. context.

2) Note that the bureaucratic and interest group approaches to Soviet politics fell into disfavor after 1979. Reasons for this are both substantive and methodological. Substantively, many of the reforms of the late 1950s and early 1960s were reversed by the Brezhnev leadership resulting in the suppression of what had appeared to be an emerging civil
Commonwealth

society in the USSR under Khrushchev. In addition, weaknesses in the interest group and bureaucratic politics approaches, the lack of scientific rigor in the testing of the basic assumptions of these approaches, and the difficulty of defining such concepts as "group" made their analytical frameworks vulnerable to the criticisms of its skeptics (Terry, 1979; Skilling, 1983).

3) For an examination of the difficulty in using these approaches in analyzing debates on domestic and foreign policy issues, compare: Ploss, 1965 and Hough, 1986.

As far as making inferences from Soviet public statements is concerned, some scholars have employed "propaganda analysis," a method of inferences based upon the logic of the situation. The scholar would make a list of the probable alternatives to the decision-maker, and make comparisons in the media content relating to each of the probable alternatives. See Ploss, 1986, p. 2 and Cutler, 1985, pp. 82-84.

4) It was on August 31, 1980 that the Polish government and the striking workers in Gdansk signed the agreements permitting the establishment of trade unions independent of Party control. The crisis ended on December 31, 1981 when PUWP First Secretary Wojciech Jaruzelski declared martial law and cracked down on Solidarity and its supporters.

5) The Soviet publications that were employed in this study included: Pravda, Izvestiya, Krasnaya zvezda, Trud, Ekonomicheskaya gazeta, Literaturnaya gazeta, Komsomolskaya pravda, Kommunist, Kommunist vooruzhennykh sil, Kommunist Ukrainy, Kommunist Belorusssii, Kommunist Sovetskoi Latvi, Kommunist Estonii, Pid praporom leninizmu, Partiinaya zhizn, Politicheskoe samoobrazovanie, and published anthologies of that public statements of the Soviet leaders at the time. The translated material employed in this study included statements by Soviet leaders in the print and electronic media. They included: Current Digest of the Soviet Press, Foreign Broadcast Information Service, Joint Publications Research Service, and the BBC Survey of World Broadcasts.

6) As far as the Politburo/Secretariat is concerned, all statements by both full and candidate members of these two bodies were treated as part of this setting. This setting was not examined for the possible impact of institutional affiliation on the stances of members of that setting, but for any significant differences in views between the top leadership as represented by the Politburo and Secretariat, and the other institutional, occupational, or ethnic settings.
7) Dissident cultural or literary figures were not studied because their works do not enjoy official sanction.

8) Thus, the emphasis was on the Party leadership just in each of these ethnic settings, not on the ethnic affiliations of all the individuals treated in this study, and opinions on Poland by nationalist dissidents in these non-Russian areas were not considered. The focus is on whether Party officials in non-Russian republics in proximity to Poland were more concerned about the Polish crisis than those who weren't.

9) The idea of classifying Soviet official statements on a particular issue area into articulations of various "tendencies" originates from the articles by Franklyn Griffiths (1971) on "tendency analysis" in the volume Interest Groups in Soviet Politics. Other works that deal with Soviet tendencies include: Clemens, 1978; Griffiths, 1984. Expressed views on Poland in the Soviet media are not the only indication from which one can make definitive conclusions about an individual's alignment with a particular tendency coalition. There is the possibility that a key Soviet decision-maker played a significant role in managing the 1980-81 Polish crisis without expressing his or her views in the Soviet media. However, without access to inside information on what occurred in the Politburo at that time, the media are a useful surrogate to gauge various coalitions on Poland.

10) The second and third sets of statistical tests were done using the Z-scores that were obtained as a result of the computation from the differences between two proportions of pessimistic statements. The two proportions are the proportion of pessimistic statements (pessimistic articulations/total number of articulations) for each setting and for the Politburo/Secretariat or the overall figure for all the settings. The formula for the computation of the Z-score of the difference between two proportions can be found in Blalock, 1979, pp. 232-234.


13) The views of Brezhnev on the crisis can be found in Brezhnev, 1982, pp. 21, 106, 181. Chernenko's views on the crisis can be found in Chernenko, 1984, pp. 16, 39, 73.

15) These conclusions can be confirmed in: Weitz, 1988 and Frost, 1989. Frost uses a .01 level of significance in his study of divergences in views between the political (Politburo and Secretariat) and military leaderships in the USSR and found that there was no significant difference in views between these two sets of leadership on the 1980-81 Polish crisis at the .01 level. However, he admits that these views might be significant at the .05 level (Frost, 1989, p. 121).

16) Shcherbytsky was known to have only one meeting with a Polish official during the 1980-81 crisis, and that was with the Polish Consul-General in Kiev on April 17, 1981. (Central Intelligence Agency, 1982, p. 46) Shcherbytsky's views on the crisis can be found in Shcherbytsky, 1981.

17) This is due to the fact that in most settings, pessimistic views prevailed, which results in a low value for Cramer's V.

REFERENCES


SUSLOV, Mikhail. 1981a. The Historic Significance of the 26th CPSU Congress. World Marxist Review. 5:4-12.
---. 1982. Marksizm-leninizm i sovremennaya epokha: izbrannye statyi i rechi (Marxism-Leninism and the Contemporary Epoch: Selected Speeches and Articles), III. Moscow: Politizdat.


In comparison with other states, Pennsylvania has elected few women to its legislature. This research explores the role of party in determining access to the Pennsylvania House; this focus emerged after research eliminated other explanations (e.g., voter apathy, difficulty in raising money) for the paucity of women. All 37 freshman House members of the class of 1983 were interviewed to explore how they reached Harrisburg. In learning what factors accounted for their success, this study seeks to identify obstacles to the recruitment of women.

Four distinct patterns of recruitment emerged, based upon party activities and prior political office. In each of these patterns, parties have a crucial role. One factor limiting female recruitment is that their political participation has been more focused toward non-partisan activities and groups concerned with specific issues rather than with parties. Political women who devote their energies to issues instead of party reduce their likelihood of becoming state representatives.

In 1922, in the first Pennsylvania election involving women as voters and candidates, eight women won seats in the Pennsylvania House of Representatives. Sixty years later, in 1982, nine women won seats in the 203-member chamber; eight were incumbents. At that time, of the 50 states only Mississippi had a smaller percentage of women in its state legislature than did Pennsylvania. Although the 1988 election raised the number of female representatives to fifteen, Pennsylvania still ranked near the bottom in the percentage of women in its legislature (National Women’s Political Caucus, 1989).
No obvious explanation for Pennsylvania's ranking appears in the literature nor could any be obtained from interviews with party leaders, activists with feminist organizations, journalists, or even other political scientists. In informal interviews, observers suggested explanations such as "Pennsylvania is a conservative state" or "The Eastern European heritage hurts women." These explanations do not survive comparisons with states such as Georgia and Utah with their respective traditional and moralistic political cultures (Elazar, 1966, pp. 96-102) or, in the case of Michigan, a large ethnic population. If a general conservatism or a large Eastern European community results in a few women in the state legislature, each of these states should have a smaller percentage of women in its legislature than does Pennsylvania. On the contrary, women in these states hold a greater proportion of legislative seats than they do in Pennsylvania.

In the classic work on female representation in state legislatures, Irene Diamond notes (1977, p. 13): "The size of the legislature relative to the population — competition for seats — is the critical variable when explaining female representation in the lower houses of state legislatures: as competition for seats decreases the proportion of women legislators increases." Although there is some question of the importance of this formula in the 1980s (Nechemias, 1985), its application to Pennsylvania predicts over twice as many female legislators as are currently serving. Pennsylvania's relatively sizeable population is a predictor that few women would serve, yet the large size of the lower house is a predictor that many women would win seats. These two factors combine to bring an expectation of moderate female representation for the state, not the unusually low percentage of women in the lower house.

Earlier studies which focus specifically on political recruitment in Pennsylvania do not help us to understand why more women do not serve in the State House. Frank Sorauf (1963) looked in depth at political recruitment in the 1958 election. The question of "lady politicians" could be dealt with quickly in that era:

In Pennsylvania males dominate the legislature, just as they dominate all American political life. Pennsylvania Democrats appear slightly more tolerant of lady politicians than do the Republicans, but in neither party are they widely recruited for the legislative race. In many sectors of the state, social understanding of the female role hardly admits of women voting, much less of their seeking public office. The popular image of the representative is at least implicitly male. Legislative chambers in the states often bear the signs
(for example, finely burnished cuspidors) of the male club, and a woman legislator may be viewed as an intruder into smoking-room company (p. 67).

Still, this does not explain why, by the 1980’s, Pennsylvania fell behind states such as Nevada and Oklahoma in the percentage of women in the lower chamber.

Raisa Deber (1982) reported that women were not elected to Congress from Pennsylvania because they did not run frequently for that office. She found that only 88 of 2476 candidates from 1920 to 1974 were females and most of these women were sacrificial lambs in hopeless races. This work is both unsatisfying and troubling because of its blaming-the-victim quality. Becoming a viable candidate for Congress is not as easy as registering to vote. Are there obstacles that have kept women from running for office? Are these obstacles particularly strong in Pennsylvania?

The overwhelming success rate of incumbents is a powerful factor that explains why women have not rapidly raised their levels of representation (Darcy and Choike, 1986). The election of 1982, the first after redistricting, forced all candidates in Pennsylvania to run in new districts, although most new districts closely resembled old districts (O'Connor, 1983). Nevertheless, any redistricting would seemingly reduce the impact of incumbency and increase opportunities for nonincumbents, including women. This research focuses on the 1982 elections because, despite redistricting, women won only nine of 203 seats.

The focus of this paper is on the role of party in determining access to the Pennsylvania House. Earlier research (O’Connor, 1983) demonstrated that Pennsylvania voters show little inclination to vote against female candidates because of their gender, but that these women usually fight long odds as minority party candidates with severe registration disadvantages (see also Darcy et al., 1987, pp. 54-57). Table 1 summarizes the first-level explanation of why more women did not win in 1982: few women ran and, when they did, they chose the wrong party. Only 31 percent of the male candidates were "hopeless," i.e., they faced a registration disadvantage of at least 15 percent. Over half of the women were similarly disadvantaged.

Another study (O’Connor, 1984) found that female candidates did not have unusual trouble raising money. The study also showed that in Pennsylvania state house races political action committees were rarely important in either recruiting candidates or providing funds to help non-incumbents reach Harrisburg. Pennsylvania seems similar to other states in that women are not disadvantaged in raising money (Darcy et al., 1987, p. 62).
Robert E. O'Connor

TABLE 1: "Value" of Party Nomination, by Gender, for All Candidates, 1982 General Election (N = 386)

<table>
<thead>
<tr>
<th></th>
<th>% Male</th>
<th>(N)</th>
<th>% Female</th>
<th>(N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Easy Win (15%) Registration Edge</td>
<td>39</td>
<td>(134)</td>
<td>29</td>
<td>(11)</td>
</tr>
<tr>
<td>Competitive</td>
<td>30</td>
<td>(105)</td>
<td>18</td>
<td>(7)</td>
</tr>
<tr>
<td>Hopeless (15%) Registration deficit</td>
<td>31</td>
<td>(109)</td>
<td>53</td>
<td>(20)</td>
</tr>
</tbody>
</table>

\( \tau_c = 0.07; \) \( \gamma = 0.29. \)

Source: Registration figures compiled at the Office of the Secretary of the Commonwealth.

If neither the voters, political action committees, nor money problems are responsible for the paucity of women in Harrisburg, what does account for the situation? The obvious answer is "the party." The use of "the party" as a residual explanatory category, however, is unsatisfying. There is no published evidence that party leaders in Pennsylvania are more chauvinistic than those in other states.

The intention of this paper is to look at how the 1983 freshman class reached Harrisburg in order to understand the patterns of recruitment. Interviews were conducted in 1984 with all thirty-seven freshmen — thirty-six men and one woman. In learning what factors account for their success we may be able to identify obstacles keeping women out of the House.

Patterns of Recruitment

A review of the backgrounds of the 37 freshmen elected in 1982 suggests four patterns of recruitment to the House. These patterns involve distinct, but not altogether different, ways the winners prepared themselves for their successful campaigns in 1982. Table 2 presents the distribution of the freshmen by party among the four types of preparation.

All 37 freshmen legislators fit into one of the four recruitment patterns summarized in Table 2. Fourteen of the legislators, the "amateurs," came to Harrisburg without holding paid elected office and with only a moderate level of party activity. The polar opposite of the "amateurs" are the "politicians," freshmen for whom politics was their vocation. They both held a paid, government office and worked extensively with their party before winning their seat in the House. The two other categories, "party professionals" and "part-time politicians" represent the recruitment pattern for seven and four freshmen, respectively. The "party professionals" did not hold remunerated
elective office before running for the legislature, but worked for their political party. The "part-time politicians" held part-time, paid local office while also holding a private-sector job. In the interviews all the freshmen explained that their relation to public office and to their party accounted for their recruitment to the legislature.

TABLE 2: Recruitment Type of Freshman Legislators by Characteristics and Party Affiliation (N = 37)

<table>
<thead>
<tr>
<th>Recruitment Type</th>
<th>Characteristic</th>
<th>Party Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Elected Party</td>
<td>Democrat</td>
</tr>
<tr>
<td>&quot;Amateurs&quot;</td>
<td>None</td>
<td>Moderate</td>
</tr>
<tr>
<td>&quot;Politicians&quot;</td>
<td>Yes</td>
<td>Heavy</td>
</tr>
<tr>
<td>&quot;Party Professionals&quot;</td>
<td>None</td>
<td>Heavy</td>
</tr>
<tr>
<td>&quot;Pt-Time Politicians&quot;</td>
<td>Pt-Time</td>
<td>Heavy</td>
</tr>
</tbody>
</table>

"Amateurs" are defined by their not holding full-time political office and by the relatively moderate pace of their party activities. This group includes most of the Republican winners. In fact, the most powerful single factor separating Democratic from Republican winners is the holding of political office immediately before the campaign. Fifteen of the twenty-three Democrats held paid political office in contrast to only one of the fourteen Republicans. Among Republicans, state legislator is an entry-level office, not a step-up after service in local office. Perhaps what is happening here is that Republicans, living in areas which reflect Elazar's "moralistic political culture" (1966), are somewhat suspicious of the career political office-holder. Democrats, found both in areas of "individualistic" and "moralistic" political cultures, are more willing to send local office-holders to Harrisburg.

While "amateurs" did not prepare themselves for the state legislature by holding paid local office, six served in unpaid positions as members of township or county planning commissions. Although they had not been involved in party activities on a weekly basis, all had attended party functions and helped out during campaigns. Four even managed local campaigns for other candidates. This activity made their names known to local party elites.

Seven of the fourteen "amateurs" noted that a local party leader was the key figure in the decision to run for office. In four other cases several party activists were noted as significant in influencing the decision to run. In only one case did an "amateur" say that an interest group to which he belonged was important in his decision to run. And, in only one case did an "amateur" report that the incumbent had a significant role in the recruitment process.
This pattern of recruitment reflects the level of party organization in the districts which send "amateurs" to Harrisburg. Table 3 reports the relationship between recruitment pattern and the strength of party organization as reported by the freshmen legislators, who were asked to score the district party organization on a scale of 1 (a paper organization which does almost nothing) to 10 (an active organization which endorses candidates, registers new voters, and gets out the vote throughout the district). Weak organizations were those given a rating of 1-3, moderate ones rated 4-6, and strong ones 7-10.

**TABLE 3: Recruitment Type of Freshman Legislator by Party Organizational Strength (N = 37)**

<table>
<thead>
<tr>
<th>Recruitment Type</th>
<th>Organizational Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Weak</td>
</tr>
<tr>
<td>&quot;Amateurs&quot;</td>
<td>2</td>
</tr>
<tr>
<td>&quot;Politicians&quot;</td>
<td>1</td>
</tr>
<tr>
<td>&quot;Party Professionals&quot;</td>
<td>1</td>
</tr>
<tr>
<td>&quot;Part-Time Politicians&quot;</td>
<td>0</td>
</tr>
</tbody>
</table>

Unlike the "politicians," "amateurs" do not come from districts with the strongest party organizations. This may explain the success of candidates who are involved in party activities, but for whom party involvement is not a consuming passion. Where the party is not strongly organized, a moderate level of involvement may be sufficient to attain party support. Thus, seven of the fourteen "amateurs" were party endorsed and one other received an "unofficial endorsement." In none of the other races involving "amateurs" did the party endorse a primary election opponent of the eventual winner.

**TABLE 4: Recruitment Type of Freshman Legislator by Incumbent Situation (N = 37)**

<table>
<thead>
<tr>
<th>Recruitment Type</th>
<th>No Incumbent</th>
<th>Incumbent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>New District</td>
<td>Incumbent Retired</td>
</tr>
<tr>
<td>&quot;Amateurs&quot;</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>&quot;Politicians&quot;</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>&quot;Party Professionals&quot;</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>&quot;Part-Time Politicians&quot;</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

Table 4 illustrates the tendency for "amateurs" to win in districts with no incumbent, either because the incumbent was retiring or because of
population shifts leading to the creation of an entirely new district. Of the 25 open seats, 12 were won by "amateurs." The "amateur" approach to reaching Harrisburg seems appropriate for open seats in areas without strong party organizations.

In contrast to "amateurs" are "politicians," new legislators who had supported themselves through full-time political positions as mayors, county officials, legislative assistants, or administrators. As one legislator described his occupation, "I'm a politician. Some people are bakers; others are lawyers. I'm a politician. That's what I do for a living and what I have always wanted to do." Eleven of the twelve "politicians" were Democrats. The group included the only female freshman.

A review of tables 3 and 4 demonstrates that these "politicians" represent districts with moderate to strong party organizations and that eight of the twelve winners defeated incumbents. It should not be surprising, then, to note that all of the "politicians" reported extensive party involvement, especially around elections. These were candidates for whom politics played the major role in their careers for years. Six of the twelve, including the only female freshman and one son who replaced his deceased father in the House, had relatives with extensive political involvements. None of the "amateurs" reported a single relative who had been involved in politics. Whereas the "amateurs" had made themselves available for the legislative race, the "politicians" more actively sought the office. Several of the "amateurs" spoke of being prepared in case "some opportunity came along." The "politicians" spoke of their long-term work designed to ensure that they would become state representatives.

The difference between "amateurs" and "politicians" is the difference between individuals contemplating a change of career and individuals seeking advancement in the same career. For the "amateurs," until they became legislators, politics constituted an activity tangential to their primary work. This is not to say that several "amateurs" did not devote great attention to their political avocation or that for some the avocation had professional payoffs, but it still was an avocation. For the "politicians," politics was and is their vocation, so they paid close attention to party activities.

The "politicians," with two exceptions, did not speak of others asking them to run, but of their own efforts to gather support. One of the two exceptions involves a district with a strong party organization in which the incumbent "recruited and anointed" one of his long-term supporters. The other is the case of the young son, 22 at the time of his election, who was asked by party leaders to run for his late father's seat.

If an aspirant to the legislature is in an area with a strong party organization, success more likely comes through extensive involvement with
the party and through local office, at least if the area is Democratic in character (see also McDonald and Pierson, 1984). The aspirant, however, should not become too sanguine about his or her chances. Eight of our "politicians" defeated incumbents, but many other "politicians" challenged incumbents that year only to lose. 6

A third type of freshman is the "party professional." This type comprises seven new members who resemble "amateurs" in that they do not have political employment, but resemble "professionals" in their attention to party matters. 7 Two of these men are ex-legislators, two ex-legislative assistants, and one worked as an advance man for a gubernatorial candidate. All held party office at the time of the 1982 elections. With these candidates there is not a question of party elites recruiting candidates, but the party elites themselves running for office. Actually, in the case of the ex-legislators and assistants, we have "professionals" returning home, becoming quite active in party matters, and using this activity to present themselves as likely party candidates. In the case of the other three "party professionals," they used their extensive party involvement in districts with strong party organizations to garner party support for their nominations. In the case of each of the two Republicans who represent one-party districts, their nomination came as a reward for years of party work on behalf of Republican organizations and other candidates.

The fourth type of freshman is the "part-time politician." This group comprises four Democrats who had part-time, remunerated local political offices while also holding down jobs in the private sector. In their 40's or older, these men had been quite active in party affairs for many years, including managing the campaigns of other candidates. Found in areas of moderate party strength, these freshmen enjoyed party support in their primary campaigns. Also, like "amateurs" and "professionals," they tended to win in districts where no incumbent was running.

Conclusions and Discussion

In the three elections since 1982, women have increased their representation in the Pennsylvania House of Representatives from nine to fifteen. Before proponents of a greater number of women legislators can rejoice at this trend, however, they should know that most of this increase can be explained by wives replacing their husbands who died in office. This hardly suggests a strategy for eventual gender equality of representation in the legislature. This section suggests the implications of the research for electing more women and proposes a direction for future research.
One conclusion relates to Pennsylvania's textbook status as a competitive, two-party state (e.g., Jewell and Olson, 1988). The state may be competitive in terms of party balance in the state legislature or in terms of the distribution of winners of statewide offices in recent years. This does not mean that most legislative races are competitive. Opportunities to become a state representative through challenging an incumbent are quite limited. With low turnover, realistic opportunities for non-incumbents to become legislators are few in number. Their best route seems to be to run in a district with no incumbent candidate on the ballot: 25 of the 37 members in the Pennsylvania House's freshman class of 1983 followed this route.

A second conclusion supports Schlesinger's argument (1966) that there are specific patterns of requisites for different offices in different places. In areas of weak party organization, party activity — but not local political office — is a requisite for office. In areas of strong Democratic party organization, the holding of local political office facilitates reaching the legislature. None of the legislators said that school board membership (the local office held by most female office holders in Pennsylvania in the 1980s) is helpful in reaching Harrisburg.

A third conclusion suggests a caveat to those who have proclaimed the death of parties (see, for example, Fishel, 1978). Party may be less powerful as a cue to voters than it has been, but, at least in Pennsylvania, the recruitment process is dominated by political parties. Political Action Committees are not significantly involved in recruitment. Incumbents had an important role in selecting their successors in only two or three cases. Instead, we see individuals working to attain the support of party activists.

The critical role of party involvement in recruitment for the Pennsylvania house works against women becoming candidates for two reasons. First, political women have been less likely to focus their activities on political parties than have political men (Carroll, 1985; Kirkpatrick, 1974). Women are more likely to devote their energies to traditional non-partisan, good-government groups (e.g., League of Women Voters) and to organizations concerned with specific policy agendas (e.g., National Organization for Women, right to life groups). None of the candidates in our sample participated in these kinds of activities to the total exclusion of party activities. Whereas many candidates reported some participation in civic groups, involvement in issue groups was almost non-existent for all but two or three of the successful candidates. Political women who devote their energies to issues instead of party reduce their likelihood of becoming state representatives.
When women do volunteer for party activities, they may find that advancement beyond clerical tasks comes more easily for men. One female party activist noted:

... (a female volunteer) has been working on elections for ten years and always does a great job. Her district is a mess; they've had three different guys running it in five years. Still (the county chair) isn't going to appoint her district coordinator. He just doesn't see women in that kind of role — although they do 90 percent of the envelope stuffing in ... county. Too, he never gets women appointed to county boards and commissions. I don't think he's ever thought about what he's doing....

To the extent that women have been disadvantaged in rising in party hierarchy, they have been disadvantaged in getting party endorsements for office.

For feminists concerned with the paucity of women in the state house, the message could be worse. The problem is not with the voters nor with the contributors. The key is participation in party affairs, and there is no obvious reason political women cannot devote more of their energies to party involvement. An increase in female involvement in party activities would produce more viable candidates immediately and, in the longer term, develop more candidates through reducing subtle and not-so-subtle discrimination by party leaders. The route to the state capital, at least in Pennsylvania, is still the local political party. While it works differently in different districts, it is available everywhere to women who seek to use it.

Winning office involves more than becoming part of the eligible pool; women in the eligible pool must then choose to become candidates. Future research might well look into why many women who are part of this eligible pool choose not to become candidates. The research reported here traced how the freshman class of 1983 reached Harrisburg. In one open-seat race, for example, the eventual winner defeated four other males in the Republican primary. There were several Republican women in his district whose record of both professional accomplishments and participation in party affairs placed them in the eligible pool. Yet none of these women ran. A next step of research in political recruitment in Pennsylvania is to find out why some potential candidates choose to run while others do not.
NOTES

The author is grateful for support provided by the College of the Liberal Arts, the Pennsylvania State University, and for the advice of the Commonwealth editor and his reviewers. This article is a revision of a paper presented at the 1985 Annual Meeting of the Midwest Political Science Association.

1. In contested races for open seats, the simple r between the winner's vote percentage and gender, expressed as a dummy variable is -0.31 with the traditional coding of 1 = male and 2 = female. But, when the winner's party's registration percentage is introduced as a control variable, the new correlation coefficient is 0.04. The correlation coefficient between the winner's vote percentage and the winner's party's registration is 0.88. In other words, males seem to do better as candidates, but this advantage disappears when party registration is taken into account. Males seem to do better because they are more likely to run as the candidate of the majority party.

2. A small number of these "hopeless" candidates (two) did indeed overcome the registration disadvantage to win. In the absence of special circumstances, however, the labelling of these races seems justified.

3. Educationally, 5 of the freshmen hold law degrees, 11 of the 37 are not college graduates, and, of the 26 college graduates, 6 hold master's degrees. This educational profile is sufficiently broad that many women remain in the "eligible pool" (Welch, 1978; Darcy et al., 1987, ch. 5) from which candidates emerge.

The one female freshman was Ruth Rudy, the Democratic prothonotary of Centre County. She defeated Republican Gregg Cunningham, a leader of anti-abortion efforts in the House, in a race with unusually high expenditures as both the pro-choice Rudy and the pro-life Cunningham raised over $50,000 including contributions from outside the state (O'Connor, 1984). Although Cunningham was a member of the House, he was technically not an incumbent candidate in the race because he had moved before the election into the new, rural, heavily Republican neighboring district. Although the abortion issue brought funds and attention to the race, during the campaign Cunningham stressed his experience and party affiliation. Rudy stressed her lifelong residency in the district and portrayed Cunningham as an urban carpetbagger. She won with over 55 percent and was reelected through the 1980s.

4. Because the data reported in this and subsequent tables comprise the entire population, tests for statistical significance are unnecessary.
5. These "amateurs" should not be confused with the "reluctant solons" and "retirees" portrayed in Barber's *Lawmakers* (1965) and other studies of state legislatures prior to the reapportionment decisions of the 1960's. Only one of the "amateurs" is even in his 50's and the eleven college graduates in this category include three attorneys. All reported working hard at campaigning, and a majority volunteered that they worked door-to-door to meet constituents.

6. One's chances are far better in open-seat elections; but, even after a redistricting, 88 percent of House members sought reelection. Although one can engage in behavior that will help one's chances, winners still need patience and luck.

7. They also resemble "amateurs" in their tendency to win in districts with no incumbent candidates.

8. In an analysis of city council members, Blensoe and Herring (1990) found that women generally lack the single-mindedness and driving ambition necessary to advance beyond local office. "The current system of obtaining political office ... is highly individualized and competitive, emphasizing characteristics that are fundamentally inconsistent with women's status and role orientations." (p. 221)

REFERENCES


Commonwealth

What's in a name?

1: political organization: civil order... 2a: a specific form of political organization: a form of government... b: an Aristotelian form of political organization in which the whole body of the people govern for the good of all and that constitutes a fusion of oligarchy and democracy. 3: the management of public and private affairs; esp. prudent, shrewd, or crafty administration. 4: a politically organized unit (as a nation, state, or community). 5: the form or constitution of a politically organized unit (as a nation or state). b: the form of government or organization of a religious denomination...

6: THE JOURNAL OF THE NORTHEASTERN POLITICAL SCIENCE ASSOCIATION

Subscription Rates

Individuals: $20.00 (including membership in the Northeastern Political Science Association)
Foreign: $22.00
Institutions: $35.00, Foreign: $36.00
Student: U.S.A. $7.00, Foreign: $10.00

Mail (subscription orders) to: POLITY, Thompson Hall, University of Massachusetts, Amherst, Massachusetts 01003

Name

Address

Payment enclosed, sum of: ___________________