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In the COMMONWEALTH

Thomas J. Baldino, Editor

It’s difficult for me to believe that a year has past and that the second issue of COMMONWEALTH is complete. As with the previous issue, it would never have seen the light of day had it not been for the able assistance of my managing editor, Jim Morse, my associate editors, Don Tannenbaum and Martin Colio, and the many reviewers whose comments were invaluable in improving the quality of the articles appearing here.

This issue is much in keeping with earlier issues of the journal in that it contains a diverse mix of subjects and a variety of approaches. There’s something here for everyone.

The lead article, by Gerard Fitzpatrick, examines how the American understanding of liberty has changed from an eighteenth century view of liberty as communal (i.e., the rights of the people together are protected against government infringement) to a contemporary notion of liberty as individualistic (i.e., the rights of the individual are protected against the power of the many). Fitzpatrick offers some insights on the implications of this change for the interpretation of our Bill of Rights.

Switching time periods and methodologies, Frauke Schnell provides an example of the individualistic understanding of liberty in her article about understanding political attitudes on abortion. Employing a model that incorporates multiple dimensions of attitude strength, Schnell explores the sources of abortion attitudes.

For those who find empirical methods not to their taste, Francis Moran provides some thoughts on moral relativism and ethical naturalism in his whimsically titled article “Ulcers, Baseball and the New Ethical Naturalism.”

For those whose interests lie in the area of the justice system or women in politics, “The Relevance of Gender: A Case Study of Judicial Appointments at the State Level” by Marianne Githens should prove stimulating. Githens served on a judicial nominating commission in Maryland for several years, and from her position was able to observe what
factors in the process and characteristics of the applicants had the most impact on who received endorsements from the commission. Her findings add a new perspective to the literature in this field.

The final article is yet another in our series of research on aspects of Pennsylvania politics. Stephanie Bressler develops a model of implementation politics and tests it on the implementation of Pennsylvania’s Seasonal Farm Labor Act of 1978. Her results pose challenges to academicians, bureaucrats and policy-makers.
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The Forgotten Bill of Rights: The Meaning of Liberty in Eighteenth Century American Political Thought

Gerard J. Fitzpatrick
Ursinus College

Although the Bill of Rights has become a sacred part of American constitutionalism, the meaning of liberty has changed significantly since the eighteenth century. Liberty two centuries ago was generally understood in communitarian terms: the people as a whole sought bills of rights to protect themselves against the usurpations of their rulers. Today liberty is seen primarily in individual terms: the few, particularly unpopular and vulnerable minorities, invoke the Bill of Rights to secure themselves against the power of the many. Eighteenth century bills of rights thus rested upon a theory of liberty no longer remembered, a theory the author calls our "forgotten bill of rights".

"We tend to speak to the past," Herbert Storing once lamented, "rather than to let the past try to speak to us" (1985, 16). This observation is particularly true with respect to current notions about the meaning of liberty and the Bill of Rights. We revere the document as the primary symbol of what we believe our regime stands for: the protection of "individual rights." We attribute this belief to the "founding fathers" and what we think was the intellectual climate of the eighteenth century. Yet, most of the supporters of the Constitution opposed a Bill of Rights. Alexander Hamilton believed a bill of rights "would sound much better in a treatise of ethics than in a constitution of government" (1961, 513). Benjamin Rush feared that a bill of rights would be an "idle and superfluous instrument," and he was relieved that the Constitution had not been "disgraced" with one (Jensen, 1976, 433). Other leading Federalists dismissed bills of rights as "absurd," "ridiculous," "useless," and "dangerous" (Kurland and Lerner, 1987, 449, 466, 471). Even James Madison, who is generally considered to have been the "father" of the Bill
Commonwealth of Rights, regarded his efforts on its behalf as a "nauseous project" (1962, vol. 11, 346).

What explains this hostility toward a bill of rights, a hostility so starkly at odds with our current veneration of the idea? The answer lies in part with the different conceptions of liberty and bills of rights held in the eighteenth century compared with today. Eighteenth century Americans would have been puzzled by the claim of Nadine Strossen (1991), president of the American Civil Liberties Union, that "the purpose of the Bill of Rights" was "to protect individual freedom from the tyranny of majority preferences." Liberty two centuries ago was generally understood in communitarian terms: the people as a whole sought bills of rights to protect themselves against the usurpations of their rulers. Today liberty is seen primarily in individual terms: the few, particularly unpopular and vulnerable minorities, invoke the Bill of Rights to secure themselves against the power of the many. Hence, we speak today of "individual rights," whereas Americans in the eighteenth century spoke of the "rights of the people." Similarly, the key to ensuring liberty then was popular control of government, which meant placing power in the legislature or "people's branch." Today, by contrast, we put primary responsibility for ensuring liberty in courts, which restrain the people in the name of individuals and minorities.

This study will attempt to recover our "forgotten bill of rights" by examining the meaning of liberty in eighteenth century American political thought. It will begin with an overview of the debate between "liberal" and "republican" interpretations of the eighteenth century. Although this debate has focused largely on the intellectual origins of the American Revolution and the federal constitution, its concern with the relationship between individual and community provides a framework for understanding the meaning of liberty and bills of rights two centuries ago. An analysis of the eighteenth century view of freedom will follow, drawing upon the tenets of English constitutionalism, the events of the American Revolution, and the debate over enacting the Bill of Rights. This analysis will show that liberty two centuries ago was generally thought to belong to the people collectively rather than to individuals or minorities, and that bills of rights served as limitations on the power of the few, not the prerogatives of the many. Finally, the study will suggest that these "forgotten" eighteenth century ideas about liberty and bills of rights can help revitalize the meaning of freedom in America by reminding us that liberty depends as much upon community as upon individualism.
Gerard J. Fitzpatrick

Liberalism, Republicanism, and the Meaning of Liberty in Eighteenth Century America

Until relatively recently, John Locke held an undisputed claim among students of American political thought to the title "America's Philosopher" (Curti, 1939). Lockean liberalism was called the "party line" of eighteenth century Americans (Miller, 1943, 170), and Locke's Second Treatise of Government was thought to have been the "textbook of the American Revolution" (Parrington, 1927, vol. 1, 193). In his classic study of the Declaration of Independence, Carl Becker asserted that Thomas Jefferson simply copied from Locke teachings that Americans had already absorbed "as a kind of political gospel" (1922, 27). Ultimately, Louis Hartz (1955) explained the entire "liberal tradition in America" as the heritage of John Locke. The heart of this tradition was individual liberty, particularly freedom to pursue economic self-interest though competitive capitalism, even if doing so threatened the public good by undermining a people's sense of community.

A profound change in American historiography started in the 1960s as scholars began challenging the Lockean interpretation of eighteenth century America (Bailyn, 1967; Wood, 1969; Banning, 1978). According to the revisionists, not only had Locke had a relatively minor impact on Americans two centuries ago, his ideas were actually at odds with the principles of 1776, which these scholars claimed were rooted more in the "civic humanist" ideals of "classical republicanism" than in the individualistic calculus of liberalism. In this "Atlantic republican tradition," people were public-spirited citizens willing to subordinate their private concerns so as to ensure the political and moral health of their community (Pocock, 1975). They were not, as in liberalism, selfish individualists motivated by hope of personal economic gain. Only by participating actively in public affairs while pursuing simple, frugal, agrarian lives could virtuous citizens maintain their liberty and prevent the corruption of their regime by the luxury and vice that inevitably accompanied commerce.

During the past decade, Lockean scholars have launched a vigorous counterattack against the revisionist contention that eighteenth century American political thought was not about protecting individual liberty but about defending republican virtue against political corruption (Kramnick, 1982; Appleby, 1984; Diggins, 1984). Criticizing the republican theorists on both methodological and interpretive grounds, these
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scholars insist that Lockean liberalism was "the unvarnished doctrine" of Americans two centuries ago (Dworetz, 1990; Pangle, 1988). In their view, the colonists' objective was "the modern one of securing individual rights rather than the classical one of creating virtues of character" (Webking, 1988, 128). Moreover, they accuse the revisionists of undermining the foundations of our liberties; for "civic virtue, the preeminent value in republican ideology, can be incompatible with personal freedom, which only... liberalism seems to defend by instinct rather than merely for convenience" (Dworetz, 1990, 4-5).

Neither school of thought has yet vanquished the other in establishing conclusively the true intellectual underpinnings of eighteenth century America. Both sides are partly right, for the evidence suggests that liberalism and republicanism coexisted two centuries ago and that the two traditions were more complementary than dichotomous (Dworetz, 1990; Ackerman, 1991). Nonetheless, the republican interpretation illuminates particularly well two important aspects of our "forgotten bill of rights": the idea of "the people" as a sovereign organism rather than a collection of individuals, and the notion of rights as belonging more to the people as a whole than to citizens individually. Taken together, these two concepts formed the communitarian ideal of "public liberty," which Gordon Wood has described as "the combining of each man's individual liberty into a collective governmental authority," resulting in "the institutionalization of the people's personal liberty" (1969, 24). This ideal was at the heart of eighteenth century thinking about bills of rights, and it is relevant to current controversy over the meaning of liberty and the relationship between individualism and community.

The roots of "public liberty" were in the republican concept of "virtue," which Forrest McDonald says entailed an "unremitting devotion to the weal of the public's corporate self, the community of virtuous men" (1985, 70). Republican virtue, he contends, was "at once individualistic and communal: individualistic in that no member of the public could be dependent upon any other and still be reckoned a member of the public; communal in that every man gave himself totally to the good of the public as a whole" (McDonald, 1985, 70-71). Similarly, Wood argues that "the sacrifice of individual interests to the greater good of the whole formed the essence of republicanism," the goal of which was "a harmonious integration of all parts of the community" (1969, 53, 60). As John Dickinson put it in 1767, "a people is travelling fast to destruction, when individuals consider their interests as distinct from those of the public"
Because citizens were thought to be linked to one another organically, what served the good of all was considered ultimately to serve the good of each. The "community" was thus not simply the sum of its parts but a separate entity "prior to and distinct from the various private interests of groups and individuals" (Wood, 1969, 58).

While today we might regard this emphasis on the public good as a threat to individual liberty, eighteenth century Americans saw the two concepts as perfectly compatible. Indeed, "liberty" was the only term they invoked more often than "the public good" (Wood, 1969, 55). Their idea of liberty reflected their idea of community. Because the people are united in their fundamental interests, individuals need not fear deprivation of their rights by their fellow citizens. A "democratical despotism" John Adams insisted in 1775, would be a "contradiction in terms" (1777, vol. 2, 287). The people's relations with their rulers, however, are a different matter. Not only do rulers and ruled share no common bond, their interests are fundamentally at odds, for rulers want power whereas citizens are threatened by it. Governmental power, not community, is thus the real threat to liberty. Viewing the community as a corporate commonwealth, Americans two centuries ago stressed not "the private rights of individuals against the general will" but "the public rights of the collective people against the supposed privileged interests of their rulers" (Wood, 1969, 61). In fact, said one American in 1773, individual liberty "must depend upon the collective power of the whole, acting for the general interest" (quoted in Wood, 1969, 62).

The communitarianism of eighteenth century Americans and their conception of liberty as a public rather than a private value shaped their understanding of bills of rights. They acted, Donald Lutz (1988, 6) has written, not as an aggregate of individuals but "as a people by achieving a shared psychological state in which they recognize themselves as engaged in a common enterprise and as bound together by widely held values, interests, and goals." Accordingly, they not only saw no necessary tension between individuals and the community, they believed that active participation in civic affairs was the best way for individuals to remain free and to achieve their full potential as human beings. Individual rights and the public good were thus one and the same, as shown by the emphasis in early bills of rights on the "rights of the people." In short, in the republican understanding of the eighteenth century, a bill of rights served less as a "legalistic limit on the power of government" than as a "public elaboration, almost a celebration, of a people's fundamental values" (Lutz,
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1988, 32). By tracing the roots of those values, we can rediscover our forgotten bill of rights and better understand the meaning of liberty two centuries ago and in our time as well.

**English Constitutionalism and the Philosophical Roots of the Bill of Rights**

The notion of a written bill of rights explicitly protecting specific personal liberties was the product of Anglo-American constitutionalism. Only after the principle of limited government had been firmly established in England and America could bills of rights be implemented. English political struggles concerned attempts to limit the power of the king in order to protect the liberty of the people generally. They did not involve checking the power of the majority to secure freedom for individuals or minorities. Hence, England's Bill of Rights of 1689 focused more on the distribution of power in the British constitutional system than on personal freedoms. Constitutional checks upon the monarchy were viewed as a kind of bill of rights. When Parliament later invaded what American colonists thought of as their rights, the idea emerged that rights should be explicitly cited in formal declarations and given special protection against violation by any organ of government. Ironically, it was English exponents of constitutionalism such as John Locke, the philosopher of liberalism, and John Trenchard and Thomas Gordon, two republican journalists, who helped provide the philosophical roots of American thinking about liberty and bills of rights.

No political tract familiar to the founding generation analyzed the problems of securing liberty under government more thoroughly or, to Americans, more convincingly than did John Locke's *Second Treatise of Government*. Yet, Locke's idea of liberty differs sharply from that associated with the Bill of Rights today. Contemporary libertarians focus on the liberty of individuals taken singly or in small groups in relation to the majority and the government that represents it. By contrast, Locke was more concerned with the liberty of individuals taken collectively in relation to rulers who threaten to oppress the people as a whole. He saw individuals united for common purposes that can be endangered not just by tyrannical government but also by isolated individuals who do not share the community's beliefs. This perspective, and its implications for individual rights, can be seen in Locke's discussion of consent, majority rule, and the right of resistance.
Consent is crucial in the transition from natural liberty to civil liberty, but the need for individual consent applies only to the initial creation of civil society, not to approval of the actions of government once it is established. For that purpose "the Majority have a Right to act and conclude the rest" (sec. 95, 375). Since public policies are unlikely to win unanimous approval, it is necessary that society "should move that way with the greater force carries it, which is the consent of the majority" (sec. 96, 375). Thus, by consenting with others to leave the state of nature for civil society, individuals put themselves "under an Obligation to everyone of that Society, to submit to the determination of the majority, and to be concluded by it" (sec. 97, 376). Government by individual rather than majority consent "would make the mighty Leviathan of a shorter duration, than the feeblest Creatures" (sec. 98, 377).

The consequences for individual rights of Locke's discussion of consent and majoritarianism emerge clearly in his treatment of the right of resistance. He denied individuals a right to resist government whenever they feel aggrieved since that would "unhinge and overturn all Polities, and instead of Government and Order leave nothing but Anarchy and Confusion" (sec. 203, 449). Only the collective judgment of the greater part of the community may determine when government has become unjust, thereby making resistance legitimate. Those who resist otherwise are guilty of subversion, "the greatest Crime" imaginable, and are "justly to be esteemed the Common Enemy and Pest of Mankind" and "to be treated accordingly" (sec. 230, 467). After all, said Locke, the "first and fundamental natural Law" is "the preservation of the Society, and (as far as will consist with the publick good) of every person in it" (sec. 134, 401).

Although Locke's understanding of liberty was a far cry from today's, it was readily embraced by eighteenth century Americans, for in their minds "majority rule and the common good were inextricably linked" (Lutz, 1988, 29). Accordingly, early Americans shared Locke's belief that personal rights could be limited when the good of the whole required it. Such a view could oppress individuals or minorities, but protecting the unpopular few against the tyrannical many was not the central concern of Anglo-American constitutionalism during the seventeenth and eighteenth centuries. This largely modern problem was almost irrelevant to the burning conflict of that time, which was the people versus the king, or to be more precise, Parliament versus the king. Locke thus discussed at length the right of the people to resist unjust monarchs but barely mentioned the possibility of majority tyranny. He believed that freedom is
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maintained through the principles and institutions of constitutional government, whereas modern libertarians insist that freedom, especially for individuals and minorities, can be secured only through the specific protections of a bill of rights.

More explicit concern for personal rights was shown by the journalists John Trenchard and Thomas Gordon in their highly influential "Cato's Letters," a series of essays published between 1720 and 1723 and widely read in the American colonies. Whereas Locke regarded liberty as something enjoyed more by the people as a whole than by the people as individuals, and while he could more easily imagine liberty being threatened by tyrannical rulers than by a majority of citizens, Trenchard and Gordon were closer to modern libertarians in recognizing that freedom can be denied to individuals and minorities by oppressive majorities. Hence, "Cato" called it a "mistaken Notion in Government, that the Interest of the Majority is only to be consulted," for "the greater Number may sell the lesser" through "a Conspiracy of the Many against the Minority" (No. 62, 128-129). Similarly, he advocated a broader degree of personal freedom than the majority might like. "True and impartial Liberty," said "Cato" in language evocative of John Stuart Mill, is "the right of every Man to pursue the natural, reasonable, and religious Dictates of his mind; to think what he will, and act as he thinks, provided he acts not to the Prejudice of another" (No. 62, 130).

Still, like Locke, Trenchard and Gordon did not call for a formal bill of rights ensuring the freedom of individuals and minorities against the arbitrary exercise of power by majorities. The primary political problem in their time was safeguarding the liberty of the people as a whole against tyrannical rulers. So despite having a greater sensitivity than Locke did to the plight of dissidents and minorities, "Cato" was ultimately more a tribune of "the People" than a defender of individual or minority rights. He thus stressed the dangers of rulers rather than the dangers of majorities. Indeed, whereas Locke considered tyranny an aberration, "Cato" was highly suspicious of those with power. Even the best rulers "grow mischievous when they are set above Laws," he wrote, and "arbitrary Power in a single Person had made greater Havock in human Nature, and thinned Mankind more, than all the Beasts of Prey and all the Plagues and Earthquakes that ever were" (No. 25, 68-69). The appetites of rulers are therefore "carefully to be observed and stayed, or else they will never stay themselves" (No. 60, 119). Because power is "apt to break its Bounds, in all good Governments nothing...ought to be left to Chance, or the Humours
of Men in Authority: All should proceed by fixed and stated Rules" (No. 25, 71).

In this context, Trenchard and Gordon did not call for a written bill of rights but, like Locke, depended instead upon constitutional principles and structure to maintain liberty. Hence, they defined "free Countries" as those where "Power is fixed," where rulers cannot "break Bounds without Check, Penalties or Forfeiture," and where "the People have no Masters but the Laws" (No. 68, 178). Equally important to them for ensuring freedom was making "the Interests of the Governors and of the Governed the same, as far as human Policy can contrive" (No. 60, 120). Since the best way of doing so, direct democracy, is rarely possible, "Cato" recommended as a "necessary and laudable Passion" a healthy streak of "Political Jealousy" in the people toward their rulers since it "tends to preserve Liberty" (No. 33, 85). This emphasis of English constitutionalists like "Cato" and Locke upon the collective rights of the people and upon the tension between the people's interests and the ambitions of their rulers greatly influenced the American understanding of liberty in the eighteenth century, thereby helping to lay the cornerstone of our "forgotten bill of rights."

The American Revolution and the Political Roots of the Bill of Rights

The conflict between Britain and the American colonies, culminating in the War for Independence, was a watershed in the development of American thinking on liberty and bills of rights. It confirmed all that Americans had learned from Locke, "Cato," and their own experience about the danger to a people's freedom posed by governmental authority. As one colonist wrote in 1768, "never was there a People whom it more immediately concerned to search into the Nature and Extent of their Rights and Privileges than it does the people of America at this Day" (quoted in Rossiter, 1953, 362). Once Britain threatened to upset their established constitutional order with its new imperial policies, Americans were convinced they had encountered the tyranny that the English Whigs had warned against. Accordingly, they made their "appeal to heaven." One veteran of the fighting reflected the American consensus when he wrote of the "bloody and distressing war, which we have sustained in defense of the liberties and indefeasible rights of mankind" (Storing,
Indeed, to Americans the whole point of the revolution was to restore the freedom of a people.

The British could not understand the American perspective since by the middle of the eighteenth century the two peoples had come to have profoundly different notions of the relationship between freedom and authority. The crucial political events of seventeenth century England involved the great struggle for constitutional liberty by Parliament and the common law courts against the absolutist Stuart kings. The outcome was limited monarchy and parliamentary supremacy. Yet, Americans believed that Parliament had limited itself by reaffirmations of Magna Carta and passage of the Petition of Right of 1628, the Habeas Corpus Act of 1679, and the Toleration Act and Bill of Rights of 1689. In addition, they regarded the British constitution, like their own colonial charters, as a body of fixed and fundamental principles, rooted in divine and natural law, and binding on king and Parliament alike. No government could abridge the "essential rights" derived from these sources, said Sam Adams (1968, 24 and 185), "without destroying its own foundation."

In reality, the English constitutional documents limited only the power of the Crown, not that of Parliament. Moreover, they gave little protection to popular rights, being aimed more at securing the prerogatives of the House of Commons. Americans believed otherwise because their constitutional theory derived from a "highly selective and romanticized image of seventeenth-century England," an image that flourished in America long after it had died out in England (Levy, 1987, 293). To Americans, the English constitutional documents were important pillars of the rule of law and the idea of liberty. Like such colonial documents as the Massachusetts Body of Liberties of 1641, the Concessions and Agreements of West New Jersey of 1677, and the Pennsylvania Charter of Privileges of 1701, they were regarded as part of an ancient tradition. Furthermore, the American tendency to equate the constitutional rights of British subjects with the natural rights of all human beings was a significant refocus of Lockean theory away from limiting primarily executive power to limiting legislative power as well. It thus implied restraints on the power of majorities in the name of individual rights.

Nevertheless, discussion of liberty during the revolutionary era tended to reflect the earlier view of Locke and "Cato" that rights belonged to the people taken as a whole rather than as individuals, and that they were threatened more by the tyranny of the few than by the tyranny of the many. Freedom of speech and press, for example, were regarded not as individual
rights but as the concomitants of free government. As one writer told the *Boston Gazette* in 1767: one has freedom of speech only "so far as the laws of a community will permit, and no farther: all beyond is criminal, and tends to the destruction of Liberty itself." When exercised properly, he continued, freedom of speech "keeps the constitution in health and vigour," thus ensuring "our preservation as a free people" (Levy, 1966, 95-96). Americans similarly emphasized the social utility of a free press over its value to individual writers and publishers. The Continental Congress thus praised freedom of the press in 1774 for advancing "truth, science, morality, and arts" as well as for its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honourable and just modes of conducting affairs" (Kurland and Lerner, 1987, 442).

The rights of assembly and petition were also considered in terms of their value in a representative government as a means of enforcing the "collective right of we the people to control government" (Amar, 1991, 1152). As the towns of Middlesex County, Massachusetts declared in 1774, "every people" has a right to meet and discuss "common grievances" (quoted in Rossiter, 1953, 386). Concern for maintaining the collective rights of the people as the foundation of republican government also helps to explain the American emphasis on civilian control of the military so as to ban standing armies and the quartering of troops in private homes. Sam Adams spoke for many in 1768 when he expressed doubt that "any people can long remain free, with a strong military power in the very heart of their country" unless the force was accountable to "the people" (1968, 264). Trial by jury and representation in the legislature were particularly thought of more as instruments of popular control than protections for individual freedom. "In these two powers consist wholly the liberty and security of the people," wrote John Adams in 1766, for they provide "a popular check, upon the whole government" (1977, vol. 1, 168-169).

Official American statements reflected this communitarian view of rights. In 1765 the Stamp Act Congress implored Britain to respect "the most essential rights and liberties of the colonists" (Perry and Cooper, 1978, 270). In 1774 the First Continental Congress condemned Parliament for violating "the rights of the people," adding that "the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council" (Perry and Cooper, 287). Shortly thereafter, Congress told the inhabitants of Quebec that representative
government, trial by jury, habeas corpus, and freedom of press and conscience were among the rights "without which a people cannot be free and happy" (Kurland and Lerner, 1987, 442). After hostilities had broken out in 1775, the Second Continental Congress issued its "Declaration of the Causes and Necessity of Taking Up Arms," which spoke of "our cause," "our liberties," and the "freedom that is our birthright," while warning Britain that the colonists were "with one mind resolved to die freemen rather than to live slaves" (Perry and Cooper, 1978, 299).

This communitarian conception of rights found its ultimate expression in the Declaration of Independence, the most important and eloquent statement of the principles and objectives of the American Revolution. The Declaration is often read as a manifesto of individualism, given its invocation of the "unalienable rights" of "all men." As Donald Lutz argues, however, the Declaration was not "an abstract essay on individual rights," for "it is not individualism that permeates the list of abuses," but concern for the injustices that "Americans had suffered as a people" (1988, 78). Similarly, Harvey Mansfield notes that "the same liberal principles we usually see used to protect individuals against government" are used in the Declaration to "defend one people against another people" (1979, pp. x-xi). In explaining why it had become necessary for "one people" to break its political bands with another, Jefferson proclaimed that "we" hold certain truths to be self-evident, a vital one being the "right of the people" to alter or abolish their government should it act contrary to the public good (Perry and Cooper, 1978, 319). The Declaration was thus concerned not with individual rights in the modern sense but with the "people's right" to ensure that government rests on the consent of the governed.

With the coming of independence, Americans set forth their liberties as a people in their new state constitutions, most of which included formal declarations of rights. Virginia's stated that government is formed for the "common benefit, protection, and security of the people," and that "a majority of the community" has a right to change government in whatever way necessary to promote the "public weal" (Perry and Cooper, 1978, 311). Eleven of the document's sixteen sections speak of "rights of the people," such as free elections, representative government, and protection against standing armies. Only five cite rights bearing more on individuals, such as freedom of conscience and procedural fairness in criminal cases. Pennsylvania's declaration of rights also was directed largely to "the people," "the community," and the "common good" (Perry
and Cooper, 1978, 329 and 331). Protection against arbitrary searches and seizures and freedom of speech and press were listed as rights of "the people," as were the right to bear arms and the right to assemble and petition. As in Virginia, only the rights of conscience and property, along with protections for criminal defendants, were described more in individualistic terms.

The communitarian understanding of freedom was even more striking in the declarations of rights of Delaware and Maryland. These states regarded "the foundation of liberty and of all free government" to be not, as we might today, the right of individuals to privacy or freedom of expression, but the right of "the people" to control their representatives (Perry and Cooper, 1978, 338 and 347). Moreover, while both states guaranteed liberty of conscience to all citizens, "the people" to whom equal rights were extended was limited to Christians (Perry and Cooper, 1978, 338 and 349). Maryland thus required its officeholders to swear belief in Christianity. Its legislature was also permitted to spend public funds to promote the Christian faith. Massachusetts went further, providing in the longest section of its declaration of rights that since "the happiness of a people" depends upon "piety, religion, and morality," the state legislature could require citizens to attend religious services and support Protestant ministers (Perry and Cooper, 1978, 374). Tax revenues could even be used to fund denominations to which contributors did not belong.

Constitutional provisions such as these and the majoritarian premises upon which they rested clearly could oppress religious minorities. Test oaths, established churches, and persecution of religious dissenters were in fact common. These practices were not regarded as problematic, however, since liberty was largely thought of as belonging to individuals as members of a broader community. The libertarian tradition that Americans had inherited from Locke and "Cato" saw the threat to individual freedom coming not from the many making up the community but from the few occupying positions of power. So long as "the people" controlled government, liberty would be secure. Accordingly, John Adams (1977, vol. 1, 169) extolled America in 1766 as a land where one "can be subjected to no laws, which he does not make himself, or constitute some of his friends to make for him: his father, brother, neighbour, friend, a man of his own rank, nearly of his own education, fortune, habits, passions, prejudices." Modern libertarians would note that those outside the mainstream, such as religious minorities, political dissidents, or those loyal to England, might not feel, or be, as secure.
The Constitution, the Bill of Rights, and the Decline of the Traditional Understanding of Liberty

Although the delegates to the Constitutional Convention were well aware of both the theory and practice of securing liberty through bills of rights, they did not attach one to the federal constitution. Their decision was due neither to oversight nor to devaluation of the importance of rights but to the nature of their enterprise. The state bills of rights reflected a popular desire during the Revolution to restrain power so as to promote liberty. By contrast, the framers of the federal constitution gathered not to limit national power but to enlarge it, for the travails of the Confederation period had convinced them that liberty can be endangered as much by a weak government as by a strong one. Unlike localists, who praised bills of rights as the cornerstone of free government, the nationalists meeting in Philadelphia feared that restrictions on federal power could become the Achilles’ heel of their new system by undercutting stable and effective government, which to them was the best security for private as well as public liberty.

In any case, virtually all the framers of the constitution believed that the institutional character of the government they were creating obviated the need for explicit recognition of traditional liberties. Because the national government would possess only enumerated powers, the framers reasoned, it could not invade the rights of the people. In fact, they believed that since the Constitution provided for separation of powers, checks and balances, republicanism, bicameralism, judicial independence, federalism, a broad suffrage, and the possibility of amendment, the entire document was in essence a bill of rights, and one that provided more dependable protection than the “parchment barriers” attached to the state constitutions. Similarly, the delegates thought the vast expanse of the American continent would ensure liberty by encompassing such a wide variety of geographically scattered interests as to make unlikely the emergence of a domineering majority. Finally, they insisted that no bill of rights could possibly list all the “natural rights” of the people (see Levy, 1987, 262-269).

Whatever the merits of these ideas, omitting a bill of rights was a serious miscalculation on the part of the convention, for it almost caused the Constitution to be rejected. To its foes, many of whom were motivated as much by states’ rights sentiment as by libertarianism, the document promised a “consolidated” government wherein an omnipotent national
legislature would abolish state autonomy and thereby extinguish the rights of the people. Asked one of many Anti-Federalists, "where is the bill of rights which shall check the power of this Congress; which shall say, Thus far shall ye come, and no farther?" (Elliott, 1907, vol. 2, 80). The Anti-Federalists thus saw in the Constitution the same danger of tyranny over the people by the powerful few that Locke and "Cato" had warned against and that the American Revolution had sought to end. As James Madison wrote to Thomas Jefferson, the Constitution's critics believed that the framers "had entered into a conspiracy against the liberties of the people at large, in order to erect an aristocracy for the rich, the well born and the men of Education" (1962, vol. 10, 519).

In calling for a bill of rights, then, the Anti-Federalists were "fighting the good old Whig cause in defense of the people's liberties against the engrossing power of their rulers" (Wood, 1969, 521). For example, Richard Henry Lee of Virginia argued that "universal experience" demonstrated the need for "express declarations and reservations" to protect the "just rights and liberty of Mankind from the silent powerful and ever active conspiracy of those who govern" (Kurland and Lerner, 1987, 448). New York's Robert Yates demanded a bill of rights to protect "public liberty" and "the rights of the people" against the "encroachments of their rulers" (Storing, 1981, 2.9.25). Only rarely did the Constitution's critics consider rights as belonging to individuals as such or see them threatened by the community. Praising "the people as the great centre of all," one Kentucky Anti-Federalist squarely defended majority rule, asserting that "in no instance ought the minority to govern the majority." He saw no danger to individual liberty in this approach since he thought of individuals in communitarian terms. Thus, in referring to the "liberty of the community" he argued that no community can ever have but "one common public interest," that being "the greatest good of the whole and of every individual as a part of that whole" (Storing, 1981, 5.13.4, 5, 7).

As during the Revolutionary War, rights were understood as belonging more to the people as a whole than to individuals. For instance, Richard Henry Lee argued that trial by jury is as vital to those serving as jurors as it is to those being tried. Jury service, he said, is among "the wisest and most fit means" the people have to protect themselves against "the few" and "the well born," for it "enables them to acquire information and knowledge in the affairs and government of the society" so that they might act "as the sentinels and guardians of each other" (Storing, 1981, 2.8.54-55). Lee similarly viewed a free press in communitarian terms,
calling it a "channel of communication as to mercantile and public affairs" and the primary means by which a people "ascertain each others sentiments" and are "enabled to unite, and become formidable to those rulers who adopt improper measures" (Storing, 1981, 2.8.203). Freedom of speech, the right to assemble and petition, and protection against standing armies and the quartering of troops were also understood by most Anti-Federalists as belonging to the people collectively rather than individually because they were, Lee said, liberties "essential to their political happiness" (Storing, 1981, 2.8.196).

Because Anti-Federalists believed the real threat to freedom came from tyrannical rulers, not oppressive majorities, they regarded bills of rights primarily as protections for the governed against their governors. This position puzzled most Federalists, who considered bills of rights unnecessary where political power rested in the hands of the people themselves. Alexander Hamilton contended that because guarantees of rights were originally "stipulations between kings and their subjects" they had no application to constitutions founded upon "the power of the people, and executed by their immediate representatives and servants" (1961, 512-513). The "leading principle" of American constitutionalism, added James Wilson, is that "supreme power resides in the people" who have "a right to do what they please" with their government (Elliot, 1907, vol. 2, 434-435). "Of what use, therefore, can a bill of rights be," James Iredell asked, "where the people expressly declare how much power they do give, and consequently retain all they do not?" (Elliot, 1907, vol. 4, 148).

Anti-Federalists did not agree that popular sovereignty obviated the need for a federal bill of rights. Building upon traditional Whig theory, they believed that power is inherently dangerous and likely to corrupt its possessors, be they monarchs or elected representatives. William Grayson of Virginia insisted that power "ought to be granted on a supposition that men will be bad" (Elliot, 1907, vol. 3, 563). "The lust of power is so universal," noted "Centinel," that a "speculative unascertained rule of construction would be a poor security for the liberties of the people" (Storing, 1981, 2.7.38). The ultimate security against the dangers of governmental power, Anti-Federalists thought, was a bill of rights. Since "it is the nature of power to seek its own augmentation," argued Robert Whitehill of Pennsylvania, "loss of liberty is the necessary consequence" unless the people "erect a permanent landmark" by which their rulers "may learn the extent of their authority, and the people be able to discover the first encroachments on their liberties" (Kurland and Lerner, 1987, 456).
Most Anti-Federalists thus argued for a bill of rights within the traditional understanding of liberty, which emphasized what "An Old Whig" called "struggles between the rulers and the people" (Storing, 1981, 3.3.23). Some, however, were beginning to see bills of rights not just as protections for the liberties of the people as a whole against the tyranny of the few, but also as guarantees of the rights of individuals and minorities against the tyranny of a majority exercising its will through its elected representatives. "A Farmer" in Maryland claimed that in popular governments "the tyranny of the legislative is most to be dreaded" since "the rights of individuals are frequently opposed to the apparent interests of the majority." Unless rights in a popular government are "clearly and expressly ascertained" in a bill of rights, he warned, "the individual must be lost" (Storing, 1981, 5.1.15). Writing as "Agrippa," James Winthrop of Massachusetts reasoned that because "unbridled passions produce the same effect whether in a king, nobility, or a mob," it is "as necessary to defend an individual against the majority in a republick as against the king in a monarchy." A bill of rights would "secure the minority against the usurpation and tyranny of the majority" (Storing, 1981, 4.6.73).

Sparked largely by majoritarian abuses of individual rights in some of the more democratic states during the Confederation period, a profoundly new understanding of liberty and bills of rights was emerging, one that threatened to undermine traditional beliefs about the goodness of the people and the need for civic virtue in maintaining a free community. Traditionalists viewed bills of rights as agents of political socialization helping to unite citizens by instilling in them affection for the principles of public liberty upon which free government ultimately depends. Richard Henry Lee, for instance, thought a bill of rights would "establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot" (Storing, 1981, 2.8.196). "Many" argued that the nation's basic principles should be expressed "in a few words, yet plain, and pithy, to which the people would pay a similar deference, as to the decalogue" (Storing, 1981, 5.20.2). A bill of rights could thus "inspire and conserve...affection for the native country," claimed "A Delegate Who Has Catched Cold," thereby providing "the first lesson of the young citizens" (Storing, 1981, 5.19.16).

In the emerging understanding of liberty, by contrast, a formerly unified community was seen as giving way to what one Virginian called "faction, dissension, and consequent subjection of the minority to the caprice and arbitrary decisions of the majority, who instead of consulting
the interest of the whole community collectively, attend sometimes to partial and local advantages" (Elliot, 1907, vol. 3, 107). Hence, "the people" increasingly were regarded as no more virtuous than princes; and because the people had become sovereign, private liberty was thought to be as much in jeopardy as was public liberty. This perspective on freedom led to an understanding of bills of rights closer to today's in its distrust of the people collectively and its emphasis on securing the rights of individuals and minorities against the deprivations of a majority of the community exercising its power through government. This intellectual movement away from republicanism and toward liberalism also had within it the seeds of our current fixation with individual and group interests, which often works to the detriment of public or common interests.

Ironically, the most articulate proponent of this new view was not an Anti-Federalist but James Madison, the "father of the Constitution." Madison initially opposed a bill of rights as unnecessary and ineffective, but he eventually became its primary catalyst out of fear that demands for protecting basic freedoms, if unaddressed, might help defeat the Constitution. Moreover, he was being heavily lobbied by Thomas Jefferson who insisted that "a bill of rights is what the people are entitled to against every government on earth...and what no just government should refuse, or rest on inference" (1955, 440). Jefferson followed the traditional view that bills of rights protected the liberties of the people as a whole from invasion by tyrannical rulers. More modern, Madison believed that since power in the United States rested with "the majority of the Community," danger to "private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents" (1962, vol. 11, 298).

Although Madison embraced the emerging understanding of liberty, he did not completely repudiate the traditional view. Hence, he argued that bills of rights are desirable in part because the "political truths" they contain might "acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion" (Madison, 1962, vol. 11, 297). He considered the symbolic and educative functions of a bill of rights to be particularly important in a fragmented, pluralistic society where the clashing interests of selfish groups could cause people to forget the principles of free government. A bill of rights could serve as a beacon to highlight those principles and remind people of their
importance. Moreover, the ideals of freedom contained in a bill of rights could "rouse the attention of the whole community" against the zealous pursuit of popular sovereignty by an overbearing majority, helping to restrain them "from those acts to which they might be otherwise inclined" (Madison, 1962, vol. 12, 204-205).

Madison thus tried to accommodate the emerging individualistic understanding of liberty and bills of rights to the traditional communitarian perspective in the belief that securing the rights of both individuals and communities depended upon maintaining the essential principles of free government. By the end of the 1780s, however, Americans had come "to regard public and private liberty as antagonistic rather than complementary" (Wood, 1969, 609). As individualism increasingly eclipsed community, the traditional understanding of liberty and bills of rights was overshadowed by the new one, obscuring the classic eighteenth century conviction expressed so eloquently by Richard Henry Lee: if people expect their political systems to endure, they "ought to recognize the leading principles of them in the front page of every family book" (Storing, 1981, 2.8.196). The new understanding would eventually evolve into a more radically individualistic vision of liberty where community and citizenship play little role. This is the twentieth century bill of rights. That of the eighteenth century was based on a tradition of liberty scarcely remembered. As such, it constitutes our "forgotten bill of rights."

Conclusion

How is the "forgotten bill of rights" of the eighteenth century relevant to American politics today? Its relevance lies in the concern of both liberals and conservatives that the meaning of liberty in our time may be less conducive to the political and moral health of our regime than was the meaning held by Americans two centuries ago. The educative function of the Bill of Rights has not been realized in the way its advocates had hoped, for the lesson many of us have learned is not that liberty depends upon community, but that community exists simply to promote liberty. We have been so insistent on enforcing our "individual rights" against one another that we have spawned a troubling litigiousness that has undermined our sense of mutual obligation and transformed the role of the judiciary in our political system. Public issues regularly are reduced to questions of "rights" to be resolved by courts rather than by citizens (McDowell, 1993). Ironically, the rhetoric of rights thus threatens to debase liberty, making it
something selfish and taken for granted rather than, as in the eighteenth century, something communal and actively maintained. In short, "the ghost of Republicanism has long since deserted the center of American life, where Liberalism is now Hegemonic" (Ackerman, 1991, 29).

Yet, neither a zealously individualistic liberalism nor an ardently communitarian republicanism can hope to ensure either true freedom or civic responsibility in modern pluralistic America. Emphasizing one set of values to the exclusion of the other ignores what Forrest McDonald has called the tension between "liberty to participate in the governing process and liberty from unlimited government" (1985, viii). When taken to extremes, both liberalism and republicanism fail to deal adequately with this tension. As for liberalism's focus on individual rights, Nathan Tarcov warns that "our public discourse is impoverished if we only invoke our rights and never debate what is good for us, if we only assert our right to pursue happiness and never discuss what would make us happy" (1985, 125). On the other hand, Stephen Dworetz asserts that whatever the vices of liberalism, it is "the only doctrine that instinctively requires political constitutionalism and the freedoms associated with it, while civic republicanism, whatever its virtues, lacks internal theoretical constraints upon the use of political power" (1990, 38).

Is a synthesis of liberalism and republicanism possible? The debate between contemporary liberals and communitarians seems to belie the possibility, for the two sides tend to frame the issue as though it were an "either/or" proposition. Nevertheless, liberalism and republicanism may share some common ground. Dworetz, a liberal, believes that because the two doctrines coexisted in the eighteenth century, "constructive interactions" between them are attainable today (1990, 191). Another liberal, Bruce Ackerman, rejects altogether the dichotomy between liberalism and republicanism and calls for "liberal republicanism," a combination of both doctrines based on the idea that "the foundation of personal liberty is a certain kind of political life--one requiring the ongoing exertions of a special kind of citizenry" (1991, 29-30). Benjamin Barber (1984), a communitarian, advocates just such a "strong democracy" where public-spirited citizens actively pursue their interests by participating in civic associations. Other communitarians such as Morris Janowitz (1983) and George Fletcher (1993) also emphasize the interplay in a free society between civic involvement and personal liberty.

The eighteenth century understanding of liberty and bills of rights reflected this republican emphasis on dedication to the community. Yet, it
also reflected the liberal belief that the community is composed of individuals and exists to ensure their welfare. Without good individuals there could be no good community; but without a good community there could be no good individuals. These symbiotic public and private interests were linked in the concept of "public liberty," the idea that freedom is the responsibility of all as much as it is the right of each. Hence, the generation that founded our polity believed that "the fate of private freedom in America...depended upon a realistic appreciation of what could, and could not, be expected of American citizens" (Ackerman, 1991, 30). That was the essence of liberty two centuries ago and the challenge today for those trying to reconcile the perennial tension between the individual and the community: the paradox that in a truly free society, freedom is a duty as well as a right. By thinking of our "rights" in terms of our dual roles as both individuals and citizens we can rediscover our "forgotten bill of rights" and perhaps revitalize the meaning of liberty in America today.

Notes

1. I cite Locke's Second Treatise of Government according to the Laslett edition (Locke, 1960), using section and page.

2. I cite "Cato's Letters" according to Jacobson (1965), using section and page.

3. All citations of Storing (1981) use his three-part numbering system indicating volume, position of an essay within that volume, and paragraph.
Commonwealth

References


Commonwealth


This research attempts to explain the sources of abortion attitudes among individuals. The proposed model moves beyond a single value-attitude formulation to a consideration of the interrelationship among core values. The result of holding equally strong and conflicted values relevant to the issue is a decrease in the strength with which abortion attitudes are held. Support for the theoretical framework comes from a survey (N=437). The results indicate that the various components of attitude strength appear to be sufficiently independent dimensions of involvement with the abortion issue, and conflict between relevant core values is associated with a decrease in attitude strength for most of the attitude strength measures.

During the past two decades abortion, one of the most controversial issues of our time, has received increasing scholarly attention. Inquiries have focused on the intricate web of abortion politics on the state and federal level (e.g., Halva - Neubauer, 1991; Woliver, 1991), on the impact of the abortion issue in national (e.g., Granberg and Burlison, 1983) and state elections (e.g., Dodson and Burnbauer, 1990), as well as on the potential of the abortion issue to mobilize a single issue public (e.g., Conover and Gray, 1983). Less context-bound analyses have examined the vocabulary and the values that come to bear in the highly-charged abortion debate (e.g., Luker, 1984, 1985). These analyses reveal that abortion is one of the most value-laden issues in contemporary American politics.

In line with this research, this paper deals with the value basis of abortion attitudes, the potential for fundamental values to come into conflict, and the impact of individual value configurations on the strength of abortion attitudes.

I begin by outlining the relationship between values, value conflict, and public opinion and by specifying the opposing world views which influence abortion attitudes. I, then, describe the impact of value
conflict on the strength with which abortion attitudes are held that is the focus of subsequent empirical analysis. The analysis reveals that the experience of conflicting values diminishes the strength of abortion attitudes. I conclude by attempting to integrate these findings into the broader context of abortion politics.

Values, Value Conflict and Abortion Attitudes

In trying to explain the intellectual and emotional civil war which is fought over the abortion issue, core beliefs which influence abortion attitudes have to be taken into account (e.g., Tribe, 1990; Scott, 1989; Luker, 1984, 1985; Falik, 1983; Tatalovich and Daynes, 1981). Advocates of choice believe that abortion is a fundamental right. For the pro-life movement, on the other hand, abortion is equivalent to murder (Luker, 1984, 1985). Between these two positions there is little room for agreement -- and, in fact, the dialogue between the pro-choice and the pro-life movements is almost nonexistent (Dionne, 1990). Luker's interviews with abortion activists clearly suggest that abortion attitudes are merely "the tip of the iceberg" (1984, 158) and are a reflection of a set of underlying values.

Despite the marked influence of normative values on abortion attitudes, empirical research has not put its primary emphasis on the value structure underlying abortion attitudes. A few studies investigate the impact of core values, most notably religiosity and sexual morality on abortion attitudes (e.g., Harris and Mills, 1985; Sears and Huddy, 1988, There have been attempts to establish a dialogue between the pro-life and the pro-choice movement. For instance, Common Ground, a national movement consisting of pro-choice and pro-life leaders seeks to reframe the issue in a mutually acceptable way. While advocacy groups of either side are less receptive to the idea of compromise, dialogue exist between individuals who actually deal with women facing unwanted pregnancies, those who run abortion clinics or provide homes for pregnant women. Ginsburg (1989) who describes the grass-roots conflict about a Fargo, North Dakota, abortion clinic also notes that activists on both sides acknowledged their interest in helping women with unplanned pregnancies.

There are noteworthy exceptions. Kristin Luker's (1984) research on abortion activists has produced suggestive, rich data about the clash of fundamental values that come to bear in the abortion debate. However, her insights are based on in-depth interviewing techniques and do not allow to test for particular hypotheses. Her respondents are California abortion activists. They neither represent the population of activists, nor the population at large.

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Jelen, 1988; Johnson, Tamney and Burton, 1989). Yet, most of the research on the abortion issue focuses on sociodemographic and attitudinal determinants of abortion attitudes.

The importance of normative values as determinants of abortion attitudes becomes apparent if we consider that, unlike attitudes, values are stable and enduring, and often serve as the basis for attitude judgments (Katz, Wackenhut and Hass, 1986; Rokeach, 1973, Kluckhohn, 1965; Allport, 1954). Rokeach for instance, defines the value concept as an "enduring belief that a specific mode of conduct or end state of existence is personally or socially preferable to an opposite or converse mode of conduct or end state of existence" (Rokeach, 5).

Such a reasoning is in accord with a long tradition of scholarship in American politics and public opinion that has attributed much of the distinctive character of American politics to basic values (e.g., Hofstaedter, 1972; Hartz, 1955; de Toqueville, 1955). Unfortunately, this tradition had surprisingly little impact on empirical studies of political attitudes and behavior. As a result, the impact of normative values on political attitudes has not yet developed into a major research paradigm (for an exception, see Feldman, 1988, 1983).

Values have been, at least partially, ignored in studies of public opinion for two reasons. First, unlike attitudes, values have been the subject of relatively little systematic assessment in psychological and political research due to operational problems in the measurement of the highly elusive value concept (Levitin, 1973). More importantly, the functional interconnections between values, attitudes on a particular issue, and behavior are complex (McGuire, 1969, 1985) and cannot be understood by relying on the simplistic assumption that there is a one-to-one relationship between values and attitudes. In order to understand the functional interconnections between values related to the abortion issue and mass attitudes on abortion, an exact specification of the value-attitude relationship is required.

As journalist Dionne (1991) argues, many Americans are unwilling to express their preferences in "either/or" terms, but endorse both sides of the issue. The public resists simple 'yes' or 'no' answers to certain policy choices and refuses to accept one value paradigm over the other. Instead, it has a more nuanced view about the issue at stake.

Exactly this kind of reasoning about the public's sensitivity toward complex issues of public policy is the core element of Tetlock's (1984, 1986) "value pluralism" argument. Tetlock's position emphasizes that the
effect of values on attitudes cannot be described by a simple one-to-one relationship. Any issue can activate a multitude of values, or in other words, a single attitude is determined by one's whole system of attitude-relevant values. Thus, policy preferences often embody clashes of abstract values in concrete form (Tetlock, 1986). As a result, arriving at an attitudinal position on any complex issue is inherently difficult because values themselves are very often in conflict. This holds especially if the issue at stake is a difficult one to straddle or to compromise.

Values, World Views, and Abortion Policy

Despite the fact that arguments for or against abortion are often stated in simple moral terms, there is more at stake than the controversy over fetal rights versus personal freedom. A comparison of the different reasons for the public's opposition to abortion, e.g. rape or incest versus consensual sexual behavior of a teenager, suggests that the marginals for opposition and support differ sharply. While forty percent of the public opposes abortion for teenage pregnancies, opposition shrinks to 17 percent if the pregnancy occurred because of rape or incest (Tribe, 1990). This asymmetric pattern shows that attitudes of abortion opponents are based on more than the mere desire to protect the sanctity of life. In fact, the abortion dispute involves a whole array of broad values concerning sexual morality (McCutcheon, 1987; Granberg, 1982), the role of men and women in the American society (Sears and Huddy, 1988), and broad life-style questions involving social and moral traditionalism (Luker, 1984, 1985). Aversion to abortion rights seems to reflect a "deeply held sexual morality, in which pregnancy and childbirth are seen as punishment that women in particular must endure for engaging in consensual sex" (Tribe 1990: 234). Additionally, religious variables are among the most prominent predictors of abortion attitudes (Sears and Huddy, 1988; Harris and Mills, 1985; Barnartt and Harris, 1982). The impact of religious variables can be further qualified by distinguishing between fundamentalist and nonfundamentalist denominations. Catholics and fundamentalist Protestants are least likely to give support to legalized abortions (Johnson, Tamney, and Burton, 1990; Blake and Del Pinal, 1979).

The investigation of values' direct influence on abortion attitudes is a necessary but not sufficient criterion to understand abortion attitudes and their potential to generate political action. A complex attitude object such as abortion can activate several and sometimes competing values
within a personal value system that can serve as standards in evaluating the attitude object. One person, for instance, may subscribe to religious beliefs and, at the same time, favor gender equality in all aspects of life. Therefore, abortion attitudes, are not only a function of pro-life and pro-choice values, but rather are based on a tug-of-war among multiple values.

Consequences of Value Conflict: Value Structure and Attitudinal Strength

In order to draw inferences about mass political attitudes on abortion the consequences of value conflict must be stipulated. The central hypothesis to be tested is that the experience of value conflict decreases the strength with which attitudes on abortion are held.

Assessing the strength of abortion attitudes is important because attitude strength moderates the attitude-behavior relationship (e.g., Raden, 1985; Schuman and Presser, 1981; Schwartz, 1978; Petersen and Dutton, 1975; Sample and Warland, 1973) and is a diagnostic criterion differentiating attitudes from non-attitudes (see also Converse, 1970; Abelson, 1988; Krosnick 1988). Past research differentiating between firmly held or strong attitudes and merely superficial expressions of an attitude has produced a rather heterogeneous and eclectic list of strength-related attitude properties. This list includes concepts such as intensity (Suchman, 1950), direct experience (e.g., Regan and Fazio, 1977; Fazio and Zanna, 1981), certainty (Suchman, 1950; Sample and Warland, 1973), importance (Krosnick, 1988, 1989), vested interest (Sivacek and Crano, 1982), crystallization (Schwartz, 1978), and memory accessibility (e.g. Fazio, Powell, and Herr, 1983).

Although it is common wisdom that attitudinal responses, simply operationalized in terms of responses to some object along bipolar evaluative dimensions are frequently poor predictors of behavior (McGuire, 1985, 1969), the attitude strength concept has not been widely incorporated into political science and public opinion research. Some noteworthy exceptions should be mentioned. Dahl (1956), for example, emphasizes the importance of estimating intensities in order to predict the stability of a democracy and the acceptance of a majority rule principle. The strength concept has been also utilized by Schuman and Presser (1981) and Krosnick (1988, 1989) to describe patterns of public opinions and to enhance behavioral prediction of attitudinal positions.
In contrast to past research which conceptualized attitude strength as being unidimensional, this research develops a multidimensional attitude strength concept. Such an assumption is warranted because previous unidimensional conceptualizations do not account for the fact that individuals not only vary in the level of strength attached to an attitude, but also in the way they are involved with an attitude object (Abelson, 1988; Raden, 1985).

Multidimensional conceptualizations of attitude strength are considered by Converse (1970) and Abelson (1988). Converse and Abelson define their strength related constructs "centrality" and "conviction" as a collection of qualitatively different connections between a person and an issue. Converse, for example, defines centrality as having the two facets of motivational and cognitive centrality. Motivational centrality "has to do with the degree to which the object gears into the primary goal or need structures of the individual." Cognitive centrality, on the other hand, refers to the sheer amount of thinking devoted to the attitude object (1970, 181).

In addition to these two dimensions, there are more distinct ways in which an attitude can be related to an individual's self-concept (Johnson and Eagly, 1989). First, attitudes can be related to an individual's self concept if the issue is of personal importance or associated with one's self interest (e.g., Sitvecek and Crano, 1982). The second involves the self-presentational consequence of holding a certain attitude. In other words, attitudes are strong if the individual is concerned about expressing an opinion that is socially acceptable to potential evaluators (e.g., Johnson and Eagly, 1989; Leippe and Elkin, 1987). This dimension will be referred to hereafter as impression-relevant involvement. Additionally, an attitude can be related to an individual's self-concept by perceiving the attitude as important in leading to or blocking the attainment of personal values. Value-relevant involvement increases the more an attitude is perceived to be related to one's cherished values (e.g., Sherif and Cantril, 1947; Ostrom and Brock, 1968). Lastly, my conceptualization of attitude strength includes a stability component. The underlying assumption is that strong attitudes are stable over time (Schuman and Presser, 1981).

These six components -- thinking about the issue, relating the issue to one's primary goal and need structures, having a vested interest in the issue, perceiving it as relevant to important others and perceiving the issue to be related to one's values, over an extended period of time -- capture the different psychological aspects of attitude strength.
Summary of Hypotheses

This research proposes that abortion attitudes are influenced by underlying core values. Yet, unlike prior research, the proposed model moves beyond a single value-attitude formulation to a consideration of the interrelationships among core values. It is argued that normative values can come easily into conflict. Holding conflicted values relevant to abortion is expected to diminish the strength of attitudes toward abortion. Attitude strength is a crucial component in this process because it moderates the attitude behavior relationship. This research relies on a conceptual definition of attitude strength which encompasses multiple dimensions. Such a conceptualization has the advantage of taking into account that there are different ways in which an individual can be psychologically involved with an issue. The proposed dimensions include cognitive and motivational involvement, vested interest in the issue, impression-relevant involvement, value-relevant involvement, and attitude stability.

Attitude strength is largely a function of the underlying value structure and the degree of inter-value conflict is assumed to influence the multiple components of attitude strength.

Methods and Results

In order to investigate the relationship between core values and attitude strength a survey was conducted to examine attitudes toward the abortion issue, the strength of these attitudes, and individual value structures. Four hundred and thirty-seven Stony Brook students from various political science undergraduate classes completed the abortion survey between February and August 1991 in partial fulfillment of class requirements. From an external validity point of view, subjects did not qualify as either a probability sample or were representative of any larger, national population. However, it is argued that the use of college students does not represent a threat to the internal validity of this study. Although students' experiences can differ systematically from the population at large (Sears, 1986), basic cognitive processes are not different from an adult population. Although it is possible that a student population is more interested and active in abortion politics, this particular sample of students
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includes only an insignificant minority of abortion activists.\(^4\) Thus, the study does provide an internally valid means through which the basic hypotheses about the relationship between value conflict and attitude strength can be tested.

The completion of the survey took approximately twenty to thirty minutes. The sample was approximately evenly split according to gender, and the average age of the survey respondent was 21 years.

Description of Key Measures

Attitudes toward abortion were assessed in two ways. First, a battery of standard abortion items was included, asking respondents whether they think abortions should be possible for a variety of reasons ranging from a serious threat to the mother’s life to a woman’s desire to end a pregnancy for any reason\(^5\). This variable will be referred to as abortion constraints hereafter. Additionally, attitudes toward abortion were measured by placing the issue into the policy domain of state regulation of abortion. Respondents were asked to indicate their support or opposition toward state laws (1) requiring parental consent for teenagers under 18, (2) prohibiting public spending on all abortions, (3) prohibiting public spending on abortions except to save a woman’s life, (4) proscribing abortions in public facilities with the exception of a threat to the mother’s health, and (5) prohibiting public employees from performing, assisting or advising

\(^4\) This information comes from a follow-up study which was conducted eight to ten weeks after completion of the initial survey. More than two-thirds of the original sample (299 students) was reinterviewed in order to assess the stability of students’ abortion attitudes. Students were also asked to indicate any direct behavioral involvement they had with the abortion issue. Only six respondents indicated that they donated money to an organization whose major concern is abortion. Three of those also participated in a rally, and two wrote to a newspaper about the issue.

\(^5\) Abortion attitudes were measured by relying on a seven-item scale. These items are similar to the series of standard abortion items utilized by the General Social Survey. The scale assesses attitudes toward legalized abortions for the following reasons: (1) If the woman’s health is endangered by the pregnancy, (2) if there is a strong chance of serious defect in the baby, (3) if the pregnancy occurred because of rape or incest, (4) if the woman is married and does not want any more children, (5) if the family has a low income and cannot afford any more children, (6) if the woman is unmarried and does not want to marry the man, and (7) if the woman desires to terminate the pregnancy for any reason. The scale was constructed by summing up affirmative responses to all seven items.
about abortions. The five state regulation of abortion items form a reliable scale, with Cronbach's alpha exceeding a .82 level. Not surprisingly for a Northern student population, 47.5% of the student sample supported abortion rights for all the specified circumstances, including abortion if desired by the woman for any reason. Support for legalized abortion seems to be somewhat less if the issue is put in the domain of state regulation than if the issue is portrayed as one of a woman's choice. The majority (58.8%) opposes or strongly opposes state regulation of abortion. Yet, most of the respondents preferred the "oppose" over the "strongly oppose" option.

The specific abortion-relevant values assessed in this survey -- the desirability of free choice, gender roles, gender equality, moral freedom, moral traditionalism, sexual morality, religiosity, and religious fundamentalism -- were measured by relying on multiple item scales. Moral traditionalism was measured by relying on a modified moral traditionalism measure first developed in Conover and Feldman (1986). This scale focuses on preferences for older and more traditional family values. Moral freedom, on the other hand, aims at assessing the extent to which individuals and not society can determine moral standards. The items used to construct this scale, the traditional gender role scale, as well as the religious fundamentalism items were drawn from Feldman (1989). Items assessing gender equality were drawn from Sears and Huddy (1988). The four sexual morality scale items are similar to those used in the General Social Survey. Religiosity was assessed by using standard National Election Study items measuring respondents' religiosity, strength of religious affiliation, and frequency of church or synagogue attendance. Some guidance for the construction of the items measuring the desirability of free and independent choice was provided by the 'Philosophy of Human Nature Scale' developed by Wrightsman (1973). Most of the items thought to measure specific values form reliable scales. Reliability coefficients are adequately high, with Cronbach's alpha exceeding a .7 or .8 level for most of the scales.

Attitude strength was measured by greatly expanding upon a list of attitude strength items proposed by Abelson (1988). As explained earlier, this study relies on a multidimensional conceptualization of attitude strength. Therefore the survey questionnaire included items measuring cognitive involvement, motivational involvement with the abortion issue, impression-relevant involvement, value-relevant involvement, vested
interest in the issue, and attitude stability. This new conceptualization of attitude strength greatly improves upon earlier attitude strength measures in two respects. First, single dimensions are assessed by relying on multiple item scales. Second, multidimensionality of the concept is taken into account.

The Multidimensionality of Attitude Strength

Before the relationship between value structure and the strength of abortion attitudes can be explored, the assumption that attitude strength encompasses different dimensions requires further empirical refinement. In order to test the hypothesis that attitude strength is a multidimensional construct, the attitude strength items intercorrelations were subjected to an exploratory factor analysis. The resulting five factor solution corresponds closely to prior theorizing about the multiple dimensions of attitude strength. Table 1 displays the five factor solution of the attitude strength items.

As can be seen, the items thought to assess cognitive involvement with the issue load on a first factor, the motivational involvement variables load on a second factor. A closer look at the items scoring on the second factor suggests that the term "motivational involvement" may be misleading. Items such as "I think my views about abortion are absolutely correct", or "I cannot imagine ever changing my mind about the abortion issue" express an individual's perception that his or her attitude on abortion is correct and incontestable. Thus, these items are more adequately described by the term certainty than by the term motivational involvement.

---

6 All together, 25 attitude strength items were assessed (see Appendix A for the wording of the items). All items came after the attitude directionality questions, but preceded all the questions on individual value preferences. Since several items are intended to assess similar constructs, great care was taken to disperse these items across all attitude strength measures.

7 Since a scree test did not provide an unambiguous answer as to how many major common factors ought to be extracted, a four, five, and six factor solution was tried. The criteria used for evaluating the resulting factor solutions was to find the most parsimonious solution, i.e., the smallest number of factors it takes to reproduce the correlation matrix, that is equally satisfying from a theoretical point of view. Only the five factor solution was satisfying on the second criteria.
TABLE 1

Factor Analysis of all Attitude Strength Items (Principal Axis Factoring with oblique rotation)  

<table>
<thead>
<tr>
<th>Factor 1</th>
<th>Factor 2</th>
<th>Factor 3</th>
<th>Factor 4</th>
<th>Factor 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cognitive Certainty</td>
<td>Vested Interest</td>
<td>Value Attitude</td>
<td>Stability Consistency</td>
<td></td>
</tr>
<tr>
<td>Involvement</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| DISCUSSION 9 | .83 | | | |
| DISC./FRIENDS&FA | .81 | | | |
| THINKING | .72 | .57 | .43 | |
| IMPORTANCE/FRIENDS | | | | |
| FEELING STRONGLY | .57 | .43 | .53 | .56 | .40 | |
| ATTENDING | | | | | .50 | |
| KNOWLEDGE | | | | | .48 | .43 | |
| IMP./FAMILY | | | | | .45 | |
| CONNECTED | | | | | .45 | |
| NEGATIVE | | | | | | .40 | |

| CORRECTNESS | | | | | .69 | .44 | |
| MIND | | | | | .68 | .41 | |
| HARD | | | | | .66 | | |
| SURE | | | | | .65 | | |
| EXPLAIN | | | | | | .53 | .48 | |
| WRONG | | | | | | | .44 | |

8 Factor Loadings <.40 were omitted

9 For the exact wording of the attitude strength items, please refer to the list in Appendix A.
Table 1 - continued

<table>
<thead>
<tr>
<th></th>
<th>Factor 1</th>
<th>Factor 2</th>
<th>Factor 3</th>
<th>Factor 4</th>
<th>Factor 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>PERSONAL</td>
<td>.88</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EASY</td>
<td>.73</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LAW</td>
<td>.73</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IMPORTANT</td>
<td>.53</td>
<td>.72</td>
<td>.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DIRECT</td>
<td></td>
<td>.55</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MORAL</td>
<td></td>
<td></td>
<td>.69</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BELIEF</td>
<td></td>
<td></td>
<td>.56</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VALUES</td>
<td></td>
<td></td>
<td>.56</td>
<td></td>
<td></td>
</tr>
<tr>
<td>STRONGER</td>
<td>.41</td>
<td></td>
<td>.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NO CHANGE</td>
<td>.43</td>
<td></td>
<td></td>
<td>.69</td>
<td></td>
</tr>
<tr>
<td>LONG</td>
<td></td>
<td>.46</td>
<td></td>
<td>.61</td>
<td></td>
</tr>
<tr>
<td>DISAPPOINTED</td>
<td></td>
<td></td>
<td></td>
<td>.40</td>
<td></td>
</tr>
<tr>
<td>SIMILAR</td>
<td></td>
<td></td>
<td></td>
<td>.37</td>
<td></td>
</tr>
</tbody>
</table>

The term 'motivational involvement' will be substituted by the term 'certainty' hereafter.

The self-interest items load clearly on a third factor. Factor four closely represents the self-perceived value attitude consistency of one's abortion attitudes, and the fifth factor resembles the stability and length of holding one's attitude. While these distinct dimensions correspond to prior theorizing, the social identification items do not represent a singular dimension. In fact, most of the items assessing the frequency and importance of abortion discussions within the close circle of friends and family score with the cognitive involvement items. Nevertheless, if it is taken into account that the frequency with which friends and family members discuss the issue may represent an indicator of one's own interest in the issue, this does not come as a surprise.

Overall, however, the rather crystalline results of the exploratory factor model are close to theoretical expectations and indicate that attitude strength is not one master dimension but rather a multidimensional concept. Thus, this investigation adds empirical support to prior theorizing about the multidimensionality of attitude strength (e.g., Abelson, 1988; Raden, 1988; Converse, 1970).
The results also provide a guideline for the construction of the attitude strength scales. Cronbach’s alpha for unweighted and congeneric measures provides a conservative estimate of a measure’s reliability. It exceeds a .8 level for the measure of cognitive involvement (Factor 1) and vested interest in the issue (Factor 3). Cronbach’s alpha for the certainty scale (Factor 2) is .79; it amounts to .70 for the self-perceived stability of one’s abortion attitudes (Factor 5), and to .65 for the dimension of value-relevant involvement. Not surprisingly, the measures of attitude strength are somewhat correlated and this was taken into account in the factor analysis that utilized oblique rotation. While the correlations between most of the measures do not exceed a .3 level, the correlation between perceived self-interest and cognitive involvement is rather high (r = .51, p < .01). However, since the two scales represent theoretically distinct constructs, they remained separate.

The Value-Attitude Relationship

In line with Rokeach’s argument (1968, 1973) that stable and enduring values serve as the basis for people’s attitude judgments, the value-attitude relationship was tested by a series of bivariate correlations. As expected, fundamental values are strongly related to both dependent variables - the abortion constraints, as well as the state regulation of abortion dependent variables.

More specifically, the correlation between religious fundamentalism and abortion constraints amounts to .523 (p < .01). Correlation coefficients are somewhat lower for religiosity (r = .415, p < .01), sexual morality (r = .437, p < .01), moral traditionalism (r = .416, p < .01), moral freedom (r = .395, p < .01), gender roles (r = .337, p < .01), choice (r = .259, p < .01), and gender equality (r = .247, p < .01). These fundamental values do not only influence abortion attitudes when the issue is framed in a rather general way, but are of equal importance when abortion becomes translated into an active public policy issue concerned with the rights of the state to restrict public funding of abortion and to limit the access to abortion in various ways. Zero-order correlations between fundamental values and attitudes toward state regulation of abortion amount to .23 for the choice items, .412 for sexual morality, .260 for gender roles, .501 for moral freedom, .309 for religiosity, .228 for gender equality, .47 for religious fundamentalism, and .46 for moral traditionalism. All these correlations are significant at p < .01. The impact of one value on the
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dependent variables, if all the other values are controlled for can be seen in Table 2.

Subscribing to value positions that endorse the pro-choice side of the abortion issue results in abortion attitudes that favor legalized abortion and oppose state regulation of abortion. The eight values explain a significant share of the variance, 33.6% for the abortion constraints variable, 32% for the state regulation of abortion dependent variable. All of the values, with the exception of moral traditionalism and gender equality, are highly significant and contribute to explaining the abortion constraints variable. Since these two values are highly correlated with all the others, the rather low beta coefficients may be caused by multicollinearity.

Consequences of Value Conflict

As outlined above, the assumption of a one-to-one relationship between values and attitudinal measures is overly simple because the presence of value conflict is not taken into account. This study operationalized value conflict as the product of two standardized value scores. ¹⁰ Specifically, the original value scores were recoded so that the first value supporting a pro-choice position received the highest negative score, the pro-life position received the highest positive score. The second value was reverse coded, i.e., the pro-life position was assigned a negative score, the pro-choice position a positive score, respectively. Thus, the highest level of conflict that can be experienced -- cherishing one value that endorses a pro-choice position, and a second that inhibits exactly this position, coincides with the highest score on the newly created value conflict scale. ¹¹

¹⁰ Operationalizing value conflict by using a multiplicative technique is superior to an operational measure which relies on an additive approach. Products are more influenced by the extremity of the scores than sums and create a more appropriate functional form with accelerating curvilinear relationships.

¹¹ This coding procedure can be exemplified by using, for example, the value pair gender roles and sexual morality. The gender role scale was recoded so that a negative score of -3 corresponds to a strong endorsement of equal gender roles, a value of +3, on the other hand, represents strong opposition to equal gender roles. Reversely, the sexual morality scale was recoded so that a value of -3 signifies a strong endorsement of a traditional sexual morality, and a value of +3 stands for opposition to a conservative sexual morality. Hence, the highest amount of conflict that can be experienced, e.g., favoring equal gender roles but at the same time supporting traditional sexual values, or vice versa, results in a score of 9.
TABLE 2

Value Determinants of Abortion Constraints and State Regulation of Abortion Attitudes \(^{12}\)

<table>
<thead>
<tr>
<th>DEPENDENT VARIABLE</th>
<th>Abortion Constraints</th>
<th>State Regulation of Abortion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Choice</td>
<td>.299 (.098)**</td>
<td>.056 (.031) +</td>
</tr>
<tr>
<td>Sexual Morality</td>
<td>.426 (.127)**</td>
<td>.074 (.077) n.s.</td>
</tr>
<tr>
<td>Gender Roles</td>
<td>.256 (.108)*</td>
<td>.051 (.031) n.s.</td>
</tr>
<tr>
<td>Moral Freedom</td>
<td>.269 (.118)*</td>
<td>.140 (.036)**</td>
</tr>
<tr>
<td>Religiosity</td>
<td>.313 (.150)*</td>
<td>.064 (.055) n.s.</td>
</tr>
<tr>
<td>Gender Equality</td>
<td>.166 (.114) n.s.</td>
<td>.030 (.035) n.s.</td>
</tr>
<tr>
<td>Moral Traditionalism</td>
<td>.020 (.124) n.s.</td>
<td>.076 (.04) +</td>
</tr>
<tr>
<td>Rel. Fundamentalism</td>
<td>.496 (.132)**</td>
<td>.122 (.04) **</td>
</tr>
<tr>
<td>Constant</td>
<td>5.082 (.289)**</td>
<td>1.530 (.286)** ***</td>
</tr>
<tr>
<td>(R^2)</td>
<td>.336</td>
<td>.32</td>
</tr>
</tbody>
</table>

Note: (***) \(p < .001\), (**) \(p < .01\), (*) \(p < .05\), (+) \(p < .1\). Entries are unstandardized regression coefficients.

\(^{12}\) Standard errors are expressed in parentheses.
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In order to test the hypothesis of conflicting values and their impact on the different components of attitude strength, pairs of conflicting core values, as well as the value conflict measure, were regressed separately on the five attitude strength measures. In line with the theoretical framework, the mere direction of a value measure should not be related to the strength of abortion attitudes. That is, strongly favoring a traditional sexual morality or strongly opposing this value should have similar effects on attitude strength. Accordingly, the absolute scores of the standardized value measures were utilized. These scores reflect the degree to which one cherishes or opposes certain values and are independent of the directionality of one's value position.

The survey considered the values of individual choice, sexual morality, gender roles, moral freedom, religiosity, gender equality, moral traditionalism, and religious fundamentalism. Thus, there are 56 possible value pairings. Yet, specific value pairings have to make sense theoretically, and the single values also have to be strongly related to the abortion issue in a statistical sense. As displayed in Table 2, the values of gender equality and moral traditionalism were not significantly related to the abortion constraint variable. Some of the strongest predictors of abortion attitudes were the values of gender roles, religious fundamentalism, moral freedom, and sexual morality. Thus, the following analyses will be based on the value pairs of fundamentalism - gender roles, gender roles - moral freedom, and sexual morality - gender roles. These value pairs consist of values that are strongly related to the issue. Further, they represent the clashes of absolute values that characterize the abortion debate. The value of gender roles is included in all three value pairings because beliefs about the proper roles in life for men and women transcend the abortion debate in all its facets. The results of the regression equations can be seen in Table 3.

The results indicate support for the hypothesis specifying the value conflict - attitude strength relationship. For the value pair gender roles and

13 Cross tabulations between these conflicting values reveal that 25.1 percent of the sample can be described as conflicted on the value pair gender roles - fundamentalism. 24.6 percent of the sample falls into the category of conflicted subjects for the value pair gender roles - moral freedom. 21.3 percent have conflicting views on the value pair gender roles - sexual morality.
TABLE 3

Regressions: The Impact of Values and Value Conflict on Multiple Measures of Attitude Strength

<table>
<thead>
<tr>
<th>MEASURES OF ATTITUDE STRENGTH</th>
<th>cognitive involvement</th>
<th>certainty</th>
<th>self-interest</th>
<th>stability measure</th>
</tr>
</thead>
</table>
| GENDER ROLES
  vs.
  FUNDAMENTALISM               |                       |           |               |                  |
| Role                          | .004 (.07)            | .025 (.06) | .142 (.08)    | .05 (.07)        |
| Fundamentalism                | .083 (.05)            | .143 (.05)** | .147 (.056)** | .062 (.05)      |
| Value Conflict                | -.151 (.033)***       | -.067 (.03)** | -.164 (.035)*** | -.15 (.03)**    |
| Constant                      | -.064 (.09)           | -.195 (.08)* | -.28 (.09)**  | -.15 (.09)      |
| R²                            | .10 (.06)             | .06 (.08)  | .12 (.09)     | .08 (.09)       |

Note: Each column represents a separate regression equation. The entries are standardized regression coefficients with standard errors in parentheses. *p < .1, **p < .05, ***p < .01
### TABLE 3 - continued

**CONFLICTING VALUE PAIR**

<table>
<thead>
<tr>
<th></th>
<th>cognitive involvement</th>
<th>certainty</th>
<th>self-interest</th>
<th>stability measure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GENDER ROLES</strong> vs. <strong>MORAL FREEDOM</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Role</td>
<td>-.07</td>
<td>-.016</td>
<td>.06</td>
<td>-.025</td>
</tr>
<tr>
<td></td>
<td>(.06)</td>
<td>(.06)</td>
<td>(.07)</td>
<td>(.07)</td>
</tr>
<tr>
<td>Moral Freedom</td>
<td>.08</td>
<td>.09</td>
<td>.096</td>
<td>.05</td>
</tr>
<tr>
<td></td>
<td>(.065)</td>
<td>(.06)</td>
<td>(.07)</td>
<td>(.06)</td>
</tr>
<tr>
<td>Value Conflict</td>
<td>-.132</td>
<td>-.071</td>
<td>-.133</td>
<td>-.072</td>
</tr>
<tr>
<td></td>
<td>(.043)**</td>
<td>(.04)*</td>
<td>(.04)**</td>
<td>(.046)*</td>
</tr>
<tr>
<td>Constant</td>
<td>.007</td>
<td>.078</td>
<td>-.138</td>
<td>-.022</td>
</tr>
<tr>
<td></td>
<td>(.09)</td>
<td>(.08)</td>
<td>(.09)</td>
<td>(.09)</td>
</tr>
<tr>
<td>R²</td>
<td>.07</td>
<td>.03</td>
<td>.05</td>
<td>.02</td>
</tr>
</tbody>
</table>

Note: Each column represents a separate regression equation. The entries are standardized regression coefficients with standard errors in parentheses. *p < .1. **p < .05, ***p < .01
Table 3 - continued

<table>
<thead>
<tr>
<th>CONFLICTING VALUE PAIR</th>
<th>cognitive involvement</th>
<th>certainty</th>
<th>self-interest</th>
<th>stability measure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SEXUAL MORALITY</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>vs.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>GENDER ROLES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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Note: Each column represents a separate regression equation. The entries are standardized regression coefficients with standard errors in parentheses. *p < .1, **p < .05, ***p < .01

religious fundamentalism the regression results are clear and in line with prior expectations. The value conflict coefficients are significant for all strength measures but the value-attitude consistency dimension. The value conflict coefficients are negative, indicating that conflict between the respective values results in a significant decrease in attitude strength. An increase in value conflict results in a decrease in cognitive involvement with the attitude and it diminishes the certainty with which abortion attitudes are held. Value conflict has similar effects on the measure of perceived self-interest and on self-reported attitude stability.
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The dynamics of these relationships can be exemplified by using the following three hypothetical cases. An individual who experiences extreme conflict, e.g., he or she subscribes to religious fundamentalism and at the same time favors equal gender roles, or vice versa, of course, serves as the extreme case of value conflict.\textsuperscript{14} A respondent opposing religious fundamentalism and at the same time endorsing equal gender roles exemplifies the extreme case of a compatible value structure.\textsuperscript{15} Respondents choosing the mean of the respective scales serve as a comparative baseline. For the first hypothetical case of extreme conflict between the two core values of fundamentalism and gender roles, a cognitive involvement score of -1.2 is obtained, for the case of no conflict a score of .33 can be calculated. These two hypothetical scores can be compared to a baseline, i.e., the mean response on both value scales, of -.064. Albeit hypothetical, these numbers demonstrate the dynamics of value conflict.

Similar results were obtained for the other two value pairs. For the value pairs of gender roles and moral freedom, as well as sexual morality and gender roles, value conflict has similar consequences on the attitude strength measures of cognitive involvement, certainty, vested interest, and self-perceived attitude stability.\textsuperscript{16}

\textsuperscript{14} The purpose of using this rather extreme case is only illustrative. A cross-tabulation of the two value measures reveals that only 20 out of 437 respondents can be characterized as experiencing extreme value conflict. However, if less stringent criteria are used 109 cases can be characterized as experiencing value conflict. These 109 respondents score high or moderately high on a pro-choice value, and, at the same time, subscribe to a contradictory pro-life value.

\textsuperscript{15} Similar to the extreme case of conflicting values, only 51 respondents display a completely hierarchical value structure, i.e., they strongly endorse equal gender roles and strongly oppose religious fundamentalism, or vice versa. However, if we use a less stringent mode of categorization, 199 respondents can be characterized as holding compatible values.

\textsuperscript{16} R\textsuperscript{2} for all the regression equations is rather low. However, as noted by King (1990), model performance and the value of R\textsuperscript{2} are independent questions. Quite likely, the low R\textsuperscript{2} can be attributed to measurement error in the dependent variable. As long as the error term is not correlated with any of the independent variables, the theoretical significance of the model is not endangered.
In sum, the regression results provide strong support for the hypothesis of conflicting values. Predicted results were obtained for all three value pairs investigated and for four out of five attitude strength measures. Thus, value conflict matters; experiencing the "tug-of-war" among contradictory core values results in a decrease in the strength with which attitudes are held.

Discussion and Conclusion

The results reaffirm the importance of values as determinants of public attitudes. Values such as gender roles, sexual morality, and religious fundamentalism undoubtedly shape abortion attitudes. More importantly, the results demonstrate that a one-to-one relationship between values and attitudes is too simplistic an assumption. Instead, the role of value conflict has to be taken into account. In contrast to abortion attitudes held by pro-life and pro-choice activists, mass political attitudes on abortion are better described by relying on a model of conflicting values. As shown, the experience of value conflict results in a decrease in the strength with which abortion attitudes are held.

The value conflict - attitude strength relationship has been demonstrated to hold for four out of the five strength dimensions investigated. Specifically, value conflict resulted in a decrease in cognitive involvement, certainty about one's position on the issue, self-interest, and self-perceived attitude stability. The hypothesized relationship between value conflict and attitude strength, however, did not hold for the dimension of value-relevant involvement. One likely explanation for the failure of this measure is that the items assessing the construct are not adequately reliable. Assessing the relatedness of one's values to one's attitudes is a rather complex task requiring knowledge about the importance of personal values, as well as information about the extent to which the values in question achieve or block one's position on a certain issue.

Overall, however, the obtained results reaffirm the notion that basic values cherished by the mass public do not always fit together into neat and coherent packages. Values are not necessarily ordered into a hierarchically organized system, but they can be contradictory, and still be valued at the same time.

It should be emphasized again that the proposed value conflict - attitude strength model can only be applied to people in the "middle ground", not to activists. Obviously, in order for the value conflict -
attitude strength relationship to hold, a certain amount of value conflict has to be experienced. While this is the case for many citizens, activists on either side of the issue hold consistent pro-life or pro-choice positions which are based on opposing and mutually exclusive values (Luker, 1884; Granberg, 1982).

This implies that the mass public does not always share the choices offered by a small and rather extreme set of abortion activists which differ drastically in their basic frameworks, value hierarchies, and in the vocabulary they use to discuss the issue (Fried, 1988). Instead, the electorate seems to subscribe to a more complex view on the issue which is based on equally important values that can come easily into conflict. As shown, the result of endorsing equally important and conflicting values is a decrease in the strength with which abortion attitude are held.

These findings about the relationship between value conflict and attitude strength have important implications as far as the strategies and the success of pro-life and pro-choice groups are concerned.

Although recent Supreme Court decisions such as Webster (1989) and Casey (1992) did not make abortion illegal, they gave way to further state restrictions on legal abortion. Thus, recent Supreme Court decisions constituted a backlash to the struggle of the pro-choice movement. However, the pro-choice position still attracts more supporters than the idea of outlawing abortion under all circumstances. Yet, the dilemma faced by the pro-choice movement is that public sentiments toward abortion are often based on conflicting values. As demonstrated, the experience of the tug-of-war of opposing values decreases the strength with which abortion attitudes are held, and, in turn, diminishes the potential for these attitudes to translate into politically relevant behavior.

Ironically, the pro-life movement may face the same dilemma. While the partial victory of the pro-life movement illustrates the success of an intense minority (see also Scott and Schuman, 1988; Mansbridge, 1986), the mass public, even those who take a pro-life position, shares many values with their ostensible opponents (see also Cook, Jelen, and Wilcox, 1992).

Which activist group will be more likely to involve more and more individuals by making the issue more visible? Although pro-life and pro-choice arguments may seem to be diametrically opposite, pro-choice supporters do not reverse religious and moral arguments put forward by pro-life activists (Scott, 1989, Luker, 1984). In other words, pro-choice proponents do not argue that abortion is good and desirable, but assert that
women should have the right to choose whether or not to have access to safe and legal abortions. By continuing to portray abortion as a matter of choice and by emphasizing public health concerns, pro-choice activists will continue to be able to appeal to the "middle-of-the-road" person who favors access to safe abortions. In other words, citizens who experience value conflict may feel more comfortable with pro-choice than pro-life arguments. An examination of the value structure underlying abortion attitudes suggests that the pro-life movement - because of the absolute values it appeals to - cannot easily mobilize citizens who hold ambivalent attitudes on this issue. The pro-choice movement, on the other hand, seems to be in a better position to accommodate those members of the mass public who cherish conflicting values. Nevertheless, numbers do not necessarily reflect the success or failure of a movement. The attempt to ban legal abortion has remained a lively issue because its "advocates feel so passionately about it, while many opponents are ambivalent" (Mansbridge, 1986: 34).

In summary, this micro-level analysis indicates that abortion attitudes reflect normative values and beliefs which can come into conflict. However, the success of pro-life or pro-choice positions will not only depend on the distribution and strength of public opinion, but also on the actions of courts and legislatures.

APPENDIX A: EXACT QUESTION WORDING

DISCUSSION: "How often do you discuss the abortion issue with your friends or your family?"

DISC/FRIENDS&FA: "How often do your closest friends and your family members discuss the abortion issue?"

THINKING: "I think very often about the issue."

IMPORTANCE/FRIENDS: "How important is the abortion issue to your closest friends."
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Appendix A - continued

FEELING STRONGLY: "I feel strongly about the abortion issue."

ATTENDING: "How much attention do you pay to newspaper and television reports about the abortion issue."

KNOWLEDGE: "I consider myself more knowledgeable about the abortion issue than the average person."

IMP./FAMILY: "How important is the abortion issue to your family?"

CONNECTED: "Several issues could come up in a conversation about the abortion issue."

NEGATIVE: "Have other people ever reacted negatively to your views on abortion?"

CORRECTNESS: "I think my views about abortion are absolutely correct."

MIND: "I cannot imagine ever changing my mind about the abortion issue."

HARD: "Overall, how hard was it for you to answer the questions on abortion."

SURE: "Overall, how sure or certain are you of your answers?"

EXPLAIN: "It is rather easy to explain my views on the abortion issue to other people."

WRONG: "People whose opinions about the abortion issue are different from mine are wrong or badly informed."

PERSONAL: "I think that the abortion issue affects me personally."

EASY: "It is very easy for me to think about ways the abortion issue might affect me personally."
Appendix A - continued

LAW: "A state or federal law restricting legalized abortion would affect me personally."

IMPORTANT: "The abortion issue is extremely important to me."

DIRECT: "My views on abortion are based on the issue directly affecting me."

MORAL: "My beliefs about the abortion issue are based on my moral sense of how things should be."

BELIEF: "My attitudes on abortion are based on my general beliefs about what is good and bad in the world."

VALUES: "My opinions on abortion are related to my personal values."

STRONGER: "My views on abortion have gotten stronger over the years."

NO CHANGE: "My views about abortion have not changed during the last years."

LONG: "I've held my views about abortion for a long time."

DISAPPOINTED: "Would any of your friends or family members be disappointed if you changed your views about abortion?"

SIMILAR: "My views on abortion are similar to the opinions of people I care about."
BIBLIOGRAPHY


Frauke Schnell


Those involved in the current revival of ethical naturalism claim that this approach offers an escape from the inadequacy of moral relativism, especially the nihilism entailed in its denial of objective standards for our normative discourse. From this perspective, nature becomes the foundation for our moral claims. The following discussion generally ignores the logical and ideological issues involved in using nature in this way and instead shows that far from replacing moral relativism an ethics based on current evolutionist theory will ultimately lead to something like the relativist position. I then draw on the rules of baseball and their ability to govern behavior on the field to argue that we ought not necessarily despair our failure to locate an objective basis for our moral theories. Politics and our political institutions function in much the same capacity as the baseball establishment: they provide the rules by which the game should be played and the power to enforce compliance.

Does the denial of an objective basis for our normative commitments imply that our moral judgments express little more than personal preferences? Does moral relativism lead to a form of nihilism by effectively denying the possibility of our making any moral judgments? Those involved in the current revival of ethical naturalism answer both of these questions in the affirmative. More importantly, they then claim to offer an escape from this difficulty: nature can become the objective standard -- and thus the foundation -- for our normative discourse (Arnhart 1988, 1990, 1992; Jaffa, 1988; Masters 1989, 1990; Wilson 1993).

Interest in reviving some form of ethical naturalism has perhaps been somewhat overdue. In the past quarter century the sharp academic boundaries drawn between the natural and social sciences have been rendered increasingly suspect by the rapid growth of new biological research bearing on normative political issues. Moreover, from a historical
perspective, the separation itself has been something of an aberration in Western thought (Degler 1991). As the new ethical naturalists are quick to point out, while the use of nature in ethical theory has been derided for much of this century (largely due to alleged logical or ideological shortcomings), it has nonetheless been an important part of western philosophy (Masters 1989, xi-xii; 1990, 196; Willhoite 1971; Ruse 1990). Not surprisingly, advocates of this approach have been more than willing to situate their work within this rich tradition. What is surprising is that it is not so much the work of Darwin (1971), Spencer (1896), Sutherland (1898), Kropotkin (1981), and others writing during the great heyday of Darwinian ethical theory, but that of such pre-Darwinian philosophers as Hobbes, Kant, Hume, Adam Smith, and even Aristotle, which has served as models for the contemporary discussion.

In the following I want to explore the implications of trying to adapt the work of these pre-Darwinian figures to suit our post-Darwinian ends. I hope to demonstrate that the teleological framework which sustained these earlier efforts accounts for much of their attraction, but that it is precisely this framework which should disqualify them as viable models. I begin my argument by examining the structure of some recent efforts in the new ethical naturalism -- especially James Q. Wilson's *The Moral Sense* -- and their discussion of the problems associated with the relativist position. Given the number of current ethical naturalists who claim to build upon Enlightenment thought, the second section addresses eighteenth century uses of nature, the teleological structure of its conceptions of nature and natural history, and the relevance of that structure for the viability of its versions of ethical naturalism. The third section explores the Darwinian denial of a cosmic teleology and the implications of that denial for the development of a new ethical naturalism. I demonstrate that an ethical naturalism based on current evolutionist theory ultimately leads to something like the relativist position. I conclude by arguing that we ought not necessarily despair our failure to locate in nature an objective basis for our moral theories.

**Nature and Nihilism**

Nature and the life sciences have been used in a variety of interrelated ways in normative political theory. One of the more common has been to assist in describing human nature, so that biology, physiology, and genetics come to define a basic set of attributes and behaviors
determining the amount of socially produced variation possible within the human species (see Dobzhansky 1956; Waddington 1960; and Lumsden and Wilson 1981, 1983; also Alexander 1987). James Q. Wilson's work arguing for the existence of a human moral sense is one of the latest examples of this approach.

In *The Moral Sense* (1993) Wilson explicitly describes his work as a continuation of eighteenth-century Scottish and English ethical theory, particularly Adam Smith's theory of the moral sentiments (xiii, 31-34). He then draws on more recent research in evolutionist theory, psychology, anthropology, sociobiology, and sociology to make the case that human beings naturally possess a moral sense centered on feelings of sympathy, fairness, self-control, and duty. Although he is careful to note that he is not postulating a direct genetic basis for any of these traits (23), he nonetheless claims to have developed his account within the constraints of inclusive fitness theory. He argues that evolution has "selected for" a "particular psychological orientation" among members of the human species which then becomes the basis for our moral behavior (23). This orientation effectively defines permissible variation in human social arrangements so that, for example, such human institutions as the family (141-163) as well as such human behavior as female maternalism and male aggressiveness (165-190) are all said to be largely immune to cultural modification.

The evidence marshaled in support of this argument focuses on the universality of these behavioral traits within the human species. Wilson acknowledges that most researchers in this area have failed to uncover moral universals (225), but he attributes his success to the emphasis on moral dispositions or "sentiments" as opposed to moral rules. Moral rules may vary cross-culturally; the sentiments do not. Because these sentiments seem to exist in all cultures Wilson suspects they must have a natural basis, and so he provides seemingly plausible evolutionary explanations to account for their existence.

Although I have little interest in revisiting the (now) standard critiques of ethical naturalism alluded to above, I do want to note one important problem in Wilson's analysis; namely that the argument appears to border on the tautological: the reason we know these sentiments are natural is that they are universal, and the reason they are universal is that they are natural. This suspicion is reinforced once we recognize that for all his citations in the relevant literature, Wilson provides neither a specific biological explanation for the operation of the moral sense nor a
physiological description of its location. Wilson himself is not unaware of the importance of these points:

Before the reader repeats the well-known criticisms of the idea of a moral sense, let me acknowledge that I know them also: If there is a moral sense, what is the sensory organ? If sincere people disagree about what is right and wrong, how can there be a moral sense? If a moral sense is supposed to emerge naturally, what evidence is there that human nature is sufficiently uniform so that this sense will emerge among most people in more or less the same way (26)?

He concedes that "I do not think one can easily give general answers to these important questions," that the truth "if it exists, is in the details." He then asserts that "this book is about the details" (26). Yet the questions Wilson sets aside are the details; for if he is unable to answer them then we have little reason to accept the rest of what follows.

The argument of The Moral Sense is analogous to a discussion of human consciousness which begins by acknowledging the problems associated with the idea of a "Cartesian theater" in the human brain (see Dennet 1991), but proceeds to discuss consciousness as if such a theater existed. In his zeal to see morality as an extension of human nature Wilson fails to consider alternative explanations for the universality of his moral sentiments. It seems equally possible, for instance, that the cultivation of these sentiments through social means might be necessary for the survival of any social arrangements. In other words, a society unable to foster these dispositions in its members would be short lived. Morality may thus be a necessary but not a sufficient condition for the existence of human societies; and our moral systems may be adaptive without necessarily being genetically based (Gould 1977, 251-59).

Wilson's disregard for this possibility may be attributed to the demands of a larger problem that he is addressing. His attempt to demonstrate that human beings are biologically predisposed to certain moral dispositions and at least indirectly to certain moral rules can be viewed as part of a broader effort within normative political and ethical theory to combat various forms of cultural relativism, or what contemporary ethical naturalists have taken to calling "nihilism." The latter term, despite its frequent use, has not been very well defined in this
literature, but it seems to refer to the ambiguous status of our moral judgments in the absence of objective standards (Arnhart 1988, 1992; Masters 1989, 239-41). Wilson, for example, asserts that

If modern man had taken seriously the main intellectual currents of the last century or so, he would have found himself confronted by the need to make moral choices when the very possibility of making such choices had been denied. God is dead or silent, reason suspect or defective, nature meaningless or hostile. As a result, man is adrift on an uncharted sea, left to find his moral bearings with no compass and no pole star, and so able to do little more than utter personal preferences, bow to historical necessity, or accept social conventions (1993, 5).

That is, if we can no longer agree on some objective standard for judging competing moral claims, such claims lose their special status. Moral judgments come to express personal preferences so that statements like "Torture is wrong" become "I do not like torture." My distaste for this form of interrogation takes on much the same status as my distaste for spinach.

The fear among many of those involved in the new ethical naturalism is that relativism leads to a form of nihilism by effectively denying the possibility of our making any moral judgments, including condemnations of practices which we find abhorrent. On this view, the logic of the relativist position deprives us of the ability to make compelling moral arguments.

Larry Arnhart (1992), for instance, cites the custom of ritual female circumcision practiced in certain Islamic countries as a social custom which most of us, certainly most women, find repulsive. He then points out that despite their contempt for the practice, moral relativists are left in the uncomfortable position of having either to accept the procedure as justifiable within its particular cultural context or to acknowledge some supracultural or cross-cultural moral standard from which to condemn the practice. As Arnhart goes on to note, ethical naturalists face no such difficulty. Because nature can offer cross-cultural standards, ritual clitoridectomy, by interfering with sexual function, can be condemned by appealing to the biological universals of women that transcend the
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particularities of local culture and custom (164). Nature may thus be used
much as Aristotle thought it might, not as a means for providing specific
moral precepts or rules of action, but as a "grasp of what is good in human
life and a rough ranking of those goods" (Wilson 1993, 237). Nature
reveals the proper telos for the species so that we can order our lives
accordingly.

This possibility of discovering a natural teleology for the human
species accounts, I think, for much of the recent interest in both reviving
some form of ethical naturalism and in turning to the Enlightenment for
intellectual support. For a teleological view of nature -- were it correct --
solves an important difficulty: it would supply an objective basis for our
moral systems without necessarily violating the is/ought distinction. If we
know the proper end for some thing, then we can move from making "is"
statements to "ought" statements by measuring the success of a thing in
fulfilling its end (Arnhart 1993). Thus, if the purpose of a watch is to keep
the correct time, one which failed to do so could be described as a bad
watch. Of course the key question we need to ask is whether nature is like
a watch. For the eighteenth-century predecessors of contemporary ethical
naturalists the answer was clearly in the affirmative; and once we examine
the use of nature in eighteenth-century thought we can better appreciate its
current appeal.

Nature and Enlightenment Morality

Throughout the Enlightenment philosophers across the political
spectrum embraced the idea that nature was much too complex to have
arisen from chance and must therefore represent an act of purposive
creation.[5] Thus most naturalists saw an intimate connection between
nature and its Creator, and it probably bears noting that the basis for this
understanding was not so much biblical fiat as a logical consequence of
empirical observation. G.W. Leibniz, Isaac Newton, Alexander Pope,
Soame Jenyns, Adam Smith, and William Paley to name a few all argued
that close observation would reveal nature's fundamental machine-like
qualities; it would reveal the universe to be deliberately -- not randomly --
created.

This view implied that nature should be understood in teleological
terms (Leibniz 1985, I, sec. 7-10), and natural philosophers of this period
relied on such explanations to address two separate issues. First, teleology
could be used to explain the basic structure of the Creation,
the arrangement and definition of species along a unidimensional cosmic hierarchy -- the "chain of being" (Lovejoy 1964); and second, it could be used to explain anatomical, physiological, and morphological attributes of different species in that hierarchy (Greene 1959; Mayr 1988, 38-66). Although this latter use fell into increasing disfavor by the late eighteenth century (see, e.g., Voltaire 1959),[6] the criticism did not appear to have much impact on its use in defining and arranging species along the chain of being. That is, naturalists continued to accept the idea of a cosmic teleology, and this would prove instrumental in making nature an acceptable normative standard.

Perhaps the most influential work on the development of eighteenth-century versions of ethical naturalism and natural theology was Leibniz's Theodicy (Lovejoy 1964, 144-82; Mayr 1982, 328). Indeed, versions of its argument would be repeated throughout the eighteenth and nineteenth centuries (Bonar 1930; Bonnet 1769; Jenyns 1793; Paley 1828; Pope 1965; Prout 1834; Raphael 1947; Rousseau 1992b, 117; Smith 1976); and some form of it continues to be a frequently raised objection to Darwinian evolution (Dawkins 1986; Dennet 1995). In this work Leibniz argues that the complexity of the universe provides evidence of design and that design implies the existence of a Creator. But this basic fact immediately raises questions both to the nature and competence of the Creator and the nature and quality of that creation. For if the Creator can be understood as a kind of divine watchmaker we need to know whether He fashioned a Timex or a Rolex.

Leibniz addresses both of these issues and begins his discussion by noting that nothing in the universe is absolutely necessary and that given the existence of a Creator we can only assume things exist because He deigned to decree their existence (1985, I, 7). Accordingly, he then speculates on the attributes of the Creator based on the special requirements of the particular decision-making position in which He was situated. Given the Creator's ability to choose which universe to create from a set of infinite possibilities Leibniz is able to derive the three primary attributes of the Christian God: omniscience, omnipotence, and omnibenevolence (I, 7). Once he has established this point, he then addresses the effect of this understanding on our assessment of the quality of Creation. His famous conclusion is that such a Creator would be disposed to create the best of all possible worlds.

For our purposes, the most significant implication of this understanding is that it allows nature to play an important role in our
normative discourse. In particular, since nature expresses divine will, then, as Pope observed, "One truth is clear, 'Whatever is, is right'" (Pope, epistle I, line 294). Although the claim that "all is good" -- predicated on the idea of a divinely created natural order -- became a rather common theme in eighteenth century European ethical theory, we also see in figures as disparate in the normative commitments as Rousseau and Edmund Burke making much more general appeals to nature in support of moral claims (Rousseau 1992a; Burke 1955; 1899). Furthermore, those who deployed this type of argument understood that while rational discourse might be useful for elaborating our moral precepts, the precepts themselves were "felt" rather than understood; they were in a sense pre-rational (Burke 1955, 97-98; Hume 1978, III. 1. ii; Rousseau 1992a).

One would expect that eighteenth century ethical naturalists would have offered a biological explanation for the operation and location of this moral sense. But they do not. Hume at times seems aware of the need for this type of explanation, but he generally sets it aside as a question best left to naturalists (1978, book I, chap. 1, sec. ii; I, 1, iv; and I, 2, v). And Hume, Smith, and Rousseau all fail to discuss the biology underlying their conceptions of the moral sense. I can think of at least two plausible explanations for this apparent oversight. First, by the mid-to-late eighteenth century naturalists had in fact begun to offer explanations for this sense (e.g., Buffon 1791, IV, 167-69). Second, and perhaps more importantly, within the confines of eighteenth-century conceptions of human natural history this may not have been considered a particularly difficult problem to resolve. Our Creator is likely to have placed within us the means by which we could perceive the merits and glory of His creation regardless of the development of our intellectual faculties.

Contemporary ethical naturalists who view their project as an extension of Enlightenment thought seem to have forgotten or at least downplayed the significance of this quite different understanding of nature. Appeals to nature carry some weight in the eighteenth century because of the special relation between nature and its Creator. As Smith explains it, since our moral sentiments were given to us by the Creator and were "intended to be the governing principles of human nature" the rules prescribed by those sentiments "are to be regarded as the commands and laws of the Deity..." (1976, III, 5.6). He then goes on to note that:

The happiness of mankind, as well as of all other rational creatures, seems to have been the original
purpose intended by the Author of nature, when he brought them into existence. No other end seems worthy of that supreme wisdom and divine benignity which we necessarily ascribe to him; and this opinion, which we are led to by the abstract considerations of his infinite perfections, is still more confirmed by the examination of the works of nature, which seem all intended to promote happiness, and to guard against misery.

He concludes by noting that in following our moral faculties we "necessarily pursue the most effectual means for promoting the happiness of mankind, and may therefore be said, in some sense, to co-operate with the Deity, and to advance as far as in our power the plan of Providence" (III, 5.7).

Interestingly, eighteenth-century ethical naturalists appealed to nature for reasons quite similar to those motivating their modern heirs; that is, they were concerned that human reason would be an insufficient basis for our moral claims. Smith, for example, criticized those who thought that our moral rules were simply the products of human reason:

The wheels of the watch are all admirably adjusted to the end for which it was made, the pointing of the hour. All their various motions conspire in the nicest manner to produce this effect. If they were endowed with a desire and intention to produce it, they could not do it better. Yet we never ascribe any such desire or intention to them, but to the watchmaker, and we know that they are put into motion by a spring, which intends the effect it produces as little as they do. But though, in accounting for the operations of bodies, we never fail to distinguish in this manner the efficient from the final cause, in accounting for those of the mind we are very apt to confound these two different things with one another (II, ii. 3.5).

Because our moral rules are so essential to human social life we seem all too willing to suspect that they are products of human reason, when in reality, like the gears of a watch, they were designed by our Creator for this purpose. In other words, "we imagine that to be the wisdom of man,
which in reality is the wisdom of God” (II, ii, 3.5). Both Smith and Burke believed it important to demonstrate that these rules were sanctioned by more than human reason. Both deploy a teleological argument to demonstrate that inasmuch as the very possibility of human society depends upon the widespread observance of moral rules, the Creator has impressed within us a reverence for those rules, a reverence which is only subsequently confirmed by reason (Smith 1982, III, 5.3; Burke 1899, 165).

Given that the use of nature in Enlightenment ethical theory was predicated on the idea of a divinely created natural order, the obvious question we need to ask is whether contemporary invocations to nature make sense without this understanding.

Gastritis and the Good

Although one would have thought that the ascendance of Darwinian evolution would have laid to rest much of the talk of a cosmic teleology or a cosmic hierarchy, we continue to see the influence of both. For instance, we continue to see references to “higher” and “lower” organisms not only in early Darwinian discussion of nature but also in some more contemporary accounts (e.g., Dobzhansky 1956; Waddington 1960; and the quote from Mayr below). So that while much of the theoretical trappings of the chain of being has long since been discarded by most naturalists, its ordering of species has proven to be strangely resistant to the Darwinian onslaught. I say strangely because evolutionist theory has been unable to identify any traits by which we could construct a cosmic hierarchy ranking different species and genomes; and Darwinian and post-Darwinian theory leave little room for the view that nature represents an act of purposive creation or that the evolutionary process possesses some ultimate end or telos (Gould 1989, 27-48).

Advocates of the new ethical naturalism seem to recognize both the importance of a cosmic teleology for their theories and the difficulties of incorporating one within the confines of Darwinian theory. Arnhart, for instance, denies that either he or for that matter Aristotle accept a cosmic teleology but instead claims that he sees each species as possessing a particular telos (1988, 187; also Grene 1972). He defends this narrow teleology in part by noting that we generally agree on the proper state of different organisms. Each of us, for instance, is capable of recognizing the difference between being healthy and unhealthy. Indeed, medical science is predicated on the idea that certain states of the body are undesirable and in
some sense "bad," so that in seeking medical attention for our ailments we effectively derive an "ought" statement from an "is" statement. Arnhart is suggesting that, much as Aristotle thought, we can recognize the proper end for a given organism and distinguish between one which is achieving its full potential and one which is not. This implies that we can determine a rough order for ranking at least the members of a species by measuring the extent to which they have fulfilled the end appropriate for their species.

Yet Arnhart, like Aristotle (1986), nonetheless does posit the existence of a natural hierarchy and he defends this view by claiming that human beings recognize this ranking "in terms of specific criteria such as levels of complexity and from their perspective as human beings" (1988, 188; emphasis in original). He goes on to assert that "[e]ven if we see the human species not as the highest step of a ladder but as one branch of a bush, we can still look at the living world from the perspective of human life and judge other forms of life for their closeness to us" (188).

Of course we can still devise a rank ordering of nature, but we ought not fool ourselves into believing that that order is somehow natural. Rather, the particular arrangement of species we describe will represent both human perspective and human criteria. Why should levels of complexity serve as the basis for a natural hierarchy, and for that matter how do we determine complexity? In order to have a nonarbitrary ranking of species we would need to know that the feature with which we arranged our hierarchy was itself nonarbitrary. We would need to know that complexity was in some relevant sense "higher" or more important than other possible features (Sorenson 1988). Current evolutionist theory has not offered any evidence to support this claim. Insofar as nature provides no evidence of any overriding principles or criteria for arranging species in some natural order, it provides little ammunition for the attack on relativism. If anything it seems to lend further support to the relativist position.

Peptic ulcers affect nearly ten percent of the global adult population. Recent work has discovered that the vast majority of these afflictions is caused by the presence of a single species of bacteria in the stomach lining: *Heliobacter pylori* (Monmaney 1993). This bacterium tends to settle in the pylorus amid the thick mucous coating which protects the stomach lining from its own acids. Once ensconced in the lining, the bacteria manage to thrive in an incredibly hostile environment by relying on the host's own immune system to provide necessary nutrients. The body's normal defense -- increased production of white blood cells, killer
cells, and other like microbes -- is unable to penetrate the stomach lining and is thus unable to attack the bacteria. As a result, these "killer cells" begin to amass at the stomach lining and start the process leading to an ulcer. On alert but unable to attack the bacteria directly, they begin to attack the stomach lining itself which in turn triggers the production of more killer cells. Sufficient amounts of micronutrients that are then sent to feed these cells seep out of the stomach lining into the mucus, where the awaiting bacteria feast.

What this means is that from the perspective of *H. pylori*, gastritis is the preferred state of affairs. While it may be important to me to take antibiotics which destroy the bacteria and ease my pain, nothing independent of my subjective experience of the pain, nothing in "nature" if you will, justifies such an action. I am simply expressing my preference for my own well-being rather than that of *H. pylori*. Likewise, the physician treating my ulcer is acting on her subjective biases in favor of human DNA over that of *H. pylori*. But since the bacterium has evolved in response to its environment in exactly the same way in which *H. sapiens* has evolved in response to its admittedly quite different one, nature can be said to show no preference for the DNA of either.

I should note that I am not suggesting that the inadmissibility of a cosmic teleology automatically denies a place for any teleological explanations in contemporary evolutionism. In fact one might object that the narrow conception of species-specific teleology remains viable; for in seeking medical treatment for my ulcer I am simply recognizing that as a human being I have different interests and desires than I would if I were *H. pylori*. It just happens to be the case that my ability to fulfill my species-specific teleology comes at the expense of this bacterium.

One potentially helpful contribution to this discussion is Ernst Mayr's use of the term "teleonomic" to describe any process or behavior that owes its goal-directedness to the operation of a program (1992, 129). In this form, teleology may be invoked to explain the development and behavior of different organisms as long as that development or behavior can be attributed to some program (129). For our purposes, the significance of this lies in the fact that the discovery of DNA and our subsequent understanding of the role and operation of genes in the life of an organism have revealed a kind of programming inherent in nature. From this perspective, modern genetics can sustain a kind of teleological understanding of morphology, anatomy, physiology, and at least some behavior. In such circumstances, a kind of teleology might be
invoked without introducing the debilitating metaphysical baggage associated with its more Aristotelian forms. But notice that we cannot speak so much of a species-specific teleology as a genotype-specific teleology, and that the ends of the genotype can be determined not by human criteria but by the unfolding of the particular genetic program.

Mayr identifies two types of teleonomic programs -- closed and open -- distinguished by the relative ease with which the program is capable of incorporating extra information (129). Thus, where closed programs are sets of complete instructions laid out in the DNA of the genotype, open programs allow for the addition of new information, whether through learning, conditioning, or other experiences during the life of the genotype (129). For Mayr, "most programs which control the instinctive behavior of insects and lower invertebrates seem to be closed programs," while "most behavior in higher animals" is controlled by open programs (132). Yet it is unclear whether such narrower claims provide a sufficient basis for a renewed ethical naturalism.

Keeping to our example of human health we see the same difficulties posed by stomach ulcers also surface when we look at genetically based diseases. Note that the genes responsible for such diseases are producing a particular teleonomic program, albeit one that in some cases may be pathological to the larger organism. But what does it mean to say some programs are "pathological"? We are not immortal and all genetic programs eventually terminate in the death of the organism. Setting aside any contingent events which might have an impact on the life of an organism, the only lifespan that might be prescribed by nature would be that encoded in the genes of particular individuals. A perspective which viewed these programs as diseased and undesirable is not a perspective rooted in the nature of the organism but one which has been shaped to a considerable degree by a particular cultural context. In terms of the human species, it reflects the interference of culturally specific developments in such areas as nutrition, medical science, personal and public hygiene, technology, and education.

According to post-Darwinian theory nature "concerns" itself with the genes of the individual rather than the life of the species, so that the value of different genotypes might at best only be known after the fact in terms of relative reproductive success. In other words, with the denial of a cosmic teleology we have no objective way of assigning value to different genotypes, making a narrow teleology an insufficient basis for an attack on relativism. Society may decide that some behavior is inappropriate, but not
nature. Indeed, it is possible that genetic programs which produce what we take to be less than desirable outcomes may have had adaptive value at an earlier point in human evolution, may have some adaptive value in the future or under different environmental constraints, or perhaps may have no adaptive value whatsoever. This does not mean that when ill I should not seek medical attention and otherwise do all that I can to cure the disease, or that society should not punish individuals who violate its norms and laws. What it does mean is that such decisions are subjective calls based on my or our idea of the telos of the species, not nature's.

It would appear to be the case that the only version of ethical naturalism that modern genetics could support would be a kind of reaffirmation of the Leibnizian dictum of "whatever is, is right;" which does not necessarily help resolve the perceived problems of moral relativism. I am not here worried about any conservative biases of the theory, for as Rousseau reminds us, one could argue that according to this rule any action we take will also be good (Rousseau 1992b, 129). If behavior is attributable to some type of teleonomic program, and if we are unable to provide an objective ranking of the different programs, then all behavior is by definition natural and, by extension, just. Insofar as the actions of sociopath and philanthropist alike are products of particular genetic programs, contemporary ethical naturalists would have to concede that according to nature each is equally praiseworthy or blameworthy. Given the differences in reproductive success between, say, John Wayne Gacy and Mother Teresa, one could argue that the genes responsible for Gacy's homicidal behavior are more successful -- and therefore from an evolutionary point of view "better" -- than those of the Nobel laureate.

**Baseball, Nihilism, and Politics**

The failure of evolutionist theory in particular and nature in general to provide the kind of foundation for our moral theories which contemporary ethical naturalists have been searching for need not be as catastrophic as most of these thinkers would have it. Michael Ruse has argued that our difficulties at the metaethical level (especially our inability to discover an objective basis for morality) need not necessarily lead to nihilism. He claims that "Substantive morality is a collective illusion of our genes" but one which is "no less real than many other things without an objective referent, like the rules of baseball" (1990, 65). This is a helpful analogy that bears closer scrutiny.
Biology and evolutionist theory might explain the existence of a being capable of playing baseball, but social or cultural forces provide the rules by which the game is played; and those rules are entirely arbitrary (i.e., they do not derive from nature or any other objective source). Yet those involved in the game accept the rules and adjust their behavior accordingly. On the diamond, everyone acts as if the rules were beyond question,[8] and on the face of it this is a rather remarkable development. For it is certainly not inconceivable that various participants in the game might reason that they could behave any way they please on the field since the rules meant to govern their behavior issue not from nature nor from some other objective source but rather from a particular group of human beings at a particular point in time. For instance, a right-handed batter could decide at the crack of the bat to break towards third rather than first base since no objective reason exists for running towards the latter and by following the rules he is at a competitive disadvantage vis-a-vis left-hand hitting batters. If the failure to have objective standards for our rules leads to nihilism, why do we not see more of these scenes on the field?

One answer is that such a player would quickly find himself removed from the game. This might seem a bit obvious but it is just this fact which contemporary ethical naturalists have apparently overlooked. Society at large likely has its share of individuals who might be tempted to take the arbitrariness of our moral values as an invitation to disregard those values, but society -- like baseball -- also has institutions, personnel, and methods for dealing with deviants. Politics and our political institutions function in much the same capacity as the baseball establishment: they provide the rules by which the game should be played and the power to enforce compliance. Thus, while the facts of human evolution and human biology may do little to provide the kind of foundation for our ethical principles that contemporary ethical naturalists claim, this should not necessarily be cause for despair.

Conclusion

In the Politics, Aristotle defines the human species as a "political animal." Contemporary proponents of ethical naturalism have with good reason attempted to recover the "animal" in this definition. They are correct to argue that the deep divisions between the social and natural sciences are no longer viable, and studies of human evolution and human biology will no doubt shed some important light on a host of issues related
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to human behavior. Indeed the whole question of morality would be moot were it not for the underlying biology of the species allowing for such crucial aspects of our being as human emotion, consciousness, and rationality.

That said, we should also note that in retocusing our attention on the biological dimensions of human behavior, contemporary ethical naturalists seem to have lost sight of Aristotle’s adjective. We are political animals. We may not have a transcendent basis for our moral beliefs but we do have a forum for defining those beliefs and the institutions for enforcing deviation and detection from those beliefs. The power of our moral claims may have less to do with their pristine logic than with their ability to influence behavior. Cultural and social practices which we find objectionable may still be condemned from a variety of moral perspectives, but such practices will not likely be changed unless and until these condemnations inspire political action. Ultimately, it may be the case that Thrasyvachus was in some important respects correct. Our conceptions of justice and morality do not issue from any natural or divine source but are the fruits of political life.

Notes

1. Earlier versions of this paper were presented at the 1993 meeting of the Northeastern Political Science Association, Newark, NJ, and the 1994 meeting of the Pennsylvania Political Science Association, Pittsburgh, PA. I would like to thank Paul Mustacchio, John Norton, and especially Larry Arnhart for their helpful comments and criticism.

2. Throughout much of this century the logical problems associated with moving from "is" statements to "ought" statements have been attributed to G.E. Moore’s discussion of the naturalistic fallacy (Moore 1903). For a discussion of the importance of this critique in stemming the development of ethical naturalism see Waddington (1960, 50) and Murphy (1982). More recently, the identification of the is/ought problem has been attributed to David Hume (to the point where it is now commonly referred to as "Hume’s law"); see Hume (1978, book III, part I, sec., I, pp. 469-470), Waddington (1960), Flew (1967) and Murphy (1982). For a recent study disagreeing with this reading of Hume, see Martin (1991).
Many of the more ideologically motivated critiques of sociobiology can be found in Birke and Silvertown (1984), Caplan (1978), and Montagu (1980). For a persuasive rebuttal of such criticisms, see Masters (1982).


4. I will grant, however, that the research Wilson presents concerning the biological mechanisms of maternal care is rather persuasive, so that social arrangements intent on disrupting a mother’s desire to care for her offspring are quite likely to fail. Yet this research says little about the biology of paternal care and the structure of the family. Beyond the mother-child relationship all sorts of family arrangements are possible and each of the arrangements will no doubt foster different psychological profiles, with concomitant effects on the behavior -- including the moral behavior -- of the individuals reared in those arrangements. We have sufficient examples of nonhuman primate populations thriving without the kind of family structures associated with human beings to suggest that the species could survive with alternative parenting arrangements.

5. There were, however, some notable exceptions, particularly among those philosophes who embraced some version of transformism or epigenesis; see, for example Diderot (1964). For a discussion of eighteenth-century transformist theories see Gould (1977, 201-206), Mazzolini and Roe (1986), and Ruger (1963).

6. Although most of the leading naturalists of the eighteenth century rejected the use of final causes in anatomy and morphology, this approach continued to have its supporters. When Buffon criticizes this use of teleological explanations, for example, his English translator, naturalist William Smellie, appends a lengthy footnote taking issue with the argument. See Smellie’s note in Buffon (1781, II, 70-71).
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7. Mayr categorizes the myriad uses of teleology in the literature into four rough groupings: programmed goal-directedness, cosmic teleology, adaptedness, and deterministic natural laws, and argues that the term should only be used in the case of the first two.

8. Of course players and coaches frequently disagree about the interpretation of the rules but few question the legitimacy of the rules themselves during the course of a game.

Bibliography


Commonwealth


The Relevance of Gender: A Case Study of Judicial Appointments at the State Level

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Information gathered as a participant observer on the Maryland judicial nominating commission and from hearings on gender bias in the Maryland courts, along with interviews, will be used to show that the attitudes of the gatekeepers toward women were less decisive than previous research suggested in having women appointed to the bench. It will be argued that the credentials of the male applicants played a more crucial role in the deliberations of the judicial nominating commission than positive attitudes towards women or gender neutral views.

For the most part, women's representation on the benches of state courts resembles that of women at the federal level. The vast majority of state judges are men, and the higher the level of the court, the more likely it is that the judge is a man. Maryland is certainly no exception to this pattern. Prior to 1951 no woman sat on the bench of a Maryland court. The first and only woman to sit on the highest court in the state, the Court of Appeals, was appointed in 1979, and when she died, she was not replaced. In 1989 only one woman sat on the Court of Special Appeals, the next highest court, and of the total of 222 judges sitting in all of Maryland's state courts; ten women sat on the circuit courts and eight on the district courts. It was not until 1981 that the first and only African American woman was appointed. (See Table 1)

What accounts for this pattern? Is it a function of the size of the female applicant pool, or are there barriers which keep women out? What role does the judicial selection process play? How significant is the role of gatekeepers to women's appointment to judgements? The judicial selection process for appointment to the district and circuit courts in Baltimore, Maryland, will be used as a case study to pose some answers to these questions. It will be argued that while the size of the eligible pool of female applicants and the extent to which the judicial selection process is
Table 1.

Gender Representation on the Maryland Courts

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<th>District</th>
<th>Circuit</th>
<th>Special Appeals</th>
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<tbody>
<tr>
<td>Men</td>
<td>92</td>
<td>110</td>
<td>20</td>
</tr>
<tr>
<td>Women</td>
<td>8</td>
<td>10</td>
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open as opposed to closed may account in part for the pattern of women's appointment to the bench of the Maryland courts, the role of the gatekeepers is less decisive than previous research suggested. A case will be made that the credentials of the white men seeking judicial appointments play a more crucial role in the recommendation of candidates than positive attitudes toward women or gender neutral views.

The Maryland Trial Court Judicial Nominating Commission for the Eighth Judicial Circuit recommends candidates for the Baltimore City circuit and district courts. My membership on this commission between 1983 and 1988 provided me with a unique opportunity to observe first-hand the process for recommending candidates for the judiciary. This experience along with interviews of others who have served on Maryland's judicial nominating commissions, the findings of a Special Joint Committee on Gender Bias in the Maryland Courts created by Chief Judge Robert C. Murphy of the Court of Appeals, and lengthy structured questionnaires submitted by candidates to the judicial nominating commission will be used to posit answers to the question, why so few women judges? Special attention will be given to the function played by the gatekeepers in the appointment process, and some inferences will be drawn about the factors which influence judicial selection.

Women's Recruitment to the Bench: Some Explanations

Early research dealing with the recruitment of women to public office attributed their limited numbers to their unwillingness to make themselves available as candidates (Rule, 1981; Fowlkes, et. al., 1979; Welch, 1978). Explanations for the paucity of women judges echoed similar themes. The number of women in the judiciary was ascribed to the
size of the eligible pool, or to the nature of the selection process, or to the role of the gatekeepers. According to the eligible pool thesis, the number of qualified female applicants was just too few to alter the existing pattern of judicial appointments (Epstein, 1981). There was some evidence to support this explanation.

Until the 1970s, women constituted less than ten percent of law school graduates; as a consequence, the total number of women possessing the credentials necessary to be appointed judges was nominal. (Martin, 1987) Moreover, the tendency of the American Bar Association to favor older, well-to-do, business-oriented, corporate attorneys resulted in higher ratings for men whose career patterns more closely followed their own, and in lower ratings for women who were less likely to have these personal characteristics (Carp and Stidham, 1985b). Women lawyers whose careers often did not conform to the patterns valued by the American Bar Association were frequently considered as less suitably qualified (Castillo, 1981; Slotnick, 1984). Since state bar associations reflected the ABA standards, few women met the established criteria for being appointed judges at the state level.

As compelling as this evidence might seem at first, there are other equally plausible explanations. Women’s perceptions of limited opportunities for professional advancement, discrimination or the use of selection criteria favoring male life styles may just as easily account for the limited number of women appointed to the bench. For example, women may believe that there is a glass ceiling. Research on ambition has indicated that when individuals see little chance to move up the professional ladder, they often opt for alternative careers (Schlesinger, 1966). Overt or covert discrimination is another possible explanation. In a study of women state legislators, for example, Welch indicated that discrimination may affect their recruitment (Welch, 1978). A similar situation may exist for women seeking judicial appointments. Bar association criteria used to evaluate candidates for judgeships may also place women at a disadvantage (Slotnick, 1984). In short, other explanations may account for the meager appointment of women to the bench.

Other research on women in the judiciary focused on the impact of the selection process rather than on the existence of an eligible pool. Three criteria characterize a closed door system: competency to sit on the bench as reflected in the bar associations’ rating, the pattern of judicial experience, and political party activism. Until 1976 federal judges were
selected by the closed door process. Slotnick contended that white male dominance of the federal courts was related to this process. She writes:

Successful aspirants are generally well endowed with "traditional" measures of professional success including elite socioeconomic backgrounds and educational training, high status and high income legal careers and, perhaps, a partisan political background which helps create "access" to patronage oriented federal judgeships in the first place." (1984, 372)

An alternative to the closed door system was introduced during the Carter Administration. Seeking to broaden the candidate pool, the President set up the U.S. Circuit Judge Nominating Commission whose task it was to seek out well qualified women and minorities. He also encouraged Senators to use merit selection panels to nominate federal district court judges. State bar associations, practicing attorneys, non-lawyers, women's and minorities' organizations and sitting judges officially joined those who traditionally determined merit: the American Bar Association, the United States Department of Justice, the Senate and the President. By drawing individuals with more diverse backgrounds into the selection process, these merit panels not only broadened the search for eligible women but were also successful in advocating their candidacy. These changes were credited with dramatically increasing the number of women candidates (Randall, 1979). Three-fourths of the women appointed were nominated by merit commissions, as opposed to less than two-thirds of the men (Martin, 1987).

A return by the Reagan and Bush administrations to a closed door system seemed to underline the importance of the selection process. When Reagan stopped pushing for merit panels, they were all but abandoned by many of the Senators, and the number of women appointed to the courts dropped. A return to the traditional patterns of judicial experience and party activism in combination with an emphasis on political ideology has often been credited with reducing the number of women whom Reagan and Bush appointed to the federal courts (Martin, 1987).

The various studies that attributed the number of women judges to the size of the eligible pool or to the judicial selection process seemed at odds with research on women in legislatures which found that gender patterns were too complex to be assigned to any single cause. Drawing on
this body of literature, Cook argued that both structures and attitudinal biases frustrated women's recruitment to the judiciary (1978; 1980). She suggested a new paradigm which consisted of three variables: the pool of eligible female candidates, the gatekeepers' willingness to recognize the presence of eligible women, and an acceptance of the legitimacy of women candidates' claim to serve in the judiciary. Allen subsequently expanded Cook's model to include a political culture which valued acting with integrity and individual achievement and economic characteristics (1984). In Allen's view, an urbanized environment structured attitudes in gatekeepers favorable to the appointment of women to the bench, and along with political culture, especially a moralistic or individualistic one, enhanced women's appointment to the judiciary. Both Cook's and Allen's models perceived the number of women judges as dependent on: (1) the number of qualified applicants available to be appointed; i.e. the eligible pool, (2) a willingness of the gatekeepers involved in the selection and the appointment process to seek out qualified women; i.e. an open recruitment process, and (3) a positive attitude on the part of the gatekeepers about women's ability to fulfill the role of a judge.

How well do these various explanations account for the appointment of women to the judiciary in Maryland and what role did the Baltimore City trial court judicial nominating commission play between 1983 and 1988? How important was its gatekeeping function to the appointment of women judges?

The Judicial Selection Process in Maryland

In Maryland, there is a four tier court system. At the bottom is the district court which has jurisdiction primarily in cases involving misdemeanors and arraignments. The next higher court is the circuit court which handles a broad array of civil and criminal cases. Above that are the Court of Special Appeals and the state's highest court, the Court of Appeals. Since criminal cases not involving a federal offense, cases arising under state law which do not involve an issue of federal constitutionality, cases involving domestic or family law and a vast array of civil cases are heard and decided at the state court level, these courts are more likely to have an impact on the daily lives of the ordinary citizen than the federal courts. Therefore, it is particularly important for the average citizen to perceive the judicial selection process for these courts as unbiased. The pattern of women's judicial appointment at the state level becomes
significant because, in the opinion of the Special Joint Committee on Gender Bias in the Courts, an absence of women judges raises questions about "whether the state’s system of justice takes into account their needs, experiences and interests" (Report of the Special Joint Committee on Gender Bias in the Courts, 1989, 97).

Prior to the 1980's, the qualifications for a judgeship in Maryland were much the same as they were at the federal level prior to Carter's Administration: bar association ratings, judicial career and party activism. The state judicial selection process became open door in 1981 when legislation was passed establishing nominating commissions. Commissions were created to review candidates for each of the appeal courts and for each of the district and circuit court jurisdictions. Legislation establishing the district and circuit court nominating commissions specified that they were to consist of thirteen individuals appointed by the governor. Six of the members had to be lawyers with the remainder "ordinary", non-lawyer citizens. In addition there was a chair who might be either a lawyer or an ordinary citizen.

The procedures for the commissions are clearly outlined in a manual distributed to each member at the time of his/her appointment. All members of the commissions are expected to be present when the candidates wishing to be considered for appointment to the district or circuit court are interviewed. Any member who misses more than two meetings a year is removed. All individual wishing to be considered for an appointment to either the district court or the circuit court must be interviewed by the commission. Prior to the interview, each candidate completes a fairly extensive, structured questionnaire that provides details about age, background, educational attainment, employment record, health, complaints that might have been brought against the candidate by the various ethics and grievance committees of the local and state bar associations, and any litigation in which the candidate was personally involved. The commission uses this information to assess a candidate’s qualifications and suitability to serve as a judge. In addition, the Administrative Office for the Maryland Courts solicits letters of recommendation and state bar association ratings. Candidates are then interviewed by the entire commission. After all the candidates are interviewed, the commission members discuss the applicants and vote. The names of those candidates receiving a majority of the commissioners' votes are forwarded to the governor. Ordinarily, no less than three names are
forwarded, and the governor may only appoint an individual whose name appears on the commission's list.  

Findings The Applicant Pool

Between October, 1983, and March, 1988, the Trial Court Judicial Nominating Commission for the Eighth Judicial Circuit of Maryland met approximately three times a year and on average interviewed twelve candidates for each opening. Since the commission met only when a vacancy on the district or circuit court occurred, the actual number of meetings varied from one year to the next. A total of seventy-three individuals appeared before the commission during this period. Some appeared before the commission more than once, with one candidate appearing every time. Those unsuccessful in obtaining the commission's endorsement the first time appeared a second or third time. Successful candidates' names remain on the gubernatorial appointment list for only one year. As a consequence, some who were recommended but not appointed to the bench within a year returned to the commission in order to be recommended again.  

The bulk of the candidates ranged in age from thirty-five to fifty-five. The oldest candidate was sixty-three. Similar to the pattern found at the federal level, the women appearing before the commission tended to be slightly younger on average than the men. The majority of candidates interviewed were white men (57.5%). Women constituted 20.5% of the candidates, and African Americans 26%.  

Almost all of the candidates possessed at least two university degrees: a bachelor's degree and a law degree. On the whole, the women and African American candidates had more distinguished academic records. For example, the majority of the women applicants were in the top quarter of their classes in law school. This was not the case for the majority of the white men. The women and African American candidates were also more likely to have made law review or to have published and to have consistently enrolled in special mini-courses updating them on changes in the law than their white male counterparts. They tended to have somewhat more breath in their legal experience, although it was most likely to be in the public sector. The women candidates and African Americans, on the whole, also received stronger letters of recommendation than the white male candidates did. The letters of recommendation written on behalf of the women and African Americans were more likely to cite examples of
achievement, legal scholarship and professional demeanor and to contain more positive adjectives and unqualified, enthusiastic endorsements, whereas the letters for the white men were more general and less enthusiastic. Finally, the women and African American candidates tended to have somewhat higher bar association ratings.

The majority of the candidates (52%) were employed in the public sector; five were judges, three of whom were up for reappointment, some were employed by the courts as the equivalent of magistrates or hearing officers, the remaining were either public defenders or state prosecutors. Here again though, there were some interesting differences between the men and women. Twelve of the fifteen women (80%) were employed in the public sector, whereas only 62.5% of the African Americans were. White men, although more likely to be employed in the public sector than African Americans, were more likely to come out of private practice than women. (See Table 2.) The bulk of the remaining white men were employed in the state prosecutor's office. In contrast, the women were much more likely to have served as judicial hearing officers, for example in the Orphan's Court, or to have been employed by the state as public defenders for the indigent.

Of the seventy-three candidates appearing before the commission, twenty-three were recommended to the governor. Of the fifteen women who appeared before the Commission, ten (66.6%) were recommended. The percentage was somewhat less (37.5%) for the sixteen African American men who came before the Commission. Only seven of the white male candidates (16.6%) were recommended. (See Table 3.)

The actual appointment of judges rested with the governor. It is interesting to note that the gender and racial distribution of the commission's recommendations were not reflected in his appointments; the largest number of appointments went to African American men, two thirds of whom received appointments. In contrast, only half of the women recommended were appointed to the bench, while just a third of the white men received an appointment. (See Table 4.)

Discussion

On the surface, these findings seem to corroborate previous studies. Allen's assumption about the importance of an urban environment is borne out by the fact that the first woman appointed to the Maryland court was from Montgomery County, an affluent, "urban-oriented",

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### Table 2.

Applicants Appearing Before the Nominating Committee
By Race, Gender and Employment in Percentages

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# Table 3

Candidates Recommended by Race and Gender in Percentages

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</tr>
<tr>
<td>African American</td>
<td>83.4</td>
<td>62.5</td>
<td>25</td>
<td>66.6</td>
</tr>
<tr>
<td>Recommended</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Recommended</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total No</td>
<td>42</td>
<td>16</td>
<td>12</td>
<td>3</td>
</tr>
</tbody>
</table>
Table 4.

Judicial Appointments by Race and Gender in Percentages

<table>
<thead>
<tr>
<th></th>
<th>Male White</th>
<th>Male African American</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointed</td>
<td>42.8</td>
<td>66.6</td>
<td>50</td>
</tr>
<tr>
<td>Not Appointed</td>
<td>57.1</td>
<td>33.3</td>
<td>50</td>
</tr>
<tr>
<td>Total No</td>
<td>7</td>
<td>6</td>
<td>10</td>
</tr>
</tbody>
</table>

* Only one African American woman was recommended, and although she was not appointed during the first year her name appeared on the commission's list, she was appointed the second time that she was recommended.
Washington suburb. In 1989 all the women who sat on the Maryland bench were from metropolitan areas. No woman sat on the circuit court bench in any of the more rural Maryland counties.

As far as the recruitment of women is concerned, the Baltimore judicial nominating commission did, perhaps, encourage the emergence of an alternative pool of candidates, although the evidence for this is certainly not conclusive. Other factors might just as easily account for the number of women applicants. Certainly the increase in the number of women graduating from the two law schools in Baltimore during the nineteen seventies increased the number of women lawyers between the ages of thirty-five and forty-five. This alone may be the reason why there was an expanded pool of women applicants. Although it is possible that before the creation of merit panels many women attorneys may not have been recommended by the "old boy" dominated bar association networks, between 1983 and 1988 women's state, local and specialized bar ratings were stronger than they were for white male candidates. In short, an expansion of the gatekeepers to include nominating commissions may have had a substantial effect on the pool of candidates recruited and recommended for the Maryland bench, but this is by no means certain.

The higher success level of African Americans recommended by the Commission in getting judicial appointments would seem to support earlier research findings about the role which party activism plays in the appointment process. The emergence of an organized, African American political presence in Baltimore City and the role played by the Black Caucus in the Maryland legislature might well explain the high percentage of African Americans appointed. Although there was a Women's Caucus in the state legislature as well, women's political organizations had less electoral clout. Perhaps this might be the reason why a smaller percentage of the women recommended received judgeships.

These interpretations fail to describe, however, the gate keeping function of the commission. In theory, the commissioners, that is to say the gatekeepers, were crucial to the judicial selection process, for any candidate whose name was recommended to the governor had to receive a majority of the votes cast by the commissioners. Consistent with the intent of merit panels, the membership reflected community diversity. Approximately half of the commission members were drawn from outside the legal profession. Five out of the thirteen members were African American, with one chairing the Commission for four years. Three of the commissioners were white women, one of whom was an attorney. The
Commonwealth commissioners played a direct role at two points in the selection process: the candidate's interview and the discussion of each candidate which preceded the vote on the decision to recommend. Practice differed from theory, however, in several important ways. All the commissioners were not equal in the power which they exerted, nor were the two stages of the process equal in importance. During the interview stage, the commissioners exerted very little influence.

By and large, the interviews were quite tame with little effort on the part of the commissioners to structure the interview. Generally the commissioners were quite cordial, but highly inconsistent in their questioning. Rarely were two candidates asked the same question. Although the guidelines distributed by the Administrative Office of the Courts suggested asking a set of questions which would test the candidate's capacity for judicial reasoning, and demonstrate her or his judicial demeanor, the commission rarely followed the prescribed format. Instead, questions often simply moved chaotically from one topic to another. On occasion, the African American commissioners asked rather hostile and leading questions of those candidates whom they suspected of harboring racist sentiments. One of the women commissioners occasionally sought to question candidates about their views on sentencing those convicted of spouse abuse. This type of questioning was not typical, however.

Ordinarily, civility ruled the day. There were only two occasions when a commissioner became clearly antagonistic in the questioning. Although in both cases, the candidate was not recommended, it was the subsequent discussion of the candidate, and not the interview which determined the outcome. Four of the men endorsed by the commission were already judges, and consideration of their candidacy was a mere formality. Only one woman seeking an appointment to a higher court was a judge. Her appearance was hardly a formality; she was subjected to extensive questioning about her activities as a judge in the district court and queried about why she was not content to remain where she was.

The experiences of other Maryland judicial nominating commissions suggest that the interview was more critical elsewhere. At first, this might be interpreted as supporting Allen's position that an urban environment is more tolerant than a rural one. However, biased questioning characterized the interview stage in other urban as well as rural jurisdictions. For example, a significant difference in the questions posed to male and female candidates was reported in both Prince Georges and Montgomery counties (Report of the Special Joint Committee on Gender
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Bias in the Courts, 1989, 97). In these counties as well as elsewhere in the state, and despite the existence of a state equal rights amendment, women were often queried about their marital status, their husbands' occupations, their children, and if they did have children, what child care arrangements would be made. No such questions were asked of the male applicants. As reported by the Special Committee on Gender Bias:

Members of the commission ask women applicants about their children, their husband's activities, their opinions on abortion and whether their spouse will be "sharing in the decision-making process." Unmarried applicants are immediately suspect and are subject to inappropriate questions about personal life activities (Report of the Special Joint Committee on Gender Bias in the Courts, 101).

In Baltimore City, these kinds of questions were only occasionally asked by the commissioners, and in general the interview played a secondary role in the commission's discussions and recommendations. The discussion stage, on the other hand, was very important. Like the interviews, the discussions were not structured. They tended to be dominated by the lawyers with two of the commissioners continually interjecting stories about the idiosyncrasies of various candidates. Hearsay evidence and gender stereotypes abounded. Although none of the discussions tended to focus exclusively on professional qualifications, the professional careers of the male applicants were discussed in much greater detail than those of the female candidates. The tenor of discussions of African American male candidates was different than that of either white men or the women, although, interestingly enough, African American females were discussed in the same manner as the other women applicants, and not as African Americans.

All the discussions began with a quick, superficial evaluation of the candidate's performance during the interview. Discussions of the white male candidates usually then proceeded to an extensive evaluation of their careers, the tone of which was almost always negative. Many of these candidates had worked for a number of years as public prosecutors. The States Attorney's Office where many were employed had recently undergone a reorganization. Part of the reforms involved an increased work load and the enforcement of the rule that no one working in the States
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Attorney’s Office could hold a second job. As might have been expected, there were some objections to these changes. The majority of the white male candidates who either had or presently worked in the state prosecutor’s office mentioned these reforms as the reason why they wanted a judicial appointment. Several actually said that they wanted to be a judge because they would not have to work long hours. During the discussion of these candidates, their poor, ill-prepared court room presentations, their general laziness and their unwillingness to do extra work were mentioned by the lawyer members of the commission. Anecdotal stories supporting these evaluations were often recounted.

In contrast, with one exception, white men who were already judges were discussed in highly deferential terms. The exception to this was a judge who had acquired a reputation for his racist and sexist biases. He was criticized by three of the African American and two of the women commissioners. These criticisms were quickly countered by a number of the remaining commissioners who testified to his "knowledge of the law" and his ability to move cases along "quickly."

There were three exceptions to this pattern. In one case, the candidate had been hospitalized, and there was some discussion of the illness and its impact on his behavior. The second involved a candidate who had openly expressed a sexual preference for children. The third concerned a politically well connected state prosecutor who, although always very well prepared, had established a reputation for being very hard on criminals. In discussing his qualifications, considerable emphasis was given to the details of his personal life. These were the only instances where there was any substantive discussion of the male applicants' personal lives or physical appearances.

With the possible exception of the candidates who were already judges, there were only a few white male candidates whose work was clearly respected by everyone. The evaluation of these applicants was particularly telling. There was considerable speculation about what hidden professional faults they might have, the assumption being that if they were not seriously flawed in some way, they would not be applying for a judicial appointment. In one discussion of a candidate with impeccable credentials some commissioners expressed serious reservations about him, because "if he’s that good, he’d never want to sit on the circuit court." Indeed, the general consensus among the majority of the commissioners was that if these applicants were as good as they looked, they would never forego a lucrative partnership in a law firm for an appointment to the bench.
Invariably these discussions ended in dire predictions about the decline in the standards for judicial appointment and the need to increase judicial compensation to make it competitive with the private sector.

The white male candidates were discussed in terms of their professional qualifications and careers. At the same time, most of the white male applicants were regarded with suspicion and assumed to be too incompetent to make it in a respectable law firm. As a consequence, although the male judges were recommended easily, few of the other white male candidates had their names forwarded to the governor.

The evaluation of African American male candidates was quite different in tone and emphasis. Their personal behavior was much more likely to be the focus of the Commission's discussion. Complaints against these applicants which had been brought to the Grievance Committee of the State Bar were treated much more seriously than those lodged against white male candidates. A number of these complaints concerned the timely filing of motions and may have reflected the fact that many of these applicants had been associated with very small law firms or were solo practitioners. Such explanations were usually dismissed by a majority of the commissioners, however, and instead personal flaws were cited to account for the grievance. Professional performance was not criticized as harshly as that of white men.

The tone of the discussion of the female candidates was also quite different. Although African American male candidates were more likely to be evaluated on the basis of their personal characteristics and behavior, the discussions were not as intense, negative or scathing as they were for the female candidates. Invariably, the women applicants, including the woman who already was a judge, were evaluated on the basis of sex stereotypic criteria by both the lawyer and non-lawyer commissioners.

Comments about their physical appearance figured prominently; one highly qualified woman with an extraordinarily impressive record of court room experience was not recommended because she wore "red shoes", another because she tried, it was claimed, to use her "sex appeal" to influence the judge and the jury. "A woman who acts sexy can never be a good judge." was the way one commissioner summed it up. One woman who had been cited three times for her outstanding performance as a public defender was not recommended the first time she appeared before the Commission because she was unmarried but had a child. "This will send a bad message to the public and diminish respect for the bench.\textsuperscript{18}" one commissioner declared. An effort was made to block the
recommendation of another candidate because she was dating a leading, influential attorney. "The only thing she’s got going for her is ...", was the comment of one of the commissioners. A woman’s family life was often discussed in some detail, and evaluations of her suitability for a judicial appointment were based on how successful, or as far as some of the commissioners were concerned, how unsuccessful she had been in managing her family life. These comments and evaluations were articulated primarily by the lawyer members of the commission, probably because the lawyers tended to dominate the discussion stage: commissioners who were not lawyers often made similar comments. 

Apparently this conduct was not unusual. In 1989 more than two thirds of Maryland’s women judges (69%) indicated that they were aware of gender bias in the selection process (Report of the Special Joint Committee on Gender Bias in the Courts, 99). Roberta McCarthy, an attorney from Prince Georges County testified before the Special Joint Committee about the higher standards applied to female applicants. The same theme was repeated by a member of the Baltimore Commission who also spoke about the existence of a double standard. A number of witnesses who appeared before the Special Joint Commission stated that women who worked in the public sector were often evaluated harshly because they lacked private sector experience. Both responses to the survey on gender bias and testimony at public hearings held throughout the state display the extent to which both the lawyer and non-lawyer members of the judicial nominating commissions held and acted on negative stereotypes of women. At the Baltimore commission and elsewhere in the state, the question was raised again and again about the ability of women to control a courtroom because of "their small voices and stature." In testimony given to the Montgomery County hearing, Jo Benson Fogel reported comments, such as "He has a wife and family. She has a husband. She doesn’t need this job and he does." Almost always, when a female applicant’s courtroom performance was evaluated, her use of "sex appeal" to achieve an outstanding record was mentioned.

The operation of the Baltimore nominating commission is very similar to the findings of the Maryland Special Joint Committee. Indeed, throughout the state, women applicants were evaluated differently than their male counterparts, and were more likely to be gauged in terms of negative stereotypes. In her testimony to the Special Joint Commission Paula Peters described as hysterical the reaction of the male members of one nominating commission to the possibility of recommending a woman.
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On the evidence presented at its hearings the Special Joint Committee concluded that

To the extent that the judicial nominating process is affected by discriminatory attitudes, stereotypes and criteria such as those described to the Committee, female candidates will not be given a fair opportunity to be appointed to the bench. (102)

Conclusion

The operation of the Baltimore City Trial Court Nominating Commission calls into question the importance that earlier studies have attached to the positive attitudes of gatekeepers and suggest the need for a significant modification of existing explanations for the limited number of women judges. Gatekeepers’ willingness to recognize the presence of eligible women and to accept them as legitimate candidates may be important, but it does not account for the recommendations of the Baltimore City judicial nominating commission. To the contrary, the deliberations of the Baltimore nominating committee and the findings of the Joint Special Committee point to pervasive opposition to the appointment of women judges. Indeed, the Special Joint Committee on Gender Bias mentioned examples of male commissioners’ hostility to women candidates, and described them as “nothing short of astonishing.” Negative stereotyping of women candidates was not restricted to men commissioners either. While it is true that on some occasions, the African Americans and women on the Baltimore commission worked together to support women or African American male candidates, this was, by no means, always the case. For example, one of the woman members was antagonistic to the female applicants on the grounds that, if a woman made even the smallest mistake after she was appointed to the bench, all women attorneys would be discredited. Both the findings of the Special Joint Committee and the deliberations of the Baltimore nominating commission indicate that, despite the efforts of those gatekeeper sympathetic to expanding the pool of eligible women and African American candidates, stereotypic criteria were used as the basis for evaluating all candidates during the decade of the eighties.

How can one then explain that, although the Baltimore nominating commission employed negative gender stereotypes in its evaluation of the female applicants and often manifested overt gender bias, it recommended
for judgeships approximately two-thirds of all the women appearing before it. In contrast, it recommended only one-fifth of the white male applicants and just somewhat over a third of the African American males. The recommendation of so many female candidates seems at odds with the importance that earlier studies have attached to the significance of positive attitudes on the part of gatekeepers. How does one account for the high percentage of women recommended to the governor by the Baltimore commission? The answer may be related to the status attached to the judiciary and the qualifications of the white male applicant pool. During the nineteen eighties, partners in large Baltimore firms who were most likely to be white and male earned salaries far in excess of those paid to judges. Perhaps the decade's emphasis on material goods and individualism encouraged the pursuit of occupations which were financially lucrative rather than those which were oriented to public service. As a result fewer white males with strong professional credentials were tempted to pursue a career on the bench. This attitude was mentioned on a number of occasions during the commission's deliberations. For example, when the commission discussed highly qualified white male candidates, almost everyone wondered why they would leave private practices where they could earn so much more, and many of the commissioners were suspicious when the white male applicants talked of giving something back to the community. The commissioners speculated that with attractive opportunities and financial gains in the private sector available to white men with strong qualifications, only those with no future would seek a judgeship. These views were, to some extent, reinforced by the fact that many of the white men who did seek a judgeship were in marginal practices, never expected to become a partner in a large firm, or had nothing to look forward to but the heavy case loads of the States Attorney's office. Faced with white male candidates whom the majority of commissioners considered unqualified, other applicants had to be considered and recommended. While bemoaning the decline in quality of the candidates and predicting a collapse in the American legal system, many of the commissioners simply could not bring themselves to recommend many of the white male applicants.

For women and African Americans, the situation was quite different. Although women are attending law schools in greater numbers, life after law school is not particularly promising for them. Regardless of their standing in law school, women tend not to be recruited in the same numbers as men to the more prestigious Baltimore law firms and few are
offered partnerships when they are recruited. Given these conditions, perhaps women lawyers view the public sector as offering more prestige and opportunities for upward mobility. If this is the case, a judgeship is a highly desirable option. Perhaps this accounts for the fact that so many well-qualified women sought appointments to the bench. Similarly, African Americans have reduced choices in the private sector. Might it not be that for women and African Americans an appointment to a judgeship represents high status and prestige; whereas for white men it means a partnership?

The findings reported here suggest that the size of the white male applicant pool may be an important factor in women's appointment to the judiciary. Perhaps, when there is a well-qualified male pool, the paradigm developed by Cook and Allen may play a role in the appointment of women to the court. However, when the pool of qualified male candidates is small, the positive attitudes of the gatekeepers may be much less critical. The actions of the Baltimore City trial court nominating commission suggest that the size of the eligible pool of white men may really be the deciding factor.

Endnotes

1. An appointment to serve on a Maryland judicial nominating commission between 1983 and 1989 provided me with a unique opportunity as a participant observer to examine some of the factors affecting judicial appointments to the bench of a state court.

2. In addition to these four levels, there are specialized courts such as the Orphans Court. "Masters", rather than judges hear cases in these courts, and the appointment process is different.

3. The names sent to the governor remain on the list for one year. If there are already several names on the list, a commission, with the permission of the governor, will sometimes forward less than three names. Permission to "short list" is usually automatic, provided a pool of three candidates already exists.
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4. On several occasions a candidate was recommended the first time, but not the second. The reasons for such changes varied considerably.

5. No one under the age of thirty may be appointed a judge in Maryland.

6. The majority of those appointed judges were in their mid-forties; the majority of women between the ages of 35 and 44. Consequently the age of the women applying was not a liability to their appointment.

7. There were 19 African Americans in all, sixteen of whom were men. There were 15 women, three of whom were African American. Here the African American women are counted in the category of both African American and women. Elsewhere in the text they are discussed within the category of women rather than African American because this best reflects the Commission’s treatment of them.

8. Four of the older candidates had an LL.B. degree but had subsequently upgraded their education by taking special courses and seminars.

9. Incumbency did not automatically ensure a positive recommendation, although in all cases except one, judges were treated with “kid gloves”. Great deference was shown to them both during the interview and in the subsequent discussion stage.

10. See also notes 2 and 3.

11. Women sat on the benches of Baltimore City and Baltimore, Frederick, Montgomery and Prince Georges counties.

12. In Baltimore City, there is a city bar association, and in addition a women’s bar association and the Monumental Bar Association which is predominantly African American.

13. As a member of the commission, I was able to keep extensive notes of the discussions surrounding the recommendation of the candidates to the governor. Rules of confidentiality, however, prohibit the discussion of specific individuals.
14. Commissioners who were close friends, relatives, business associates or who had close connections of any sort with the candidates were required to disqualify themselves.

15. One of the judges seeking the commission's endorsement for reappointment refused to appear, claiming that his record spoke for him. The Commission decided, without discussion, to accept the questionnaire which the judge submitted in lieu of an interview and subsequently endorsed his candidacy.

16. When asked during the interview why she wanted to move from the district to the circuit court, the applicant mentioned that being a judge in the district court was a gruelling experience. In the subsequent discussion of her qualifications, one commissioner argued in favor of recommending her for the circuit court on the grounds that the district court was too taxing on her physically. This reason appeared to sway several members who had previously seemed hostile to recommending her. In contrast no male district court judge was asked why he was not content with remaining where he was, and physical well-being was not suggested as a reason for recommending him.

17. This applicant was not recommended by the commission the first time he appeared it. Extensive political pressures was subsequently exerted on his behalf, and he was recommended the next time he applied to the commission. He was appointed shortly thereafter to the bench and has proved to be a very good judge; his courtroom is known for its intelligence and fairness.

18. Although this decision was subsequently reversed when the candidate appeared before the commission a second time, there was still very considerable opposition to recommending her because of her "unmarried" status.

19. The proceedings of the commission were confidential. Therefore, candidates could only informally be advised of the discussion which had taken place. Some informal leaks of the kinds of comments which were being made was one of the factors which led to the creation of the Special Joint Committee on Gender Bias in the Courts.
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References


Marianne Githers


An implementation politics model is proposed to explain how the extent and direction of policy implementation is determined by the impact of politics and the changing political and economic environments on implementation activities. The model is used to analyze the delay in implementation of the 1978 Pennsylvania Seasonal Farm Labor Act. The primary methodology employed in the research is the interviewing of key participants in the implementation of this law. The model suggests why policy implementation does not unfold in neat progressive stages but instead moves forward and backward according to some discernible patterns based on the opportunities and constraints presented by the changing political and economic environments.

Policy implementation is now widely acknowledged as an important part of the processes which determine public policy (Ripley and Franklin 1991; Rourke 1976). But insufficient attention has been paid to implementation politics. While the bargaining and persuasion which define politics are characteristic of the entire policy-making process, implementation politics involves a special form of politics. In implementation politics the very existence of a defined policy mandate, legally and legitimately authorized in some prior political process, affects the strategy and tactics of participants (Bardach 1977, 37).

Implementation politics can be expected to vary across policy types. Ripley and Franklin (1991) categorize policies on the basis of the distinctive set of political relationships which they generate and by which they are surrounded. While distributive policies (which promote and subsidize private activities) and redistributive polices (which manipulate allocation of resources among groups) both involve many political actors, the relationships among these actors tend to be more stable than the political relationships generated by regulatory policies. Regulatory policies
are intended to protect the public by setting conditions under which private activities can be undertaken. The political relationships surrounding these policies are more unstable because of constantly shifting substantive issues related to them (16-22). This paper focuses on the politics of regulatory policy implementation.

Regulatory policy-making is often explained in terms of interest group competition and economic processes (Stigler 1971). This approach depends on an analysis of costs and benefits available to competing interest groups. Economic theories of regulatory policy explain rational actions taken by competing interest groups and the outcomes of rational policymaking. However, economic explanations do not adequately analyze the struggle for control of implementation within a changing political environment which involves more players than competing interest groups. For example, Wilson (1980) suggests that political elites including bureaucratic officials may favor one interest over another as economic circumstances give greater urgency to the needs of one group or another (361). But Wilson further suggests that economic interests do not totally account for the motives of political elites. Rather, he proposes that explanations of regulatory policy should give attention to the beliefs of political elites and what they seek as appropriate political rewards for their performance (372-374).

Economic explanations also do not recognize that a changing political environment alters the perceptions of costs and benefits to all major players. These perceptions influence the strategies implemented by sides to a policy conflict. While an economic approach to explaining regulatory policy can provide useful tools for analyzing policy implementation, theories like Stigler's ignore the important roles of political environment and the additional players in regulatory policymaking (Meier 1988, 171). Meier rejects the idea that policy outcomes are simply the result of economic competition between interest groups. He examines the roles played by legislators, the courts, bureaucrats, and consumers as well as industry within an environment that structures the opportunities available. Stimson (1991) points to the impact changes in public policy mood have on how these roles are played, especially by elected officials. Schlozman and Tierney (1986) observe that relationships among these players in the policy process are not static but are influenced by many factors including changes in leadership of both governmental and non-governmental groups (345).
These observations concerning the impact of the changing environment on the political relationships of players involved in regulatory policy-making processes suggest that politics is an appropriate focus for explaining to what extent and in which direction regulatory policy is implemented. In approaching an understanding of implementation politics, a model is presented which organizes the complex reality of regulatory policy implementation. It is proposed that the nature of regulatory policy implementation is determined by the impact of politics and the changing political and economic environments on implementation activities. The model is applied to analyze the changes in extent and direction of implementation of the 1978 Pennsylvania Seasonal Farm Labor Act. While the suggestions made by the model may appear self-evident, Wilson (1980) observes that among scholars studying this subject, the politics of regulation remains controversial (357). As the following review of the literature demonstrates, some political scientists prefer a tidier, less complicated explanation of policy implementation.

**How Others Explain Implementation**

During the past twenty-five years, research on policy implementation has focused on the numerous barriers to implementation demonstrated by case studies. More recent research is based on the search for theories to "solve" implementation problems (Linder and Peters 1987). This search has generated many useful policy implementation frameworks. These models have evolved from focusing on a single governmental institution or level to identifying processes and multiple factors which contribute to the attainment or lack of attainment of policy goals. Cook and Scioli (1972) acknowledged the multidimensionality of policy implementation and presented an early process model based on a multivariate factorial design for analyzing and measuring impacts of public policy. While this model recognizes the relationships among major components of the process, Cook and Scioli pay little attention to the changing political environment and the political relationships surrounding policy implementation. Other process frameworks identify broad categories of variables which directly or indirectly influence implementation (Edwards 1980; Montjoy and O'Toole 1979). While focusing on central features to move toward a theory of policy implementation, these frameworks mask the political complexities of the process. Some recent models elaborate on these variables and reflect the involvement of actors from numerous
governmental and non-governmental groups, the changing political environment, and the implementation process over time. Goggins et al. (1987) present a model of intergovernmental policy implementation which explains state implementation as a function of both inducements and constraints imposed by higher and lower levels of government as well as the state's capacity and propensity to act. Sabatier and Pelkey (1987) more directly address regulatory policy with a framework that incorporates multiple actors using various legal and political instruments to influence implementation. This model, which is further refined by Sabatier (1991), views policy change over time, focuses on relationships among actors, and recognizes the impact of environmental changes as well as stable system parameters on policy formulation, implementation and reformulation.

Scholarly thinking about implementation as reflected in the literature suggests an evolution from attempting to isolate and simplify implementation as part of public policy-making to acknowledging its complex reality. The model proposed in this paper supports this evolution.

What Others Contribute

In addition to policy implementation theorists, other political scientists and public administrationists have contributed concepts which aid in our understanding of policy implementation. Their ideas prove useful in constructing a model to explain regulatory policy implementation politics.

According to Edelman (1964), policy mandates often represent symbolic reassurance in statutory form. He further claims that while the formulation of law constructs a setting in the sense of building assumptions and limits that will persist over time, it is only through subsequent bargaining that policy is realized. And that bargaining takes place in a changing political environment.

Hargrove and Nelson (1984) point out that legislators are far more inclined to support regulation in principle than in practice. They observe that symbolic support is one thing and imposition of regulation quite another. For implementation of regulatory policy to be effective, strong support from the attentive public must continue. To the degree support falters, the regulatory process is characterized by the implementors' bargaining with the regulated and the compromising of goals. Menzel's 1983 study of coal surface mining regulations illustrates how this maneuvering within a changing political environment can result in a definite redirection of the implementation of a specific regulatory policy.
In his analysis of the rise and fall of the Occupational Safety and Health Administration (OSHA), Noble (1986) acknowledges the capability of the capitalist state to pass social legislation in the interest of labor and over the opposition of business. However, he makes the point that since Congress left implementation of workplace safety and health policy to the executive branch, a focal point for renewed opposition by the regulated was made available (79). Noble suggests that our liberal-pluralist system provides the regulated with many opportunities to challenge standard-setting and enforcement actions (37 and 238). Noble concludes that the failure of workplace regulation shows how mobilization of business interests can combine under certain political conditions (i.e., a pro-business White House) with the structure of capitalist democracy to frustrate implementation of anti-business reform (238). In the case of the OSH Act, the success of the regulated's strategy was facilitated by the conservative drift in the political climate which made it easier for industry to be heard.

While it is true that business sometimes pushes for regulation to control competition and/or rates in certain industries such as transportation and communications (Wilson 1980, 358), regulation designed to protect the public by setting conditions under which various private activities can be undertaken is generally opposed by business. Opponents to the goals of regulatory policy may stay quiet or compromise during the adoption phase. They may count on subsequent opportunities to achieve more decisive, less publicized victories during the struggle over implementation (Bachrach 1977, 85). As Noble observed with the implementation of the OSH Act, their chances for success are often good.

Edelman (1964) suggests that while the involvement of the public and the presence of strong coalitions provide important support for policy adoption, the intensity of interest in particular regulatory policy is lessened to the degree that statutory action is taken (164). With passage of legislation, public desire to keep focused on a conflict wanes as more novel conflicts exert claims on public attention (Downs 1972, 40). And following their perceived decisive action in setting policy by passing legislation, legislators often assume the less active role of creating a climate of expectations to keep regulators responsive to general policy goals (Meier 1988, 168).

After regulatory policy moves from the legislative agenda, the politics of the implementation process begins. While those desiring regulation are reassured that action is being taken (i.e., a law has been passed), the regulated attempt to reduce the perceived losses associated
Stephanie L. Bressler

with policy-adoption. Coalitions that pressed for passage of legislation often disband or are weakened as leaders move on to related issues. But regulated interests have good reasons to remain organized and active. Making this observation, Williams (1983) points out that analysis of regulatory policy should include more than the relative power of competing groups at a given moment (i.e., policy-adoption). It must also include the relative staying power of these groups as the environment changes (344).

Inclusion of administrative personnel charged with implementation changes the mix of major actors involved in the policy-making process. Movement of policy from the legislative to the bureaucratic agenda also alters the visibility of the policy, changing the rules of the political game by providing additional opportunities for those opposing policy to block, modify or delay its implementation (Dahl 1972, 395). At the same time, additional opportunities become available to those groups promoting implementation. Courts can become a major actor in the policy-making process as they facilitate, hinder or even nullify implementation through their decisions (Anderson 1975, 101; Melnick 1983, 345). The resulting complexities in the play of power in the policy-making process multiply during implementation (Lindblom 1980, 64). Thus, moving the conflict to the bureaucratic arena appears to be a rational strategy for the regulated if they have the resources to take advantage of these complexities to slow down or control the direction of policy implementation.

As passage of legislation moves a policy conflict from one arena to another, the regulated are expected to bargain to minimize their losses (e.g., low level enforcement) while proponents of regulatory legislation try to persuade officials that full enforcement is both reasonable and just. As evidenced by the title of James Q. Wilson's (1980) book, there is a "politics of regulation." And, the politics of implementing regulatory policy, just like the politics which characterizes earlier stages of policy-making, is defined by the struggle to control conflict as suggested by Schattschneider (1960). But as the arena changes from the legislative to the bureaucratic, so do the rules which determine who can readily get into the struggle--that is, who has access.

Who controls conflict is often determined by financial resources, expertise or experience in the areas regulated by policy. However, access is also influenced by a group's political skill in taking advantage of the party and belief orientation of those working in bureaucratic agencies charged with policy implementation. It does make a difference who is in control of
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the bureaucracy in determining whose voice is heard (Anderson 1975, 110).

Research Background

A Pennsylvania statute intended to regulate agricultural labor presents an interesting case for the study of implementation politics. In 1978 the Pennsylvania Legislature publicly recognized the need for special protections for the Commonwealth's migrant and seasonal farmworker populations by enacting the Pennsylvania Seasonal Farm Labor Act, this law, still commonly referred to as Act 93, was heralded by religious, labor and advocacy groups as the long awaited commitment by the state to protection of Pennsylvania's seasonal farmworkers. The anticipated policy outcomes of this commitment have not been realized. Many farmworkers, like those interviewed for a 1988 Philadelphia Inquirer article, continue to live in deplorable housing and face substandard working conditions (Henson and Bustos, 6-BJ). The reality of the Pennsylvania Seasonal Farm Labor Act has been described by farmworker advocates as "a failed promise." In a 1984 report prepared for the Pennsylvania House of Representatives Select Committee on Seasonal Farm Laborers, the Coalition on Seasonal Farm Labor Issues observed that once public attention on farmworker needs abated, the Commonwealth returned to its policy of apparent neglect (Pennsylvania Coalition 1984, 1).

Act 93 looks good on paper. It appears to be the worthwhile product of a long hard legislative struggle. Act 93 was said by groups representing farmworkers as well as groups speaking for agribusiness to reflect a series of compromises worked out among these same groups and intended to protect the rights of workers, yet not place unreasonable burdens on employers.

The overall goal of Act 93 is to regulate the working and living conditions (i.e., farm labor camps) of seasonal farmworkers in Pennsylvania. As was common with the adoption of protective regulatory measures during the late 1960s through the late 1970s (Melnick 1983, 7), legislators appeared to be specific in writing policy goals and standards into the seasonal farm labor statute. However, considerable discretion in developing regulations and procedures for meeting these goals and standards was left to bureaucratic agencies. Such tacit delegation of policymaking authority is said to be typical of American legislators who prefer to delegate conflict "as far down the line as possible" (Lowi 1979, 55).
According to Lowi, this propensity for delegation is often expressed in the enactment of vague and ambitious legislation that appears to be more the product of logrolling and compromise than of authoritative decision-making (Brodkin 1987, 577). While Act 93 appears to be written in clear language, problems encountered in implementing the law indicate that certain definitions are imprecise and can be interpreted in different ways. Many provisions of Act 93 seem to represent compromises that at best acknowledge the claims of competing players in the policy-adoption process and pass on the more difficult choices to agencies charged with implementation.

Act 93 remains controversial and its administration fragmented. The two agencies charged with implementation, Pennsylvania Department of Environmental Resources (DER) and Pennsylvania Department of Labor and Industry (L&I), were chastised by legislators during hearings in 1984 and 1987 for not meeting their mandated responsibilities. As The Philadelphia Inquirer article indicates, the agencies have also been repeatedly criticized for their lack of adequate enforcement of the law.

The existing literature on regulatory policy-making leads us to expect difficulties in implementation. But while some difficulty is expected, the lack of progress noted by legislators and the media in the agencies’ carrying out the legislative intent of Act 93 has been significant and cannot be ignored. Considering why implementation of the Act has been delayed and its stated objectives underachieved poses an important focus for research on public policy-making processes. Since it can be observed that no single set of circumstances nor a solitary dramatic event adequately explain this delay in implementation, the politics of implementation presents an appropriate starting point. The proposed implementation politics model is applied to help explain and predict the extent and direction of implementation of Act 93.

Research Methodology

The primary methodology employed in the application of the model to Act 93 involved interviewing key participants in the implementation process. Key participants were identified through review of legislative documents and media accounts and through preliminary, unstructured interviews with farmworker advocates and legislative staff. Interviewees were chosen from five groups: 1) legislators, 2) legislative staff, 3) bureaucratic officials (both political appointees and civil servants),
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4) advocates and lobbyists for groups advocating implementation of Act 93, and, 5) lobbyists and representatives of groups regulated by Act 93. While the non-random selection of interviewees might produce bias in the data collected, this is the only realistic approach to use in studying a policy with which only a limited universe has more than superficial knowledge. Due to easier access to individuals and groups advocating enforcement of seasonal farm labor regulation, it is acknowledged that the views of advocates are overrepresented in the interviews.

Thirty individuals were interviewed during the period August 1988 through October 1990. It is noteworthy that several interviewees formerly held one or more positions different from their current positions which also provided for participation in or at least observation of the politics of the implementation of Act 93. For example, a current bureaucratic official formerly represented a group of regulated growers and a current legislative staff member and advocate of Act 93 is both a former legislator and bureau head.

Application of Proposed Model

The proposed model as presented in FIGURE 1 views the interaction of competing interests within the changing balance of political and economic forces as determining the nature of policy implementation. The Pennsylvania Seasonal Farm Labor Act provides a case study supporting the usefulness of the implementation politics model.

Determinants of Context for Implementation Politics

The model views implementation politics as a dynamic process which is greatly influenced by a context determined by the policy decision itself, the bureaucratic setting assigned to the implementation, and the potentially changing political environment established by the administration and the legislature. The economic climate as well as the national mood are also important components of the context influencing implementation politics. These contextual elements can and do change. And a change in one element is often contingent on a change in others. For example, policy decisions are amended, bureaucratic assignments are changed, officials win and lose elections, and the economic climate and national mood shift.
FIGURE: A Framework for Analyzing the Impact of Politics on the Nature of Policy Implementation

DETERMINANTS OF CONTEXT FOR IMPLEMENTATION POLITICS
- Policy Decision
- Bureaucratic Assignment
- Changing Political Environment
- Economic Climate
- National Mood

DIMENSIONS OF IMPLEMENTATION POLITICS
- Struggle for Control of Scope of Conflict
  - Who plays and when
    - Strategies
- Struggle for Control of Intensity
  - Access Resources Strategies
- Struggle for Control of Visibility
  - Policy Windows Fixer/breaker Strategies

IMPLEMENTATION ACTIVITIES
- Interpretation of Policy
- Application of Policy

NATURE OF POLICY IMPLEMENTATION
The context set the stage for the politics of the implementation of the Pennsylvania Seasonal Farm Labor Act. The long and sometimes bitter struggle to pass protective regulation for seasonal farmworkers in Pennsylvania culminated in a policy decision in 1978. This policy decision established the point at which the struggle to control the conflict moved from the legislative to the bureaucratic arena. The policy decision signaled a need for a changed strategy for seasonal farm labor employers who perceived they had lost in the legislative process. On the other hand, the decision provided symbolic reassurance to farmworker advocates that something was being done about the conflict and that their struggle might be over. Subsequent actions taken by the legislature in response to advocates' inquiries or media attention also provided reassurance that influenced proponents to put off committing additional resources to the struggle to control the conflict during implementation. In the years immediately following passage of Act 93, farmworker advocates disbanded the coalition that pushed for the law. Advocates were lulled into complacency when legislative oversight hearings were held and a line item appropriation suggested that enforcement of the law was imminent.

Bureaucratic assignment also influenced implementation politics since how well a mandate fits into an agency's overall mission influences its ability and desire to meet responsibilities. The assignment of implementation of Act 93 to DER and L&I was based on political expediency and the attempt to avoid a prolonged legislative battle over authorization of a new, single enforcement agency. Although camp inspection provisions meshed at least generally with DER's authority and expertise in environmental health and wage and hour provisions fit in well with L&I's overall authority and expertise, these agencies resisted carrying out the added mandates. DER and L&I preferred to give priority to implementation of more salient programs which won them the support of the governor, legislature and the public. During Richard Thornburgh's governorship which spanned the eight years following Act 93's passage, these departments were headed by officials to whom Thornburgh granted little discretion. As a result, the agencies were anxious to contribute to the governor's economic development goals by not enforcing costly regulation.

The analysis of the seasonal farm labor conflict points to the changing political and economic environments as the most important features of the context influencing policy implementation. The political environment that is intertwined with the economic environment determines which opportunities parties confront in their efforts to control a conflict.
This context determines how the game of politics is played and who will play. Schattschneider's (1960) explanation of politics as the struggle to control the scope, intensity and visibility of the conflict is most useful in analyzing implementation of Act 93 when considered within the changing political and economic environments.

**Dimensions of Implementation Politics**

As implied by the model, the context not only sets the stage but continues to influence the politics of implementation. Schattschneider's (1960) view of politics as the struggle to control conflict is applied here. A conflict is thought to occur between two or more identifiable groups, each attempting to take control over procedural or substantive matters relating to the distribution of resources (Cobb and Elder 1972, 87). The dimensions identified by Schattschneider as determining strategies of politics are also utilized in the model.

Concepts from the agenda-building literature used to analyze processes by which demands become conflicts competing for the attention of public officials in policy-adoptions also help to explain how policies move from legislative decisions to implementation. Processes determining whether a policy succeeds on the bureaucratic agenda are likely marked by struggles similar to those which distinguish agenda-building during policy-adoptions. Concepts from this literature (Cobb and Elder 1972; Cobb, Ross and Ross 1976; Kingdon 1984; Sharp 1992) are incorporated into the implementation politics model.

**Struggle for Control of Scope of Conflict.** The struggle for control of the scope of conflict is defined as the simultaneous attempts to expand and limit participation of actors during policy-making. It is usually the least powerful (i.e., the group with few resources seeking regulation) who wish to expand the scope. Keeping the struggle on the public agenda and maintaining a high level of interest among many individuals and groups help to ensure that the issue will continue to get attention. The movement of a policy conflict from the legislative to the bureaucratic arena would appear to be a transfer from one formal governmental agenda to another. However, proponents of policy implementation might discover that the conflict is stalled on the bureaucratic agenda. Cobb, Ross and Ross' (1976) out-side initiative model can be incorporated here to explain how proponents must create sufficient pressure to bring the conflict to the attention of decision makers in this new
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arena (132). Strategies to expand the scope of the conflict include efforts to bring more groups outside of government into the conflict.

It is usually the group already holding an advantage in resources and having something to lose with regulation that prefers to limit the scope of the conflict (Schattschneider 1960, 39; Schlozman and Tierney 1986, 396). This group’s goal is to have as few actors involved in the conflict as possible so as to utilize its privileged position to influence what happens in the administrative arena. Should implementors go against the interests of this group, the regulated might seek to expand the scope of the conflict to attract more support for the group’s opposition. However, once the scope is expanded in the administrative arena, both sides can take advantage of the complexity of the situation by lining up with other influential groups both inside (e.g., legislators, bureaucratic officials, etc.) and outside of government (e.g., large, well-organized interests).

The struggle over the scope of conflict is not just a fight over who plays a role in the policy implementation process, but also involves alignment of these players. Coalition-building becomes an important part of this strategy as both sides to a conflict line up with individuals and groups (both inside and outside of government) who can bring their own resources to bear on the struggle. The stability and willingness of coalition members to commit resources is influenced by factors related to the conflict in question and factors unrelated to the conflict. Who can play a role in policy implementation and when and how these roles are played is closely related to struggles to control intensity and visibility of the conflict.

Struggle for Control of Intensity of Conflict. The intensity of a conflict is measured by the degree of commitment of the contending parties to mutually incompatible positions. In operational terms, intensity roughly corresponds to the resources groups are willing to commit to controlling conflict relative to their total capability (Cobb and Elder 1972, 43). Specifically, intensity refers to the proportion of their available resources groups apply in their struggle to control a particular conflict. While generally the greater resources a group expends, the greater its chances of success, groups must consider the likely return on investment of resources based on characteristics of a conflict as well as demands placed on resources by other conflicts (Cobb, Ross and Ross 1976, 131). Resources are defined as money, organization and special competence or expertise that can be used to bargain during policy implementation. But these resources are second in importance to a group’s accessibility to political elites including bureaucrats who determine when and to what extent policy
is implemented. Where access is not already institutionalized through formal lobbying activities, a group's commitment in bringing resources to bear on a conflict can help it gain access. Where both sides have some access, political skill becomes a significant factor. Effectiveness in developing and sustaining political skill over time influences the struggle to control intensity. Groups' perceptions of each other's resources, commitment and access are also important determinants of their political strategies.

Struggle for Control of Visibility of Conflict. The struggle for control over visibility of conflict is closely related to the struggles to control scope and intensity. Means, motive and opportunity form the basis for this struggle. According to Schattschneider, politics determines which conflicts become issues, which conflicts become most visible (64). And, Schattschneider says, all politics deals with displacement of conflict or efforts to resist displacement of conflict (68).

Kingdon (1984) suggests that policy windows provide opportunities for advocates to push attention to their favorite conflicts. A change in administration or a well publicized tragic event can provide a favorable climate for bringing attention to a conflict. The simultaneous occurrence of one of these with other circumstances (e.g., changes in the economy or extensive media coverage influencing a shift in public opinion) can determine whether a policy window opens or closes as far as a particular conflict is concerned. Since regulatory policy is generally implemented in a bureaucratic agency led by politically appointed officials, a change in administration could be the most powerful determinant as to whether a policy window opens or closes for the implementation of a particular policy.

As Kingdon observes, policy windows do not stay open for long. In fact, with most regulatory policy, a window will often close soon after policy-adooption because participants feel they have addressed the problem (1984, 177). It is important that policy entrepreneurs take advantage of reopening windows for policy implementation. Kingdon's policy entrepreneur is an advocate for a proposal, an individual or coalition willing to invest resources--time, expertise and reputation--in hopes of finding success for ideas in the policy-making process (129). The successful policy entrepreneur is able to couple a proposal to politics to push it through an opening window toward policy adoption. A skillful policy entrepreneur should also be able to take advantage of opening windows to push implementation.
Bardach's (1977) related concept of fixer is a policy entrepreneur who specializes in policy implementation. According to Bardach, because the policy implementation process is so complex, it is often necessary for a fixer with powerful resources to intervene in the process (279). This concept of fixer implies that the person or coalition doing the intervening is not just taking advantage of an opening window but is trying to pry one open. Bardach's fixer best describes a type of policy entrepreneur who finds it necessary to advocate not just for the adoption of policy but also for its implementation.

In contrast to the concept of fixer, a breaker might be understood as seeking to delay or limit opportunities to implement a policy. Unlike the concept of fixer, breaker is not found in the agenda-building literature. But a breaker can be thought of as an individual or coalition that attempts to keep policy windows closed and uses resources to insure that the disjointed pieces of the implementation of policy are not assembled.

In the case of regulatory policy that is not favored by industry, a breaker often represents the well organized, well financed interests of the regulated. The availability of a fixer is important to counter a breaker's strategies. The success of a fixer is often related to ability to raise the visibility of a conflict by redefining or relabeling it to attract wider support. Since the scope of conflict is often reduced by symbolic reassurance provided by passage of legislation, proponents of regulatory policy might find fewer advocates among their ranks during implementation. However, following passage, the regulated may exploit their advantages in resources to try to renegotiate policy goals or slow down implementation. The regulated may attempt to convince bureaucrats and other political elites that policy implementation would not be in the public interest. Relabeling of a conflict by a fixer to take advantage of political sentiment could again expand the scope and counter the strategies of the regulated. Redefinition serves to propagandize the conflict as consistent with priorities of the public and the changing political environment. Redefinition can expand the scope of a conflict and raise its visibility (Cobb, Ross and Ross 1976, 127).

It is proposed in this model that the presence or absence of a skillful fixer often determines whether conflicts can be coupled with politics to take advantage of an open window through which regulatory policy can be pushed into implementation. Some individual or coalition must be able to gather support by mobilizing resources and allies and outmaneuvering breakers who organize to oppose implementation of policy. The
commitment and political skill of a fixer can determine success or failure in identifying and exploiting opportunities during policy implementation.

But opportunities must first exist. Political elites play an important role in establishing the climate for the presence or absence of opportunities. Legislators pass legislation which sets the stage for policy and they further influence policy by exerting various degrees of oversight and controlling agency budgets. The administration appoints the heads of bureaucratic agencies charged with implementation and either grants them independent authority or closely directs their activities. And the courts play an increasingly important role in ruling on interpretations of statutory language and agency decisions.

Bureaucracies charged with policy implementation also influence how well opportunities can be exploited to move implementation at a particular pace or in a particular direction. Bureaucracies are organizations with their own goals and interests and established practices and procedures. These organizations and their leaders often have goals or priorities that are incompatible with the goals of regulatory policy. And these agencies often have structures (such as regional offices) which contribute to inconsistent implementation of policy. In addition party orientation or personal philosophy of agency leadership might clearly support either of the sides competing for control of a conflict. Sides both promoting and opposing implementation often view bureaucracy as a potential ally rather than referee of a conflict (Schlozman and Tierney 1986, 397). In this model, the bureaucracy is not considered a neutral implementor of legislation or arbiter of competing interests. The bureaucracy is seen as an active participant in this stage of policy-making. Whether policy windows open or close and whether a fixer or breaker can exploit resulting opportunities often depend on the roles played by these bureaucratic participants as well as those played by other political elites.

As noted in the discussion of the struggle to control scope of a conflict, Cobb and Ross and Ross' (1976) outside initiative model presents strategies groups use to achieve formal agenda status for a conflict. These same strategies (expansion of conflict, redefinition of conflict, and mobilizing interested groups both inside and outside of government) are useful strategies for controlling visibility of a conflict and maintaining its status on the bureaucratic agenda.

During the fiscally conservative, pro-business Thornburgh Administration, the regulated were able to control the seasonal farm labor conflict during a time of economic uncertainty by utilizing access to
political elites to keep enforcement of regulation low and their costs minimal. While the scope of the conflict expanded somewhat as it moved to the bureaucratic arena, the Thornburgh Administration provided a climate in which agribusiness found officials in DER and L&I disposed to making minimal implementation efforts. As Pennsylvania's leading industry, agribusiness was represented by the well-financed, well-organized Pennsylvania Farmers Association (PFA), and it found a willing ear for its message that enforcement of regulation would cut into profits resulting in slower economic growth for the Commonwealth. In addition, the lack of a highly salient issue combined with symbolically reassured advocates practically guaranteed that growers would control the seasonal farm labor conflict during the years immediately following passage of Act 93.

One of the most controversial provisions of the drafts of legislative bills which culminated in the Pennsylvania Seasonal Farm Labor Act was that which defined a seasonal farmworker and a seasonal farm labor camp. Since agribusiness resisted the intervention of government into the farm labor-management relationship and recognized the economic costs of compliance, the users of farm labor pushed to have these terms defined as narrowly as possible. Farmworker advocates pushed for broader definitions that would lead to wider coverage by the law. Even though DER's Seasonal Farm Labor Committee set up by the Act to develop regulations for implementation proposed a broad interpretation, Thornburgh's appointed officials in DER established guidelines which excluded from coverage many farm operations, especially in the mushroom industry.

Court action is often the strategy employed by groups who perceive that the other side to a conflict has important advantages in terms of access to political elites and a favorable political climate. In a suit filed in 1983, Friends of Farmworkers, a legal services organization representing workers in the mushroom industry, alleged that there was a conspiracy between growers and DER officials to ignore the legislative intent of Act 93. In particular, the suit alleged that DER conspired with other Commonwealth officials and agricultural producer representatives on the Seasonal Farm Labor Committee to bar review and reconsideration of regulations in order to deprive farmworkers of their equal protection rights.

The following year Commonwealth Court issued a judgment which clarified legislative intent of broad definitions of seasonal farmworker and seasonal farm labor camp. The Court directed DER to inspect camps in the mushroom industry. This action empowered farmworker advocates to seek funding to staff DER's camp inspection program when that agency claimed
it did not have the resources needed to comply with the court order. Advocates reorganized into the Pennsylvania Coalition on Seasonal Farm Labor Issues and used research and moral persuasion to lobby the legislature for enforcement money. But even after a line item was appropriated, DER continued to duck its responsibilities. Such ducking was reinforced by standard operating procedures and personnel policies including a refusal by the Thornburgh Administration to authorize the positions intended to be funded by the appropriation.

DER’s non-enforcement of Act 93 in the mushroom industry illustrates the politics of the implementation process. It demonstrates the struggle to control the scope, visibility and intensity of a conflict with the strategies employed by the opposing forces. An important strategy among mushroom growers involved the promotion of a definition of seasonal farm worker which effectively excluded their operations from coverage by the law. They took advantage of their history of ready access to political elites and regional office staff to make sure they would not be subjected to the law’s provisions. Farmworker advocates led by Friends of Farmworkers increased the scope and raised the visibility of the conflict by resorting to a strategy—court action—which seems to work best for groups which traditionally have little power to push implementation of protective regulatory policy. Advocates responded to DER’s later claim that the agency had too few resources to implement Act 93 in the mushroom industry by appealing to the legislature to appropriate special funds. When advocates realized that legislative oversight was not adequate to insure that DER would use its new funding to enforce provisions of the Act, they pushed for monitoring of DER’s compliance with the court order. But DER’s decentralized structure, lack of staff and no strong commitment to its seasonal farm labor camp program resulted in quantitative but little qualitative progress in the inspection of farm labor camps.

While the court decision provided a potential policy window through which advocates might push Act 93’s implementation, it was not until a second policy window began opening that progress was made. The election of Robert Casey as governor in 1986 provided a more favorable climate for implementation. Although Casey is a fiscal conservative and not always willing to commit adequate resources to enforcement activities, he recognized his responsibility to enforce statutes of the Commonwealth which have been put in place to meet needs. He appointed heads of agencies who shared this philosophy. They in turn appointed staff who redirected implementation of Act 93 toward meeting legislative goals.
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Implementation Activities and Nature of Policy Implementation

It is proposed in this model that the impact of these struggles over the scope, intensity and visibility of conflict on implementation activities that include interpretation (directives and regulations) and application (enforcement and service provision) of policy explains when, how much and in which direction policy will be implemented.

The case study illustrates how the climate of expectations created by political elites influences opportunities to push or delay implementation. The struggle to control the intensity of the conflict moved from the hands of those opposing regulation to those pushing for regulation. While the mushroom industry used its access to political elites and resources to influence a delay in implementation for many years, Friends of Farmworkers later committed much time and effort to pursuing a court case which brought together legal and political attention to the need to implement Act 93. This group mobilized a coalition of complacent farmworker advocacy groups to struggle for control over the intensity of the conflict by committing resources to court action and then trying to link this action with community advocacy (media coverage emphasizing farmworkers’ contribution to the state’s economy) and political advocacy (legislative hearings) to raise visibility of the conflict. However, it was not until a change in the political environment, specifically a change in governor and top leadership in agencies, that a policy window slowly opened through which advocates could push for implementation. Kingdon’s concept of policy window proves useful in this model and is best illustrated here by the change in administrations. While the operationalization of this concept is not limited to a change in administrations, in the case of Act 93, this change provided a significant opportunity to raise visibility of the seasonal farm labor conflict.

A future change in the political environment could signal another redirection of policy implementation. While farmworker advocates talk about the need to institutionalize the changes in implementation that came about in the Casey Administration to insulate them from future political influence, they do not recognize the importance of the changing political environment in determining which side can maintain control of a conflict.

A change in the political environment which does not involve a change in administrations can also come about as a result of economics. For example, the slowdown in the national and state economies can lead political elites to tighten spending and cut back on staffing of enforcement
programs. The worsening economic climate for Pennsylvania state government slowed progress made in Act 93’s implementation during the Casey Administration.

As discussed, during the Thornburgh years, L&I did not perceive its responsibilities under the Seasonal Farm Labor Act as fitting in well with its priorities. And the economic climate did not support rigorous regulation of industry. However, with the change in agency leadership under Casey, L&I acted on its mandated responsibility to enforce wage and hour and related provisions of Act 93. The Casey Administration set a climate of expectations in which statutory remedies were implemented. Implementation of Act 93 was actually established as a priority for L&I in 1988 by then Secretary Harris Wofford, and the seasonal farm labor program was reorganized and adequately staffed.

But just as L&I moved forward in implementing its seasonal farm labor regulatory responsibilities, the general operating budget for the department was reduced. As state revenues failed to meet predicted levels, the governor and legislature cut operating expenses. Economic and political realities provided a context in which priorities were reexamined. So while the direction of implementation changed with the replacement of top L&I officials, the economic environment brought about a slow-down in enforcement activities due to insufficient staffing resources.

The employers of seasonal farm labor continue to look for opportunities to commit resources to regain control of the regulatory conflict. An attempt by PFA (now the Pennsylvania Farm Bureau) to amend Act 93 is viewed by farmworker advocates as an admission by agribusiness interests that the law is beginning to work as a result of the agencies’ redirection of implementation. When implementation was delayed, farm employers maintained control over the seasonal farm labor conflict. However, several changes came about which threatened agribusiness’ control. The political environment in Pennsylvania became more supportive of regulation with the change in administrations, the suit against DER clarified legislative intent of coverage, and Friends of Farmworkers successfully litigated cases based on Act 93. From the growers’ perspective, since the law began to work, perhaps it was time to change it. The growers seek to return the conflict to the legislative arena where they may regain control. Their chances of succeeding have improved since the 1994 election switched control of the Pennsylvania General Assembly away from the Democratic Party whose leaders have generally supported farmworker advocates’ positions.
The current attempt to amend Act 93 is recognized by advocates as one of agribusiness’ strategies to regain control over the seasonal farm labor conflict. Another involves ongoing attempts to hamstring Friends of Farmworkers by discrediting the agency and by threatening to defund its operations. The Pennsylvania Farm Bureau has testified at Congressional hearings to block reauthorization of the Legal Services Corporation from which Friends of Farmworkers receives funding. As a result of this group’s actions, several members of Congress asked the General Accounting Office to investigate legal services programs which represent seasonal farmworkers in their complaints against growers. The Pennsylvania Farm Bureau appears to be substituting a more politically popular “farmers versus lawyers” conflict for the “employer versus farmworkers” conflict. These actions are perceived by advocates as part of an overall political offensive by the regulated to diminish the effectiveness of Friends of Farmworkers in the struggle to control the seasonal farm labor conflict.

Since proponents of seasonal farm labor regulation have used court action and taken advantage of a changing political environment to redirect implementation of Act 93, they are perceived as succeeding in their struggle to control the conflict in the bureaucratic arena. But the struggle continues as agribusiness perceives new opportunities to regain control in a changing political environment. The most recent political change—the election of Tom Ridge as governor in 1994—could provide a window of opportunity for those interested in slowing down implementation. The governor’s restructuring of DER includes a gradual transfer of that department’s farm labor camp inspection responsibilities to the Pennsylvania Department of Agriculture. Agribusiness enjoys ready access to this department which has traditionally promoted rather than regulated agriculture. Meanwhile, farmworker advocates are forced to use resources to develop counter-proposals to agribusiness’ attempts to amend the law and to defund advocates’ legal actions while continuing to monitor the bureaucracy’s implementation of the current law.

Conclusions

The case study points to the need to understand the implementation process as more than just a sum of its parts. Implementation is influenced by more than the actions of those players in the policy-making process who legislate policy, those who administer it, and those who oppose or promote it. Implementation is more than the strategies employed by sides that
continually struggle to control the conflict which becomes the focus of public policy. Implementation takes place in a context that influences actions and interactions of those with a stake in the outcome and determines which strategies they will use to try to win an advantage. So while the model used to analyze the implementation of Act 93 can be separated into components that can be examined on their own, it is only in the dynamic interaction of the components that the politics of policy implementation is understood. The direction and extent of implementation of Act 93 is the sum of the actions of governors, legislators, bureaucrats, the courts, farmworker advocates, regulated growers, and the media. But it is something more than what results from adding up the pieces of the implementation puzzle. And that something more is not easily represented in a model. It is not easily comprehended by discerning how the features of the model relate to each other. Instead, it is only understood when the model is used to make sense out of a messy reality that constantly reminds the policy analyst that features are not the neat little packages that they appear to be in a model.

The concepts of fixer and breaker as initially operationalized in the model proved to be oversimplifications when applied in the case study. While individuals and groups are identified as pushing or blocking implementation, the idea that a single fixer or breaker can gain control over the many elements of implementation to direct it approaches a simplistic explanation of implementation politics about which Wilson (1980) warns us.

While potential single fixers of Act 93 can be identified, none seem able and willing to commit the time, resources and reputation needed to continually direct the process. Other conflicts backed by more influential constituencies take priority for potential legislative or bureaucratic fixers. And members’ agency work and day-to-day operational responsibilities prevent the Seasonal Farm Labor Coalition from assuming this role on other than an as-needed basis.

In further developing the ideas of fixer and breaker, it might be more useful to adopt Sharp’s (1992) concept of “network.” It appears more accurate to identify fixer or breaker networks in considering the efforts and interactions of those individuals and groups pushing and delaying policy implementation. These efforts can be viewed in terms of the strategies networks employ given the opportunities and constraints offered by the political environment in their struggle to control conflict so as to determine the nature of policy implementation.
What does seem clear is the general advantage a breaker network has over a fixer network in this process. A breaker network need take advantage of only a few opportunities to slow down implementation while a fixer network must exploit all opportunities to keep implementation on track. A fixer network is required to assemble all pieces of the implementation process while a breaker network can focus on the few weak links needed to stall the process.

The model is not intended to be a blueprint for improving the way government goes about making public policy. Much has already been written on how we might improve this process by returning to a more simplified structure (Lowi 1979) or by striving to achieve optimal conditions under which effective implementation can be achieved (Sabatier and Mazmanian 1979). But the politics model can assist in explaining and predicting implementation of regulatory policy. It is helpful in discovering relationships, influences and outcomes of policies which are focused on struggles to control conflicts. It helps make some sense out of the politics of the implementation process while it brings to our attention the reality that this process does not lend itself easily to finite analysis. The model's importance lies in its pointing out complexities involved in any effort to reduce the policy implementation process to a simplified model.

In using the model to order the research undertaken on the implementation of the Pennsylvania Seasonal Farm Labor Act, many questions have been addressed. Why more efforts were not made to proceed with the implementation of Act 93 can be explained as the result of the carryover of the politics that characterized the policy- adoption process. Passage of Act 93 has been shown to be mostly symbolic reassurance that something was being done to resolve the seasonal farm labor conflict when, in actuality, it was transferred from the legislative to the bureaucratic arena. The strategies of the parties in their struggles to control the conflict reflect the resources available to them as well as the opportunities and constraints presented by the new arena and changing political environment. A look at the strategies employed illuminates what works and under what conditions as the conflict continues. The value of this model, therefore, is not prescriptive--it does not indicate how public policy-making might be improved. Rather, its value lies in implicit suggestions it offers to sides to a conflict that need to better understand the politics of policy implementation in order to recognize and exploit opportunities to influence that process.
Contributing to Theory of Implementation Politics

If theories are described as sets of generalizations that explain relationships between phenomena, then models that try to represent reality can help us locate those relationships. In the case of seasonal farm labor policy in Pennsylvania, the proposed framework helps discover the nature of relationships between actors in the policy making process, the strategies employed by proponents and opponents of the policy and the impact of the changing political context. The model helps us understand how the process works and provides some basis for forecasting how the process might work if certain political conditions exist, certain actors get involved and certain strategies are employed.

Although the limits inherent in using a single case study to demonstrate the usefulness of a particular model cannot be denied, case studies provide the best opportunity to study the complexities of implementation problems. The case study supports the model's explanation that policy implementation does not unfold in neat progressive stages but instead moves forward and backward according to some discernible patterns based on the opportunities and constraints presented by the changing political environment.

This model helps to highlight the opportunities and constraints of the policy implementation process and the many points at which proponents and opponents can attempt to influence policy. In this way the model contributes to theory building in this area. Most importantly, this model reminds us that simple theories of public policy implementation might very well be unrealistic, and that single explanation theories of regulatory politics might be, as James Q. Wilson (1980) suggests, just as useless as single explanation theories of politics or disease.

But models can suggest relationships which provide a basis for establishing empirical generalizations which in turn can contribute to theory building. Hopefully, the proposed model does just that. And if this claim can be attacked as too optimistic, at least the claim that the model illuminates the messy world of implementation politics cannot be refuted.
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