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In the COMMONWEALTH

Thomas J. Baldino, Editor

All good things come to he who waits, some wise person once said. It seems that the subscribers of COMMONWEALTH should adopt this aphorism. Some 14 months since its last publication, the latest edition of COMMONWEALTH took a rather tortuous path to print. Initially, there was a dearth of quality manuscripts submitted for publication after the last volume appeared. In the spring, I received the resignation of my valued managing editor, Jim Morse. (I want to express publicly my sincere thanks and appreciation to Jim for his dedication and excellent work on behalf of the journal over many years. Without his patience and stamina, a few issues of COMMONWEALTH might not have ever seen the light of day.) After some searching and pleading, I convinced a colleague at Wilkes, Harold Cox, editor of the Wilkes University Press, to assume the managing editor position, and things looked bright again. But then came a series of computer viruses and crashes that further complicated matters. With some luck and the cooperation of my family, lost material was reconstructed over several weeks, and an absent husband and father reemerged with a journal. I can only hope that you find the product worth the wait.

In this issue, we are fortunate to present three articles that focus directly on Pennsylvania government and politics, which may be something of a record for the journal. The two other articles provide a kind of bookends to American politics of the last two hundred plus years.

In the lead article, Dr. James Yoho examines the role of interest groups in pre and post revolutionary America. His study reveals the importance of interest groups to the revolutionary movement as well as their critical involvement in the ratification of the constitution of 1787. He ultimately concludes that interest groups would have developed in the new nation but perhaps not as quickly had there not been a revolution and push for a new constitution to replace the Articles.

From the past to the present, and perhaps the future, the reader is invited by Dr. Gerard Fitzpatrick to consider the application of the First Amendment to material published in cyberspace, a.k.a. The Web. Is it possible to take the First Amendment and the Supreme Court’s case law, developed over two hundred years, and use these to settle disputes involving press freedom, particularly material deemed by some to be obscene? His view is that cyberpublications require a different legal framework, especially for “cybersmut.”

The first article in the section on Pennsylvania Research is by Dr. Stephanie Greco Larson. Her work is an empirical analysis of the campaign
literature employed by men and women running for the Pennsylvania General Assembly in 1996 to determine if differences exist between the sexes. Using a content analysis of campaign brochures, Dr. Larson explored the issues raised by the candidates, the traits that they highlight, and the types of attacks employed by the men and the women. She also controlled for incumbency, party, and whether the candidate won or lost. Her findings are most interesting.

The second article by Dr. Paula A. Duda is a case study of the application of a regulatory mechanism called regulation negotiation. In this study, Dr. Duda was an observer as the Pennsylvania Department of Environmental Protection attempted to use this technique in enforcing the Special Protection Water Program. Applying theory to the case study, Dr. Duda concludes her analysis with a number of recommendations for how to improve the rule making and rule implementation process using regulation negotiation.

The last article is really an extended bibliographic essay. Dr. Joseph Marbach compiled this material to serve as a guide to students and teachers of Pennsylvania government and politics. He includes all three branches of state government as well as local governments, the media, and interest groups, among other things. It is hoped that our readers will find this a most helpful source of information.

Finally, I take this opportunity to announce publicly my resignation as editor of COMMONWEALTH. Having served the PPSA and the journal for over ten years and publishing four volumes (including this one) as editor-in-chief over the last five years, I felt that it was time to move on. I have thoroughly enjoyed this experience, and I have learned a great deal. Interacting with so many talented authors and reviewers is truly stimulating. I will miss it. But every journal needs new blood, fresh ideas, and perhaps a different perspective from time to time; by my assessment, this is the appropriate time for COMMONWEALTH to have its transfusion. After consulting with Don Tannenbaum, the founding father of the journal, and members of the executive council, the editorship was extended to Gerard Fitzpatrick, and he graciously accepted. I hope that he derives as much satisfaction from his work with the journal as I have. Authors should send all future manuscripts to:

    Dr. Gerard Fitzpatrick
    Department of Politics
    Ursinus College
    Collegeville, PA 19426

Any manuscripts that have already been accepted for publication will be published in the next volume, and I will retain responsibility for any manuscripts submitted to me to ensure that they are properly reviewed.
Before the Constitution:
Interest Groups from 1763-1789

James Yoho
Wilkes University

The movement for American independence from Great Britain was closely associated with interest group activity, and cannot wholly be understood without reference to the phenomenon. This association is documented with reference to a consistent definition of "interest group." Lesser known is the role that interest groups played in the movement to adopt a new constitution. Still, this paper argues, the growth of interest group activity during this era seemingly would have happened, although perhaps to a lesser extent, even without these movements.

The year 1763 often is cited as a landmark in the political development of what eventually became the United States of America, and rightly so: it is the year that Parliament first began to play a significant role in the management of the American colonies. Among the many well-known repercussions of Parliament's colonial policies is the resistance created in America by the Sugar Act of 1764 and, especially, the Stamp Act of 1765. These were important preludes to the break with Great Britain that was formalized a decade later.

It already has been aptly noted that the movement for American independence from Great Britain significantly stimulated organizational activity here and — as will be shown in this study — much of this was interest group activity, a topic which has been hardly touched upon for this period (the most notable exception, by far, is Olson 1992). Although it is difficult to consider the other events of that time in America without at least some reference to the pervasive movement for independence, it seems clear that some of this increase in organizational activity would have occurred anyway, later if not sooner. After all, interest group activity in America already had been steadily growing for nearly three centuries.

For example, it seems likely that science would have continued to develop in that Age of Enlightenment and lead to a certain amount of associated organizational activity even without the movement for independence. American doctors would have gotten around to organizing permanent medical societies sooner or later. The Royal College of Physicians, which had 228 American members in 1770, already had been in existence since 1660 (Cassedy 1976). One was attempted in America as early as 1735, in Boston, but did not survive. Additional attempts were made, successively, in New Haven, New York, Charleston, Connecticut, Massachusetts, Philadelphia, and New Haven again before one lasted: it was formed in 1766 in New Jersey (McDaniel 1959, 133-137; Marks and
Beatty 1973,194-197; Burns 1976,288-289; Shryock 1960,31-32; Bates 1958,16-18). The Revolutionary War (1775-1783) generally acted to inhibit this sort of organizational development, as no new societies were successfully organized until after the end of the war (Shryock 1960,31; Bates 1958,16-17; McDaniel 1959, 136-137).

These medical societies were involved in interest group activity. The medical society formed in Charleston in 1755 convinced the legislature to enact a fee schedule, which created so much controversy that the society dissolved (Marks and Beatty 1973,195). Before they folded, both the Connecticut (1763) and the second New Haven society (1766-1769) lobbied the assembly, unsuccessfully, for physician licensing (Starr 1982,44; Hindle 1956,112). The New Jersey Medical Society, already a pioneer, was more successful with its own effort of this sort: in 1772 it convinced the colonial assembly to license physicians (Marks and Beatty 1973,197-198; McDaniel 1959, 136; Shryock 1960, 32-33). The Massachusetts Medical Society went one better: the charter that it obtained from the legislature in 1781 accorded licensing authority to the society (Cash 1980,69-100; Whitehill 1976,162; Starr 1982,46).

It also seems inevitable that activity by learned societies would have increased in any case. The colonies' first scientific organization, the American Philosophical Society, emerged in 1766 from extended inactivity. This emergence was mostly due to its new rivalry with the newly-founded American Society for Promoting Useful Knowledge, formed that same year by Philadelphians interested in improved agricultural methods and the promotion of domestic manufactures and internal improvements. Even before the merger of these organizations in 1769 (Hindle 1956,127-138; Bates 1958,6-8), the Philosophical Society convinced the colonial legislature to again fund observations of the transit of Venus, this one occurring in 1769 (Bates 1958,134-135,150-152). The rejuvenated organization mounted at least three additional successful lobbying efforts in the Pennsylvania assembly in the next few years: to appropriate 1,000 pounds sterling for silk production in 1771, to grant 300 pounds sterling to the development of a planetarium by David Rittenhouse in 1771, and to appoint Rittenhouse as the colony's Public Astronomer in 1775 — the last of which was postponed in the wake of the British-American skirmish in Lexington (Bridenbaugh 1955,413; Hindle 1956,140-141,167-170,201-202).

A second learned society, the American Academy of Arts and Sciences, was founded in Boston in 1780. It, too, was politically connected: its organizer was John Adams, who convinced the Continental Congress in 1776 to encourage each state to establish such a society. His first organizational task was to lobby for a charter from the Massachusetts legislature; the first president, James Bowdoin, later was elected governor (Ford 1904-1937, Vol. 4,224; Bates 1958,9-11; Whitehill 1976, 151-154).
Other philosophical societies were just as politically connected: one formed in New York in 1784 elected the state's governor as its first president and another, formed in Connecticut in 1786, elected the lieutenant governor as its president and held meetings at the same time and place as the assembly (Hindle 1956, 273-274).

The formation of the first permanent American agricultural societies, in both Charleston and Philadelphia in 1785, was long overdue: they had been forming in Europe since 1723 (True 1929, 6-8; Boorstin 1958,264; Jameson 1940,51). These organizations had few farmers (Rossiter 1976,279,284-285), but they had plenty of politically-connected members. The first 12 officers of the Charleston society included a future Chief Justice of the U.S. Supreme Court, five members of Congress, four governors, and a signer of the Declaration of Independence. The first president of the Philadelphia society served two terms as mayor; by 1794, the society was lobbying the state legislature to charter a state society (True 1929,7-8).

That the competition among the land speculation companies — which had hardly yet begun — would have continued in any case seems clear, too; even the French and Indian War (1754-1763) and King George III's 1763 proclamation that purported to limit the westward spread of colonization caused only a pause. Even as they struggled to obtain as much land as possible, the land-speculation interest groups also began to reach for such collateral projects as the construction of canals, for example, the efforts by the Ohio Company as early as 1762 to promote a canal for the Potomac River (Dorfman 1947, Vol. 1,124-125; Woodward 1926,396; Ferling 1988,333; Nute 1923,98). This project would prove to have particular significance for the substance — and very existence — of the U.S. Constitution, as well as lead to the siting of what now is Washington, D.C.

The issue that led to the most signatures on any petition submitted to the New Jersey assembly during the colonial era is one that could occur in any era: in 1774, 2,686 signed petitions offering one view or another on a scandal involving public funds and the East Jersey treasurer (Purvis 1986,183).

Still, the movement for independence left an undeniable mark on the American interest group system no less than on other aspects of the political system. For example, it is an indication of how much political activity generally increased during just the start of this era that petitions to the New Jersey legislature increased from 76 a year to 187 between 1763 and 1768 (Batinski 1987,7,185,187).³

Early Resistance to London's New Colonial Policies

In 1763, while Parliament still was considering the Sugar Act, the merchants of Massachusetts formed the Society for Encouraging Trade and Commerce, which spent the next five years lobbying against various trade
acts (Pole 1966,55; Andrews 1917, 59-61; Schlesinger 1957, 59-60). The merchants of New York and Philadelphia organized against the Sugar Act early the next year (Schlesinger 1957, 60-61; Harrington 1964,320-321). A popular campaign was commenced to boycott the British goods that were covered by the law; through hundreds of interest groups this campaign would be waged, off and on, for an entire generation.

None of this compares, however, to the American reaction to the Stamp Act of 1765. Hundreds of organizations, mostly local, arose throughout the colonies. They were loosely associated; many of them called themselves the Sons of Liberty. These interest groups employed a variety of tactics, including petitions, demonstrations, and mobs (Morgan and Morgan 1962, 157-262; Conser 1986, 22-88; Gilje 1987, 44-52). Suddenly, petition campaigns encompassed whole colonies (Batinski 1987, 186).

The first interest groups of note comprised of women also were formed during this period: the Daughters of Liberty and, later, the Anti-Tea Leagues concentrated on the boycott of British imports (Hymowitz and Weissman 1978, 26-27; Evans 1989, 49). Even the Stamp Act Congress of 1765, to which nine colonial assemblies sent delegates to organize further resistance to the Stamp Act (see Morgan and Morgan 1962, 137-148), qualifies as interest group activity because the assemblies were acting well beyond the scope of the governmental authority granted to them.

In any case, intercolonial interest group organization would undoubtedly have been furthered by the congress of the Sons of Liberty that was proposed by the New York chapter. The congress was cancelled when the Stamp Act was repealed in 1766 (Decker 1964, 67-68; Starr 1991, 232).

Despite the repeal, Parliament was determined to assert its authority over the colonies, which some leaders of the American resistance well knew and planned to counter (Walsh 1959, 40; Morgan and Morgan 1962, 359-360). To a significant extent, the colonials' efforts took the form of interest group activity. For example, when the government in London dissolved the Massachusetts and Virginia assemblies in 1768, interest groups stepped into the breach by starting colony-wide organizations that, in effect, replaced the assemblies by providing a unified — albeit unofficial — voice (Morgan 1956, 45-46, 49; Brown 1970, 29-31).

America was soon rife with interest groups, and they diverted much of the effort that once was directed toward London — but with more success — to the colonial assemblies (Olson 1992, 58-166). The same interest groups that dominated before 1763, business and churches, continued to lead in their level of organization.

Merchants tended to organize at the local level, including formation of the first Chambers of Commerce, in New York City in 1768 and Charleston in 1773. Both engaged in interest group activity from the outset, one of the stated goals of the New York chamber being "procuring such laws
and regulations as may be found necessary for the benefit of trade in
general” (Stevens 1971, 3-73; Cherington 1976, 491; Harrington 1964, 285-
287; Bridenbaugh 1955, 287-288; Schlesinger 1957, 116, 296-297; Davis 1917,
Vol. 1, 102; Egnal 1988, 185, 265-266; Sellers 1934, 73).
Churches were more likely to organize on a broader scale, typified by
the corresponding committees established by dissenters after 1769
(Kammen 1975, 289; Olson 1992, 162-163; Brown 1970, 45-46). There also
were some new pitfalls: an annual convention for dissenters proposed
for 1766 was nixed lest it too much resemble the Stamp Act Congress and
thus alienate British supporters (Morgan 1962, 244-245; Bonomi 1986, 207).
The occasional cancellation aside, business and church interest groups
now were more inclined to adopt the tactics of forming coalitions with
other interest groups and appealing to the general public (Olson 1992, 164).
In this, they were adjusting to the reality of what was a new interest
group system in America, one that often required the cultivation of pub-
lic opinion for success.
Historian Alison G. Olson refers to relatively informal mass-membership
interest groups that specialize in political action that is centered on
a “cause” and feel free to openly criticize the government as “public opin-
ion lobbies,” an apt term. Her contention that public opinion lobbies were
first developed by British politician-journalist John Wilkes in the late 1760s
(see Olson 1992, 136, 143-146) is inaccurate, however, because the interest
groups that arose in America during the Stamp Act controversy of 1765-
1766 and persisted even after repeal fit this description exactly; Olson
herself seems to acknowledge this elsewhere (see Olson 1992, 165). Public
opinion lobbies may well have existed even in Britain earlier than
Olson suggests; Wilkes became a hero to groups like the Sons of Liberty
long before his return to England from exile in 1768 precisely because he
had so agitated public opinion against the government from 1762-1764.
As Olson notes, the propriety of public opinion lobbies, which, after
all, had a purely political purpose, and their tactics were the subject of
some controversy. The questions served to disrupt some of the London
lobbies that dealt with Anglo-American matters (and which might have
helped soothe the proverbial waters of the Atlantic) by plunging them
into internal disputes about tactics (Olson 1982, 22, 32-41; Olson
1983, 384, 386-388; Olson 1992, 136, 143-153). Even as this controversy de-
veloped, Samuel Adams and Arthur Lee speculated in 1771 that a system
of allied societies could be developed at the local, colonial, and intercolo-
nial levels that could associate itself with Wilkes’ Bill of Rights Society
(Cushing 1906, Vol. 2, 234; Henderson 1974, 16-17), thus creating, in effect,
an Anglo-American public opinion lobby. As Adams began to develop
these societies, while Lee worked in London as the lobbyist for Massachu-
setts, he avoided the controversy associated with use of the name “Bill of
Rights Society” by adopting a name with which Americans already had become comfortable: committees of correspondence (Brown 1970,45-48).

The Rebellion Matures

The evolution of the movement for resisting London’s colonial trade and taxation policies into one for American independence presents increasingly thorny definitional problems. Although obviously the colonial assemblies and towns were governmental in nature and thus would ordinarily be excluded from classification as interest groups, they acted well outside of the authority conferred by the British government when taking such actions as organizing intercolonial committees of correspondence (1772-74) or convening the First Continental Congress (1774).

Of course, the question of how much autonomy the colonies had was the very essence of their ongoing dispute with the British government, and eventually the colonists attempted to resolve the impasse by claiming total autonomy. Prior to this, however, the colonies stayed just that way, that is, within the British domain, even if only just within it. Thus, the extralegal actions of the colonial assemblies and towns — that is, those not authorized by the British government — were interest group activity up to the point that the revolutionary governments were established.

Definitional problems aside, there now was more organized political activity of an indisputably private nature afoot than ever before; the American interest group system never lost the pattern of steady — sometimes even prodigious — growth that was initially spurred by Parliament’s consideration of the Sugar Act in 1763. A particular notoriety is attributed to the interest group that held the Boston Tea Party of 1773 (which provoked London into a showdown) by scholar Karl Schriftgiesser, who called it “the first pressure group in this country to attain immortality.”

One of the ironies of the era is that as the rebels assumed more and more governmental authority, they inevitably became the targets of interest group pressure, and with the emergence of a nascent nationality immediately came interest group activity to match. Consider, for example, the experience of the Massachusetts delegates to the First Continental Congress, who were lobbied thrice while en route to Philadelphia: by merchants, a local committee of correspondence, and the resistance coordinating committee of New York City (Schlesinger 1957,405-407; Montross 1950, 31). While the Congress was still in session, the delega-
tion was lobbied once again: a committee of interest group representatives from several colonies headed by Baptist minister Isaac Backus of Massachusetts obtained an audience. The committee initially intended to lobby the entire Congress, but decided against it on the advice of John Adams. The sophistication of the committee’s organization went beyond crossing colonial boundaries: it was not only intercolonial — it was also interdenominational (Hovey 1972, 203-213; Mecklin 1934, 202-205; Douglass 1965,140-141; McLoughlin 1967,128-133; McLoughlin 1979,Vol. 2,912-913). Disappointed with the results of their lobbying effort, in 1775 the Baptists contemplated a “Continental Congress of Baptists” and, in 1776, one of all Christian denominations (McLoughlin 1967,137-138).

State Campaigns After the Declaration

The former colonies — now states — had no sooner set up their own government shop than interest groups began to lobby them.

The most impressive interest group campaign at the state level in the early independence era was commenced in Virginia in 1776. The campaign attempted to capitalize on the recent break with England by proposing the disestablishment of the Church of England and the reduction of restrictions on dissenting religious sects. Over the years, those sects, and the interest groups that they formed, had been increasingly assertive. For example, in 1772 they killed a toleration bill before the Virginia assembly because it would prohibit evening meetings (Lingley 1910,190-197; James 1971,29-67; Bailey 1979,150-152).

The cornerstone of the effort in 1776 was the submission of petitions to the House of Delegates seeking disestablishment. The most impressive of these, which was from the Baptists, was 200 feet long and had 10,000 signatures (Little 1938,489; James 1971,68-75; Singleton 1985,158-161; Bailey 1979,153; Mecklin 1934,264-268; Ryland 1955,99-101). A Presbyterian petition that was presented to the assembly may have been drafted by James Madison, a new member of the Virginia assembly who was already in the forefront on the issue (Ketcham 1990,71-76; Brant 1941,293-298). The Anglicans were slow to react, and eventually mounted only a relatively weak counter-effort (James 1971,75-78; Bailey 1979,153). By 1779 this neglect would prove to be fatal to continuing the establishment.

The dissenter interest groups pressured the legislature in the ensuing years for additional measures, such as a successful effort to obtain recognition of marriages performed by dissenting ministers (James 1971,84-100,112-121; Bailey 1979,53-154; Mecklin 1934,268-277). These matters came to a head in 1784 when a bill providing for a tax on Virginians for the support of the former Church of England, now the Episcopal Church, seemed likely to clear the House of Delegates following a petition campaign on its behalf; no opposing petitions had been received. When it
decided to postpone final action until the next year, the House invited Virginians to express their sentiments on the matter (Singleton 1985, 157-166; Brant 1948, 322-323, 343-347; James 1971, 122-133; Bailey 1979, 153-154; Mecklin 1934, 271-278).

The opponents of the measure took this opportunity to organize their own petition campaign. Madison, back in the state legislature after a stint in Congress, drafted the best known of these petitions, his "Memorial and Remonstrance." It was printed in newspapers across Virginia and contributed to an eventual disparity in the signatures on petitions presented to the state legislature of about 11,000 to 1,200 in favor of Madison's coalition. The momentum of the campaign was enough to defeat the general assessment bill and then some; Madison also dusted off and passed the bill for religious liberty that was drafted in 1779 by Thomas Jefferson, who now was in France (Hutchinson 1962-, Vol. 8, 295-298; Bailey 1979, 154-158; Lingley 1910, 190-211; Singleton 1985, 166-168; Pfeffer 1988, 283-312).

Another impressive early interest group campaign at the state level was the continuation of the debt relief movement centered in western Massachusetts, which grew out of various conventions first held in 1774 to protest against the British. The courts' role in debt collection continued to be the target of protests utilizing such tactics as interstate conventions, petitions, and mobs following the conversion of Massachusetts into a sovereign state in 1775-1776. This effort was sustained until early 1787, when it erupted into a full-fledged revolutionary movement in which 1,100 armed men, mostly farmers, assaulted the state arsenal and were routed by the state militia. This was Shays' Rebellion.

**Lobbying Congress**

During this era there were two particularly significant interest group campaigns to influence the Continental Congress.

**Land Speculation Companies**

In its initial phase, the first of these two campaigns involved land speculation companies, often with overlapping investors and claims, that were intent upon establishing their ownership of land on the western frontier, especially in the Ohio River Valley. Their political difficulties stemmed from the refusal of the State of Virginia, which claimed jurisdiction over the land under the terms of its colonial charter and had the strongest jurisdictional claim of any state, to recognize their titles. The land companies were not outside their element when it came to politics, however, for their very origins were in lobbying campaigns.

A group of political entrepreneurs that included Benjamin Franklin and his son, William, formed three overlapping organizations in 1763: traders, or their successors in interest, who claimed losses from Indian raids during the recent wars and were eventually organized as the Suf-
fering Traders and the Illinois and Indiana land companies. After lobbying
in London produced neither monetary compensation nor land grants
from the Crown (Abernethy 1959, 22-33; Lewis 1941, 19-59; Philbrick
1965, 28, 35), the two land companies made large land "purchases" from
Native American tribes.

In 1768 the Indiana Co. negotiated a treaty with the Six Nations of
the Iroquois to receive, as compensation for losses suffered by traders at
the hands of other tribes led by Pontiac, nearly two million acres of land
south of the Ohio River in what now is West Virginia. This eventually
became associated with a larger claim that included this same land that
was asserted by the Vandalia Co., also known as the Walpole or Grand
Ohio Co., which had successfully lobbied the Crown for a grant of land
that included that claimed by the Indiana Co. The claims of the Vandalia
Co. effectively collapsed with the break between Great Britain and the
United States (Livermore 1968, 113-115; Lewis 1941, 59-154; Abernethy
1959, 36-58; Bailey 1939, 233-249).

The Illinois Co. purchased two tracts of land from the Illinois tribe
along the Mississippi River and north of the Ohio in 1773 (Abernethy
1959, 28-30, 118; Philbrick 1965, 16, 28, 42). A later spin-off of this group was
the Wabash Co., which purchased lands to the east in 1775 from Native
Americans. When the Illinois and Wabash companies merged in 1779,
together they laid claim to some 60 million acres (Smith 1956, 160;
Abernethy 1959, 93-194, 202; Philbrick 1965, 42).

Thus, with the break of 1775-1776 it was a natural step for these com-
panies to begin to lobby the Continental Congress. The investors of the
Illinois, Wabash, and Indiana companies were a veritable who's-who of
political influentials in the "landless" states of Pennsylvania, Maryland,
and New Jersey, plus a few others. This was due, in part, to such tactics
as the gift of stock made in 1775 by the Illinois Co. to nine congressional
delegates (Abernethy 1959, 121-122). The Illinois-Wabash Co. set aside 12
per cent of its shares "for purposes most conducive to the [company's]
general interest" (Smith 1956, 160).

Not surprisingly, the investors in one or more of these companies soon
included such political luminaries as Charles Carroll of Maryland (Con-
gress, 1776-1778); Samuel Chase of Maryland (Congress, 1774-1778, 1784,
1785); Silas Deane of Connecticut (Congress, 1774-1776); Benjamin
Franklin of Pennsylvania (Congress, 1775); his son, William Franklin of
New Jersey (governor, 1763-1776); Joseph Galloway of Pennsylvania (Con-
gress, 1774-1775); Conrad Gerard (French minister to the U.S., 1778-1779);
Patrick Henry of Virginia (Congress, 1774-1776, governor, 1776-1779, 1784-
1786); Thomas Johnson of Maryland (Congress, 1774-1777, governor, 1777-
1779); William Johnson of New York (superintendent of Indian affairs,
1755-1774); Henry Moore of New York (governor, 1765-1769); Robert
Morris of Pennsylvania (Congress, 1776-1778, congressional superinten­dent of finance, 1781-1784; William Paca of Maryland (Congress, 1774-1779, governor 1782-1785); George Ross of Pennsylvania (Congress, 1774-1777); James Smith of Pennsylvania (Congress, 1776-1778); Samuel Wharton of Delaware (Congress, 1782-1783); Thomas Wharton of Penn­sylvania (state council president, 1776-1777); and James Wilson of Penn­sylvania (Congress, 1775-1777, 1782, 1783, 1785-1787). And these were· only the investors who had been made public (Jensen 1940, 211-212; Jensen 1939, 325; Jensen 1936, 38-39; Abernethy 1959, 29-30, 121-122, 142, 193-194, 210-211). While serving in Congress, Wilson took a fee in 1776 to ren­der an opinion that was favorable to the Indiana Co.'s title claims. He became president of the Illinois-Wabash Co. in 1780 (Jensen 1939, 327; Abernethy 1959, 143-144, 154; Smith 1956, 160).

When he returned from London and entered Congress in 1775, Ben­jamin Franklin proposed a draft of confederation that implied congres­sional jurisdiction over the western lands. However, Virginia and the other "landed" states, with the assistance of New England, were able to pre­vent the inclusion of a congressional jurisdiction provision in the draft of the Articles of Confederation that was submitted to the states in late 1777. By 1779, however, the leaders of Maryland, the only state that had not ratified the Articles, were making clear their willingness to hold out in­definitely unless Virginia relinquished jurisdiction over its western lands. The Virginia assembly, which had been receiving (and ignoring) peti­tions from the Illinois, Wabash, and Indiana companies since 1776, then invited them to present their case at a joint session. Before the hearing, the Indiana Co. was careful to first spread some stock and legal retainers among such prominent Virginians as Edmund Randolph (attorney gen­eral, 1776-86; Congress, 1779-82; governor, 1786-88) and William Grayson (state assembly, 1784-85 and 1788; Congress, 1785-1787). (Jensen 1940, 206-208; Lewis 1941, 199-216)

However, this strategy was not successful. After the hearings, the legis­lature declared invalid all land titles based on purchases from Indians. To stave off ruin, the Indiana Co. tried, but failed, to get a consolation grant of land similar to that given earlier to the Henderson Co. by Vir­ginia and North Carolina. The legislature also declared invalid all land grants made by the Crown, which finally ruined whatever hopes were left for the old Ohio Co. under its grant of 1749. George Mason, a mem­ber of the assembly who doubled as the lobbyist for the Ohio Co., was unable to obtain even a hearing for the company, which claimed much of the same land as the Indiana Co. but had never been able to perfect its title through the required surveys. However, Mason did present the case against the Indiana Co. in the assembly, sponsored the land legislation adopted by the assembly that year, and was the primary author of
Virginia's subsequent complementary proposal to Congress for resolving the western land problem. The Ohio Co.'s old political rival, the Loyal Co., benefited the most from Virginia's policies and also had lobbyists who were active before the state assembly during the critical decisions of 1779 (Rowland 1964, Vol. 1,333-336; Rutland 1970, Vol. 2,549-550; Brant 1948,92-93; Lewis 1941,217-218; Sosin 1967,153-158; Jensen 1940,208-209; Abernethy 1959, 217-229; Bailey 1939,253-279; James 1959,165-170). Virginia moved immediately to open a land office to accommodate western land purchases, which set the stage for a renewal of the lobbying campaigns directed at Congress.

The British invasion of the lower Atlantic coast in 1780 imparted fresh incentive to resolve the standoff. In 1781, it finally was agreed that Maryland would ratify the Articles and Virginia would cede its lands north and west of the Ohio River. However, Virginia retained the conditions that it had attached to its earlier cession, one of which was that the land would be under the control of Congress and used to create new states rather than to add to the territory of existing states. Another condition was that the titles from Indian purchases be declared void, which cleared the way for confirmation of the titles of the competing Virginia speculators. This delayed acceptance of the cession by Congress and set off a flurry of petitions to that body. As historian Irving Brant has noted, this was "a notice of congressional jurisdiction in Western affairs."

Although the land speculation companies were hardly the only factor accounting for the congressional politics of the time, even on the western lands, their lobbying was significant enough that in 1782 Arthur Lee of Virginia wrote to fellow congressional delegate Samuel Adams of Massachusetts that "these Agents [of land companies] are using every art to seduce us and to sow dissention among the States, I think they are more dangerous than the Enemy's Arms" (Burnett 1963, Vol. 6,331).

Another indication of the new authority of Congress over western lands was the submission in 1782 of the boundary dispute between Pennsylvania and Connecticut that underlay the Wyoming Valley land title disputes to a court convened under Article IX of the Articles of Confederation, which was the only case ever decided under this provision for resolving disputes between states (Boyd and Taylor 1930-1971, Vol.7,xx-xxxiii). The extent to which the State of Connecticut's position on the matter was tied to that of land speculators is reflected in the payment by the Susquehannah and Delaware land companies of half of the state's legal costs in the matter and their hiring as their own agents the same men who represented the state government in the litigation. Wilson, of the Illinois-Wabash Co., was one of the attorneys hired to represent the State of Pennsylvania (Boyd and Taylor 1930-1971, Vol. 7,xi,35-136; Smith 1956,171-177). Jurisdiction over the disputed area was awarded to Pennsylvania by the Article IX
court. However, many of the Wyoming Valley settlers who had bought land from the Susquehannah Company still refused to move, and much blood was shed. Pennsylvania finally put the matter to rest in 1787 by confirming those titles on lands settled prior to 1782.

Acceptance by Congress of the land cessions of the landed states, which was essentially on the terms proposed by Virginia, did not come until 1783. While acceptance resolved many of the land title controversies, it also created a vast national domain that was at the disposition of Congress and initiated the second phase of the land speculators' lobbying of Congress, which involved competing for grants from Congress.

Investors immediately began to form new land companies to capitalize on these opportunities, the most successful of which was the Ohio Company of Associates. One of the first acts of the company after its organizational meeting in 1786 was to hire Samuel Holden Parsons to lobby Congress for a western land purchase on favorable terms. Parsons was ineffective, but his replacement, Manasseh Cutler, was quite successful.

Cutler allied himself with William Duer, a former member of Congress (1777-78) who was the secretary of the U.S. treasury board. Cutler and Duer became so optimistic about their lobbying prospects that instead of the original objective, congressional agreement to sell 1.5 million acres at the statutory price of $1 each, they sought to buy 5 million acres at $.67 each for the Ohio Company of Associates in what is now southeastern Ohio plus an option on another 3.5 million acres at the same price for yet another new group of investors. A Congress that was hungry for capital agreed, and even allowed the Ohio Company of Associates to pay only half of the purchase price down and the other half when the land survey was completed. Additionally, payment could be made in government securities worth about 12 per cent of face value (Myers 1983,107-110; Davis 1917, Vol. 1,130-138; Belote 1971,12-21; Cutler and Cutler 1888, Vol. 1,228-242,292-305; Roseboom 1976, Vol. 5,43-144).

The terms of this deal were worked out at the same time as the details of the Northwest Ordinance of 1787, described by historian Richard B. Morris as "the most important piece of legislation ever enacted by the Congress of the Confederation." Cutler drafted much of the ordinance, perhaps including its prohibition of slavery in the Northwest Territory (Finkelman 1989,8-71; Cutler and Cutler 1888, Vol. 1,242,292-305).

In order to gain a key ally, Cutler also successfully proposed that Arthur St. Clair, the president of Congress, be named as the first governor of the new Ohio Territory (Davis 1917, Vol. 1,134; Cutler and Cutler 1888, Vol. 1,288,301; Morris 1987,229).

Public Creditors

From the time that he was appointed as the superintendent of finance
by Congress in 1781, Robert Morris was determined to raise money for the war effort. First he stopped paying interest on loans to Congress and salary to the soldiers of the Continental Army at least partly because he hoped that this would build enough public support to bring about an increase in public revenue (Morris 1987,41; Ferguson 1961,140-143,149). When that did not succeed, in 1782 he organized a committee of public creditors in Philadelphia that was assigned the task of circulating in all of the states written materials that advocated lobbying for public revenue increases. Organized activity by public creditors then occurred in New Jersey, Connecticut, New Hampshire, and, most notably, New York. The New York group, which was organized by Alexander Hamilton, among others, resolved to promote conventions of public creditors in each of the counties of the state, in each of the states, and nationally. However, these conventions were never organized (Ferguson and Catanzariti 1973, Vol. 5,47,200,357,398-399,483-484,495,514,548-549,588-589,598, Vol. 6,xxxix, xxxvii,36,48-51,53-54,56,62,82, 235,603-604,657,695-697, and Vol. 7,xxxvii-xxx, xxxv,142-146,332, 366,413-414,417-418,426,468,513; Ver Steeg 1954,156,172; Ferguson 1961,148-152; Jensen 1950, pp.66-67; Syrett and others 1961-1987, Vol. 3,71-177,290-293; McDonald 1982,44; Gerlach 1987,483-484).

This omission may have been due to the sudden presentation of what appeared to be a better opportunity: a deputation of army officers came to Congress with a threatening petition demanding financial relief. This was by no means the first lobbying effort by army officers: an organization formed by virtually all of the generals had successfully petitioned Congress in 1779-80 for half-pay for life for all officers who finished out the war (Myers 1983,3-5).

Hamilton, who had just entered Congress, and Gouverneur Morris, a former member of Congress (1777-78) who now was the assistant congressional superintendent of finance, worked to coordinate the officers’ lobbying with that of the other public creditors’ groups (Henderson 1974,332-334; Ferguson 1961,157-160; Miller 1959,92-97; Myers 1983,6-10; McDonald 1982,44-47; Skeen 1974,274-275;Kohn 1970,193-194). Soon the officers threatened to refuse to disband, the war now being all but over. In a private letter, Gouverneur Morris wrote:

The army have swords in their hands. You know enough of mankind to know much more than I have said and possibly much more than they themselves yet think of. . .although I think it probable that much of convulsion will ensue, yet it must terminate in giving the government that power without which government is but a name. . .On the wisdom of the present moment depends more than is easily imagined and when I look round for the actors — let us change the subject (Morris 1980,485-486).
Commander-in-chief Washington had been slow to learn of the threat, which he believed had been “managed with great Art.” He attended the famous meeting of the officers at Newburgh, N.Y., in early 1783 despite his lack of an invitation and quieted the scheme with a simple but devastatingly effective emotional appeal (Fitzpatrick 1931, Vol. 26,216-217; Kohn 1970,202-212; Myers 1983,2,10-13; Flexner 1965,500-508; Flexner 1969,234-235).

A month after the showdown at Newburgh, and just before the army disbanded, many of the same officers organized the Society of the Cincinnati, a national officers’ organization whose activities were to include lobbying for the compensation of the war’s veterans. Washington was selected as its first president. Two months later, Congress was petitioned, unsuccessfully, to grant western lands to the recent war’s officers by 285 officers; 87 per cent of them became members of the Society. By the end of 1783, the Society had organized chapters in all 13 states (Myers 1983,15-19,25,31-34).

In the Society of the Cincinnati, the United States had its first national interest group of any permanence. It was, essentially, the only national organization of any type other than Congress (McDonald 1965,33; Myers 1983,ix,92; Flexner 1969, 66).

The Society immediately proved to be controversial, both externally and internally. Public meetings that criticized the Society and its potential influence occurred in Connecticut and Rhode Island and criticism was heard in several state legislatures (Jensen 1950,262-264; Myers 1983,50-52). At the Society’s first national convention, in Philadelphia in 1784, Washington proposed seven changes to the Society’s constitution, including a deletion of all references to political activity. However, the titular ban on political activity often was ignored and the changes were not ratified by the state chapters until 16 years later (Ferling 1988,348-349; Myers 1983,58-63,77-81). The extent of the political connections of the Society’s 2,300 members is evident in this statistic: they comprised 21 of the 55 delegates who attended the Constitutional Convention of 1787 (Myers 1983,97).

**The Push for a National Commerce Power**

The movement that resulted in the adoption of the U.S. Constitution was fueled, in significant part, by interest groups that came forward to press for the adoption of a national power over commerce.

In 1784 a Philadelphia merchants’ committee led by Tench Coxe began to organize a statewide chamber of commerce and a national campaign to promote business. One of its first efforts was to convince both the Pennsylvania assembly and a congressional committee formed at the group’s request to endorse greater congressional power over navigation and foreign trade. When Congress moved from Trenton to New York
City in early 1785, it was met by an address from "the Artificers, Tradesmen, and Mechanics of the city" and two petitions from the local Chamber of Commerce requesting such a measure. In response to the petition, the assembly endorsed the idea. The participants in a Boston merchants' group elected John Hancock, recently the governor, as its chair and agreed to organize the rest of the state behind the cause and petition Congress. There also was a second Boston group, the Association of Tradesmen and Manufacturers of the Town of Boston, which began to contact similar organizations in other cities; answers were received from Newport, New Haven, New London, Hartford, Baltimore, and Charleston. The Charleston Chamber of Commerce soon received communications on the issue from both the New York Chamber of Commerce and the Boston merchants' group, following which it endorsed the idea and sent a petition to the state legislature (Crosskey and Jeffrey 1980, 166-183, 203-205, 237; Morris 1946, 203-204; Morris 1987, 151; McDonald 1992, 378; Kornblith 1988, 355; Cooke 1978, 2-74; Beard 1986, 40-41; Steffen 1984, 82-84).

There was other interest group activity that took a less direct route and that arguably had as much eventual effect on the form and nature of American national government. Upon Washington's resignation as commander-in-chief of the Continental Army, he resumed a private life which included the promotion of his long-standing dream to build a canal on the Potomac River that would link the drainage of the Chesapeake Bay with that of the Ohio River. In 1785 he successfully lobbied the legislatures of Maryland and Virginia to grant a charter to the Potomac Canal Co., of which he became the first president. He served as either the company's president or board chairman until his death in 1799 (Ambler 1936, 187-190; Woodward 1926, 396-397; Dorfman 1947, Vol. 1, 248-251; Ferling 1988, 333-334; Flexner 1969, 73-77; Brant 1948, 365-374; Bacon-Foster 1912, 33-60).

At the suggestion of Washington, Thomas Jefferson, and Madison, the state legislatures of Maryland and Virginia called a convention in the spring of 1785 to discuss how they might share the Potomac River and Chesapeake Bay. Washington capitalized on confusion concerning the arrangements for the meeting to score a lobbyist's coup: he convinced the delegates to make use of his estate at Mount Vernon. Later, the delegates cooperatively endorsed the proposed Potomac canal in their report on the convention to their legislatures. The convention was important to the movement for a national commerce power because the participants agreed to meet again, following which the Maryland legislature decided to also invite the other two states whose participation in a Potomac canal would be desirable, Pennsylvania and Delaware (Hendrick 1937, 11-13, 50-54; Rowland 1964, Vol. 2, 81-82; Crosskey and Jeffrey 1980, 219, 221, 225-229; Dorfman 1941, 248-251; Flexner 1969, 73-77, 89-90; Jackson and Twohig 1976-1979, Vol. 4, 107-108, 140; Ketcham 1990, 169-170;
The Virginia legislature then topped even that, extending invitations to all 13 states to what became known as the Annapolis Convention of 1786, whose delegates convinced the Continental Congress to convene the Philadelphia Convention of 1787. It is for this, as well as its support of interstate commercial cooperation, that the report of the Mount Vernon Convention, shaped significantly by Washington, one of the first "super-lobbyists," has been termed by Burton J. Hendrick as "next to the Constitution itself, the most historic paper in our constitutional history."

The push for the Annapolis Convention was fueled in Virginia later that year by additional interest group pressures there for a national commerce power. In November 1785 alone, the state assembly received five petitions supporting such a measure. After the Constitution was submitted to the states in 1787, interest groups such as these were important supporters of ratification (Crosskey and Jeffrey 1980, 221-222).

Interest Groups and the Constitutional Convention

The relative lack of interest group pressures at the constitutional convention of 1787 is due, in large part, to the secretive nature of the proceedings, and that appears to have been much the purpose of the secrecy. Judging by the apparent relative lack of interest group influence at the convention, the attempt to insulate the delegates was about as successful as could have been hoped.

Of course, virtually all of the delegates to the convention had interest group affiliations of one sort or another, and most had several. However, they do not appear to have overtly injected these affiliations into their roles as delegates; if they did, no documentary record appears to have been left. Even Charles A. Beard, who made his famous argument in 1913 that the delegates were primarily influenced in their decisions by their comparative knowledge of and affection for reality versus personality, did not describe any organizational activity by the delegates (Beard 1992, 73-151).

Even the Society of the Cincinnati, with its 21 members among the delegates to the convention, was mentioned only twice on the record, and at the time the Society was holding its second national convention elsewhere in Philadelphia. Recognizing the delicacy of the situation, Washington did not participate in the Society's meeting despite being its president, limiting himself to a single dinner with its members. The Cincinnati who were delegates to the constitutional convention did not vote there as a bloc (Daves 1925, Vol. 1; Myers 1983, 91-100; Farrand 1937, Vol. 2, 114, 119).

Although it is common to assert the effect that Shays' Rebellion (1786-87) had on the convention, this effect did not ensue from any direct attempt to influence the delegates.
The only general category of interest group that made anything resembling a concerted effort to lobby the constitutional convention was the anti-slavery societies, and they were decidedly ineffective despite having influential members of their own among the delegates.

Standing abolitionist societies were just beginning to appear on the political scene. The first of these displayed what may almost be termed the classic American pattern: the Pennsylvania Abolition Society was organized in Philadelphia (in 1774, and reorganized in 1787) and Benjamin Franklin was its president; Benjamin Rush and Coxe also were officers. It soon convinced the state legislature to move toward the gradual emancipation of slaves. The second such group, the New York Society for Promoting the Manumission of Slaves, was formed in 1785 with John Jay as its president and Alexander Hamilton its secretary. The group lobbied the state legislature, unsuccessfully for many years, for abolition (Jensen 1950, pp. 135-136; Zilversmit 1967,125,147-151,159-163; Syrett and others 1961-1987, Vol. 3,597,604,654; Van Doren 1938,774-775; Cooke 1978,92-93; Bruns 1977,84-385,504-506,512-515).

Of course, opposition to abolition was even stronger in the South than in Pennsylvania or New York. In Virginia, a 1782 statute permitting manumission in some circumstances and petitions for emancipation submitted by Methodists to the Virginia assembly in 1784-85 prompted an impressive backlash in 1785 in the form of proslavery petitions with 1,244 signatures (Schmidt and Wilhelm 1973,133-146; Morris 1987,181; Bailey 1939, 123-124; runs 1977,506-507).

The explosiveness of the issue was offered by Franklin and Hamilton, both of whom were delegates, to explain why they squelched the lobbying efforts of the abolition societies of which they were officers. When Franklin, who, at that point, had only lent the considerable prestige of his name to the society without actively participating, was asked by the Pennsylvania society to present to the convention a petition to abolish the slave trade, he suggested that it be let to “lie over for the present.” While temporarily away from the convention in New York, Hamilton persuaded the society there to forego submitting an antislavery petition that Jay had drafted (Dillon 1974,15-17; Zilversmit 1967,166; Drake 1950,101-102; Morris 1987,181; Cooke 1978,93,110; Morris 1985,192-194; Finkelman 1987,188-226).

There may well have been more interest group lobbying at the convention than can easily be detailed. For example, Coxe lobbied the delegates to support a strong national power over commerce even while leading the formation of the Pennsylvania Society for the Encouragement of Manufactures and the Useful Arts, the functions of which included lobbying. Coxe also demonstrates that organizational affiliations can work both ways: he also lobbied the delegates against the presenta-
tion of the antislavery petition of the Pennsylvania Abolition Society of which he, too, was an officer (Coxe 1982,33-62; Cooke 1978,92-93,102-108,110). One interest group lobbyist who did make an appearance in that capacity was Manasseh Cutler of the Ohio Company of Associates, who still was orchestrating his congressional triumph in New York (Cut­

The Ratification Campaign

The news blackout that was imposed by the Philadelphia convention of 1787 began to show holes even before adjournment in September. Re­
ports of the proceedings leaked by the allies of New York Gov. George Clinton led to the publication of various newspaper articles that criti­
cized the proposed constitution even while it still was being written. After adjournment but before the delegates dispersed, some of the supporters of ratification began to confer concerning a coordinated strategy, thus launching what became one of the most significant interest group cam­
paigns in American history.

Disputes about the nature of the organization formed by the federal­
ists to advocate ratification usually focus on whether it was a political party. However, the federalists were not a political party, as no “Federal­
ist” candidates were nominated for either the state ratifying conventions or any other public office. The candidates in the popular elections for the state ratifying conventions often indicated where they stood on ratification, but they did not claim to be the candidate of a political party.

Neither can the federalist organization have been a precursor of political parties, since a legislative bloc did not play an important role in it. For example, of the authors of The Federalist — Madison, Hamilton, and, until he took ill, Jay — only Madison was even a member of a legislature, having been returned to Congress in late 1786. Madison’s work for the federalists was outside the scope of his duties as a delegate to Congress, which merely submitted the proposed Constitution to the states for ratification without an endorsement and met only occasionally while the federalist braintrust operated. Neither was this work within the scope of the duties of Hamilton and Madison as delegates to the constitutional convention, which had adjourned. Nor was it within the scope of being a delegate to a state ratifying convention, as which they all served; the elections for the conventions had not yet been held.

Scholarly recognition of the federalists as an interest group is rare. A clear explanation of the basis of the classification is even more rare. David B. Truman, for example, seems to base it on the federalists’ work in the state ratifying conventions. However, the ratifying convention delegates were public officials and so this particular portion of the ratification cam­
campaign was public activity, that is, it was not interest group activity.

In any case, while in New York City during the fall and winter of 1787-1788, the supporters of ratification met regularly. Together, they acted as a national coordinating committee for the pro-ratification forces, passing on all sorts of information, including their suggestions for strategy. In order to marshal the arguments for ratification, Jay, Hamilton, and Madison wrote the series of newspaper pieces that became, collectively, *The Federalist*. Madison, of course, wrote *Federalist 10*, the first important discussion of American interest groups. The more interesting aspects of the federalist organization include a pony express between Poughkeepsie, the site of the New York convention and Hamilton’s coordinating efforts, and other convention sites (Jensen and others 1976, Vol. 10,1572,1672-1675,1723-1725).

The antifederalists also formed a national interest group, coordinated on Clinton’s behalf by John Lamb, an organizer of the Sons of Liberty in New York a quarter-century earlier and a general during the War of Independence (Leake 1971,304-336; McDonald 1965,213,222,224-226; Boyd 1979,128; Ross 1933,555-556; Main 1964,221,226,235-236,244,252; Jensen and others 1976, Vol. 9,788-793,811-829,845-846, and Vol. 10,1547n,1572,1589-1590,1630). The antifederalists had their own pony express system (Jensen and others 1976, Vol. 9,845-846, and Vol. 10,1589n).

Interest groups were active during the popular elections for the state ratifying conventions. For example, Madison left New York in order to campaign for election as a delegate to the Virginia ratifying convention after learning that his old supporters, the Baptists of Orange County, were upset that the proposed constitution neglected to guarantee religious liberty. On his way home, he visited John Leland, a prominent Baptist minister who had petitioned against ratification. Although Leland and the Virginia Baptist organization remained opponents of ratification, he was converted enough by Madison to withdraw himself as a candidate and endorse Madison (Hutchinson and others 1962-, Vol. 10,515-516,540-542; Ketcham 1990,250-251; Ryland 1955,133-134; Mecklin 1934,150-158; Jensen and others 1976, Vol. 8,424-427, and Vol. 9,596n). The mechanics’ association of Baltimore successfully supported a federalist candidate there (Steffen 1984,90-92).

Predictably, various group petitions were sent to the conventions in New Jersey (McDonald 1992,123), Delaware (Jensen and others 1976, Vol. 3,107-108), and Pennsylvania (Jensen and others 1976, Vol. 2,298-299,309-311,316-319). Group petitions supporting ratification were sent to the state assembly in Delaware (Jensen and others 1976, Vol. 3,54-55) and New Jersey (Jensen and others 1976, Vol. 3,135-137) before there even was a chance to organize the ratifying convention.

*Ad hoc* citizens’ groups were formed. In Massachusetts, a mass federal-
ist rally was staged in Boston for the sole purpose of gaining the endorsement of Samuel Adams, who was a delegate, and Boston’s tradesmen endorsed the Constitution in a mass meeting (Wright 1961; 174; McDonald 1965, 216; Jensen and others 1976, Vol. 15, 289-295. In Pennsylvania, several local antifederalist societies were formed, and Coxe, James Wilson, and Rush formed the federalist coordinating committee (Cooke 1978, 111; Jensen and others 1976, Vol. 2, 306-309, 695-696). In Virginia, a federalist society was formed in Berkeley County (Jensen and others 1976, Vol. 8, 3, 22).15

Standing organizations of one sort or another also debated or expounded upon the merits of the proposed Constitution. In Connecticut, the Congregational clergy of New Haven County endorsed the Constitution (Jensen and others 1976, Vol. 3, 351). In Virginia, the issue was discussed by the aforementioned Baptists, the Union Society of Richmond, the Danville (Ken.) Political Club, the “court party” of Danville (Ken.), Washington County’s Society of Western Gentlemen, and the Political Society of Richmond (Jensen and others 1976, Vol. 8, 3, 170-173, 292, 408-417, 433-436, 472-474, Vol. 9, 769-779, and Vol. 15, 561-562). In North Carolina, a Baptist minister denounced the Constitution to his congregation (McDonald 1992, 311). In New Jersey, the Newark Society for Promoting Useful Knowledge endorsed it (Jensen and others 1976, Vol. 3, 135). In Pennsylvania, the Philadelphia Baptists’ Association endorsed it, too (Jensen and others 1976, Vol. 8, 374-375).

The other means by which interest groups communicated their views on the proposed Constitution were varied. Of course, everywhere there were pamphlets and newspaper articles. In New Hampshire, federalist riders were dispatched to the remote corners to promote ratification (McDonald 1965, 220). In New York, antifederalists conducted effigy parades (Gilje 1987, 97).

There also was violence. In New York, 18 were injured when rival parades of federalists and antifederalists in Albany came to blows (Miller 1959, 212). In Pennsylvania, a federalist crowd literally dragged two assembly delegates into session at Philadelphia in order to obtain a quorum for the purpose of organizing the elections for the ratification convention, a mob threw stones through the windows of a Philadelphia boarding house that was popular with antifederalist delegates, and there were eight reported fatalities from a battle between the two sides in Washington County (Van Doren 1948, 180, 182; Beard 1992, 231-232; Cooke 1978, 151; McDonald 1992, 164; Jensen and others 1976, Vol. 2, 104, 110n, 713n). Even adjournment by a state’s ratifying convention did not necessarily end the interest group activity there. In Pennsylvania, petitions with 6,005 signatures were presented to the state legislature requesting that the ratifying convention’s approval of the Constitution be reversed and the state’s delegates to the Congress be instructed to resist its adoption. The feder-
alists, apparently happy enough with the convention's action, gathered only 31 opposing signatures (Boyd 1979, 123-137; Jensen and others 1976, Vol. 2, 709-725; Morris 1987, 302). In North Carolina, ratification supporters who were disappointed with the first convention's rejection of the Constitution started a successful statewide petition campaign to convince the legislature to call a second convention (McDonald 1992, 312).

Conclusion

The ambiguity of the authority of Parliament to adopt and enforce the colonial policies that proved to be so unpopular in America spurred many Americans to form and join interest groups in unprecedented numbers during the first part of the 1763-89 period.

The assertion of a new domestic constitutional authority to replace that which was denied to the British also stimulated interest group activity. Suddenly, there were new possibilities to be achieved through interest group initiatives such as increased religious liberty and land ownership. Land speculation, especially, served to affect the new constitutional arrangements by fueling the competition for authority between the states and Congress.

The western land cessions notwithstanding, the national constitutional authority over commerce remained so weak that many interests associated with commerce agitated on behalf of an improvement, leading to the drafting and ratification of the Constitution itself.

Even as the constitutional arrangements were being shuffled, there was a corresponding rearrangement of nonpolitical organizational relationships. In part this resulted from the split between America and Britain, as the various trans-Atlantic organizational partnerships necessarily were reconfigured during the war. It also resulted from a significant increase during the period of the tendency to form organizations of all types; in this sense, what occurred was not so much a rearrangement as it was a blossoming of general organizational activity.

Notes

1. Definition of the term “interest group” has been imprecise and inconsistent among all branches of the social sciences. It is defined here as a private organization that seeks to influence governmental policy but does not nominate candidates for public office—i.e., is not a political party. See Yoho 1998.
2. It was from the platform built by the Society to observe the transit that the Declaration of Independence was first read in public, seven years later (Hindle 1956, p. 233).
3. Of course, not all petitions are from interest groups.
4. For an interesting discussion of the class patterns of participation in
these organizations, see Hoff 1991, p. 51.
5. At the peak of the resistance to the Stamp Act, the authority of those colonial institutions of government that were acting under authority from London—e.g., the governors and councils—was all but extinguished.
6. In fairness, Olson might be read as meaning to say that Wilkes created only the first public opinion lobbies in Britain, as distinct from America.
7. Revolutionary state governments were not formed in some of the colonies until 1777.
8. The other factors included the interest of the "landless" states in using the western lands to raise revenue and for grants to their military officers.
9. It is a misconception that the Tammany Society, organized in New York City in 1787, was intended to counteract the Cincinnati (Myers 1983, p. 192; Mushkat 1971, pp. 8-11).
10. The text of the report is in Conway 1963, pp. 11-15.
11. Of course, Beard's evidence, which he described as "frankly fragmentary," has been persuasively refuted by, in particular, Forrest McDonald in We the People. McDonald notes that, contrary to many characterizations of his work, Beard "carefully and explicitly denied that he was charging the members of the Convention with writing the Constitution for their personal benefit" (McDonald 1992, p. 6n).
12. The context of the references to the Society was whether its members would dominate a popular election for the American presidency.
13. A good account of the early organization of the federalists is in Ketcham 1990, pp. 232-239.
14. As to what Madison thought of interest groups, see Yoho 1995.
15. This meeting is distinguished from seven others held by the freeholders of other towns and counties for such purposes as instructing their delegates; these were arguably official assemblies of local voters rather than meetings of interest groups.

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Censorship of the Internet: The First Amendment Lost in Cyberspace

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Computer technology is changing faster than the laws governing it, raising the question of whether laws formulated to address conflicts arising in the “real world” are applicable to conflicts in “cyberspace.” This question is particularly relevant to the debate over sexually explicit material on the Internet. This article argues that because the Supreme Court’s current approach to the obscenity is not transferable to cyberspace, a different legal framework is necessary for dealing with “cybersmut.”

Largely unheard of just a few years ago, the now popular terms “Internet” and “cyberspace” refer to that “decentralized, globally networked, computer-sustained, computer-accessed, and computer-generated multidimensional, artificial, or ‘virtual’ reality in which ‘netizens’ anywhere on the planet can send and receive information almost instantly simply by ‘uploading’ and ‘downloading’ text, pictures, sounds, and video” (Schlachter, 1993, 89). Unlike traditional modes of communication, computer networks provide speed, anonymity, ease of access, and the potential to reach an immense audience to any speaker, no matter how obscure or controversial, on any topic imaginable, making the Internet, in the words of one federal judge, “a unique and wholly new medium of worldwide human communication” (American Civil Liberties Union v. Reno, 1996, 844). In fact, Americans now spend as much time “surfing the Net” as they do watching rented videotapes (Lewis, 1995, D5). It is no wonder that the American Library Association has called the Internet “the most important thing that has happened to communications since the printing press” (Lewis, 1996, D2).

Clearly, we are witnessing a remarkable transformation in the communication process, but where is the “information superhighway” taking us? Some see the Internet as promising a new dawn in human communication and productivity (see Gates, 1993). They emphasize not only the boundless capacity of the Internet for the unbridled transfer and receipt of information, but also its distinctively interactive character, which allows ideas to grow and evolve. Others fear that the Internet is an overhyped threat to human values (see Stoll, 1995). Erik Barnouw, a media historian skeptical of the euphoria surrounding the Internet, warns that “the lesson of history is that every new medium provides new opportunities for selling as well as for education, for monopolists as well as for democracy, and for abuse as well as for benefit” (Lohr, 1996, E1). More
information is not necessarily better information, and speedier communication does not necessarily advance a community's interests. Indeed, because technological innovation affects who wins and who loses in the struggle for power, it can alter political relationships among individuals, groups, and the state, thereby changing the very meaning of community. Traditionally, a "community" has been understood to be a discrete geographic site inhabited by a distinctive set of people sharing certain customs and values and working together more or less cooperatively for their mutual benefit. Changes in telecommunications have brought about a new kind of association, the "cyber-community," wherein like-minded people from scattered points around the globe come together and interact with one another despite physical distance by using their computers to exchange information. Although their members lack physical proximity, cyber-communities possess the primary attribute of a community: they are societies that people join in order to pursue common interests and enjoy mutually satisfying relationships. Cyber-communities are proliferating, but all communities inevitably experience conflict, and managing conflict requires law. At issue is whether laws formulated to address conflicts arising in the "real world" are applicable to conflicts occurring in the "cyberworld." Can new wine be poured successfully into old bottles, or do changes in communication technology require significant revision of traditional frameworks for analyzing issues concerning freedom of expression?

These questions are particularly relevant to the current debate over sex on the Internet. According to a widely selling book, computers are "the new tool, another avenue, another forum for sex" (Robinson and Tamosaitis, 1993, xvii). One study found that because people can anonymously access "adult" Internet sites from the privacy of home, often for free, "one of the largest (if not the largest) recreational applications of the users of computer networks [is] the distribution and consumption of sexually explicit imagery" (Rimm, 1995, 1861). Opponents of "cybersmut" believe that computerized erotica is abundant and can fall too easily into the hands of computer savvy children (Time, 1995, 38). They also fear that "on-line" communication facilitates the illicit market in "child pornography," for not only can pedophiles with computers network with one another to exchange pictures, they can also surreptitiously locate, converse with, and eventually prey upon unsuspecting children. Consequently, they pressured Congress to enact the Communications Decency Act of 1996 (47 U.S.C.A. sec. 223, hereinafter "CDA"), which prohibited using the Internet either to transmit or to display "indecency" to minors. Yet, content regulation and censorship are concepts derived from the traditional world of print and broadcast media. Can they be transferred to an intangible and interactive dimension?
like cyberspace, or must a different legal framework be developed to fit computer communication technology?

Although the Supreme Court invalidated the *indecency* provisions of the CDA on First Amendment grounds, it seemed to assume that traditional obscenity doctrine applies to cyber-communities in the same way that it applies to physical communities. This study argues to the contrary that the unique character of Internet communication warrants an approach to obscenity in cyberspace different from that followed by the Court for the past twenty-five years with regard to “regular space.” Part I reviews the nature of cybersmut and the provisions of the CDA while Part II explains why the CDA was found to be unconstitutional. Part III shows the problems of trying to apply the Supreme Court’s current obscenity framework to cyberspace. Given those problems, Part IV advocates an expansion of the notion of “community” so as to include cyber-communities as well as geographic communities. Part V presents an alternative framework for judging the permissibility of cybersmut based upon the nature of cyber-communities. Lastly, the conclusion offers some thoughts on the larger significance of this issue for freedom of expression in a democratic society. The study thus hopes to contribute not just to our understanding of evolving constitutional law, but also to the literature on the theory of freedom of speech and press.

**I. Cybersmut and the Communications Decency Act**

Despite the hype and hysteria surrounding the issue of cybersmut, less than 1% of material found on the Internet is sexually explicit (*New York Times*, 1995, A26), and it is dwarfed by the $8 billion Americans spend annually on tangible forms of erotica (Harmon, 1997a, A21). Still, while the quantity of such material is often overstated, it is plentiful and readily available, extending from “the modestly titillating to the hardest-core” (*American Civil Liberties Union v. Reno*, 1996, 844). “Graphic files” are the most common form of cybersmut because “scanners” make it easy to digitize photographs into high-resolution computer images. Sexually oriented jokes and stories are available in “forums” based upon topic. “Hot chat rooms” where sexually explicit messages can be exchanged between participants in “real time” are increasingly popular. One of the largest locations of cybersmut is “Usenet,” a network of more than 15,000 discussion forums known as “newsgroups” whose members daily post more than 100,000 images and messages that can be viewed, read, and responded to by other users. Sexually graphic text and images, as well as sounds and videos, are also obtainable from private “bulletin board services” (or “BBSs”), the commercial equivalent of Usenet newsgroups whose services are available only to “members” who pay a subscription fee to the service’s system operator (Huelster, 1995, 872-873). Finally, thousands of both free
and commercial adult sites exist on the World Wide Web.

Groups like the Christian Coalition, the Family Research Council, and the National Coalition for the Protection of Children and Families began lobbying Congress in 1995 to enact legislation against cybersmut. Senator James Exon (D, NB) embraced their cause, declaring that “the information superhighway should not become a red light district” (Congressional Record, February 1, 1995, S1953). Even though Senator Exon had little knowledge of how the Internet works, he became the chief sponsor of the CDA, two sections of which ultimately were declared unconstitutional. Section 223a, the “indecent transmission” provision, made it a felony punishable by a fine of up to $250,000 and a prison term of up to two years to use any telecommunication device to transmit knowingly to anyone under eighteen years of age “any comment, request, suggestion, proposal, image, or other communication, which is obscene or indecent.” Section 223d, the “patently offensive display” provision, applied the same punishment to the transmission or display of any communication that “depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs,” regardless of whether the recipient initiated the communication. The act was directed at the creators and distributors of cybersmut, not at users or access providers. In order to protect innocent third parties, it shielded commercial on-line services from liability for sexually explicit postings by their customers, and it exempted companies that merely provide transmission services, navigational tools, or intermediate storage for customers moving material from one electronic location to another.

Critics of the CDA like Jerry Berman of the Center for Democracy and Technology thought the law was trying quixotically to “design a whole city to look like Disney World” (Andrews, 1995, D7). The ability of computer users to jump quickly between thousands of different Internet sites, critics said, has blurred the distinction between sending and receiving information. They noted too that unlike television and radio the Internet is decentralized in that it has no main control point though which government could regulate content. Because the Internet can accommodate millions of speakers and publishers, as television and radio cannot, governmental control would have to be directed at an inordinate number of constantly changing BBSs, WebPages, and Usenet sites. The task of system operators trying to comply with the CDA would also be immense. The law granted them a “good faith” defense if they took “reasonable, effective, and appropriate actions” to prevent access by minors to adult material, to enable customers to block out offensive material, and to warn them about inadvertently downloading it (47 U.S.C.A. sec. 223e). Critics wondered what this nebulous standard meant and
how much Internet traffic system operators would have to examine in order to satisfy it. Even if the sheer amount of information available on the Internet did not render attempts to control it futile, they said, governmental efforts to regulate cybersmut would stifle the growth of this new medium for legitimate purposes, thereby squandering its potential for enhancing the democratic process and separating the United States from a growing global information structure.

Critics noted too that the nature of the Internet makes sexually explicit material difficult to track. Cybersmut can be disguised through a process known as “encryption” or posted through “anonymous mailers” that make it impossible to identify the sender. In any case, because the Internet is global in scope no single nation can regulate it. Much erotica is posted to the Internet from foreign countries immune from American law, and it is as available as material posted domestically. Purveyors of cybersmut based in the United States could circumvent the CDA simply by establishing Internet sites outside our borders and electronically replenish them with new material without ever leaving the country. Explains John Gilmore of the Electronic Frontier Foundation, “the Net interprets censorship as damage control and routes around it” (Lim, 1996, 319). Combating cybersmut effectively would require an international agreement (Shackelford, 1992). As Joel Perry Barlow of the Electronic Frontier Foundation concluded, the CDA was the product of “the completely clueless, trying to impose their will on a place they do not understand, using a means they do not possess” (Levy, 1995, 47). Despite these problems, Congress passed the CDA on February 1, 1996 by a vote of 414-16 in the House and 91-5 in the Senate. Seven days later, President Clinton put aside qualms about the CDA’s constitutionality and signed it in an election year gesture to families concerned with protecting their children from cybersmut.

II. The Communications Decency Act and the Courts

On the same day that the CDA took effect, twenty organizations led by the American Civil Liberties Union challenged it in federal court as a facial violation of the First Amendment on the grounds that it was vague and overly broad. A week later, a federal judge issued a temporary restraining order against the CDA, finding its “indecency” provision unconstitutionally vague but upholding its “patently offensive display” section. On June 11, 1996 a special three-judge court went further and declared the CDA’s “indecency” provision unconstitutionally overbroad under the First Amendment and its “patently offensive” standard unconstitutionally vague under the Fifth Amendment. In trying to protect children from cybersmut, the court stated, the CDA “sweeps more broadly than necessary and therefore chills the expression of adults” (American
Applying "strict scrutiny," the judges said the CDA was not the least restrictive means available to further the government's admittedly compelling interest in protecting children from cybersmut. Indeed, they feared that the law could apply to legitimate works of serious value such as films, plays, books, and art dealing with sexual themes. The judges also dismissed the CDA's supposed protection of content providers who take "reasonable, effective, and appropriate action" to restrict access to minors. There is no effective way to limit Internet sites to adults, they noted, since the ages of people on-line cannot readily be ascertained. Requiring credit cards or adult access codes in order to enter a site would impose a "significant economic cost" on non-commercial sites because they would have to pay third parties to collect and verify the information. "Tagging" indecent material would be so physically burdensome as to be cost prohibitive. Hence, content providers could avoid liability only by "constitutionally intolerable" self-censorship (American Civil Liberties Union v. Reno, 1996, 882).

Although Senator Exon predicted that the three-judge court's invalidation of the CDA was "so radical and so sweeping in ignoring existing laws and previous court rulings that it will crumble under Supreme Court scrutiny" (Exon, 1996, 97), the high Court unanimously affirmed it in a landmark decision on June 26, 1997. The Government had urged the justices to treat the Internet like television and radio where regulations of speech aimed at protecting children from sexually inappropriate material have been upheld. As Deputy Solicitor General Seth Waxman put it, easy Internet access threatens "to render irrelevant all prior efforts" to shield children from erotica, for with the mere click of a computer mouse any child can get "a free pass to every adult bookstore and video store" in cyberspace (Greenhouse, 1997, A1). In his opinion for the Court, Justice Stevens conceded the "legitimacy and importance of the congressional goal of protecting children from harmful material," but he emphasized that "the mere fact that a statutory regulation of speech was enacted for the important purpose of protecting children from exposure to sexually explicit material does not foreclose inquiry into its validity" (Reno v. American Civil Liberties Union, 1997, 2334 and 2347). That inquiry led him to hold that the CDA "places an unacceptably heavy burden on protected speech" because it lacks the precision required by the First Amendment when a statute regulates the content of speech (Reno v. American Civil Liberties Union, 1997, 2350). "In order to deny minors access to potentially harmful speech," wrote Justice Stevens, the CDA "effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another" (Reno v. American Civil Liberties Union, 1997, 2346).

The Government based its appeal upon several Supreme Court decisions involving children and indecency. The strongest of these, FCC v.
Pacifica Foundation (1978), had approved sanctions against a radio station that broadcast in the afternoon, when children were likely to be listening, a recording by the comedian George Carlin entitled "Filthy Words" that repeatedly used several common vulgarities in referring to certain sexual organs and activities. Ruling that while government may not ordinarily regulate expression based upon its content, it may regulate the "time, place, and manner" in which expression occurs, the Court found the radio program to be indecent and patently offensive since it was intrusive and easily accessible by children. It also said that the First Amendment does not prohibit content regulation in the broadcasting realm where constitutional protection is lower than it is for print media and where government has a special interest in protecting children from indecency. Justice Stevens saw sharp differences between the FCC order and the CDA. First, the FCC has long regulated a medium with historically limited First Amendment protection, whereas the CDA would not be enforced by any governmental agency having comparable familiarity with the Internet. Second, the FCC had targeted only a single broadcast that had departed dramatically from traditional program content, not banning it entirely but merely regulating the time during which it could be broadcast. Not only was the CDA vastly broader in scope, unlike the FCC order it was also punitive. Third, while the broadcast media can easily issue warnings about program content, such warnings are not feasible in the unique world of cyberspace. Finally, the special factors justifying regulation of broadcast media, such as their invasive nature and the scarcity of available frequencies, are inapplicable to the "vast democratic fora of the Internet" (Reno v. American Civil Liberties Union, 1997, 2343).

The Court also was unconvinced by the Government's claim that the CDA's reach was limited because it applied only to violations committed knowingly. Since most Internet forums are open to all comers, the Court reasoned, the CDA essentially allowed a heckler's veto in that a person opposed to the operation of a sexually explicit Internet forum could effectively close it down simply by having his or her child present in it. Nor was the Court reassured by the Government's declaration that legitimate sexually oriented material was outside the scope of the CDA, for the text of the law gave no such guarantee, leaving open the possibility that it could be applied to serious discussion of topics like rape, birth control, and homosexuality. Finally, like the three-judge court, the justices thought that section 225e gave less protection to Internet content providers than met the eye since "tagging" and age verification systems are either technologically ineffective or unduly costly. Since content providers cannot be sure as to whether minors are among their customers, to avoid liability they would have to refrain from offering otherwise legal material, thereby burdening communication among adults. Such a
burden is unacceptable, the Court said, if less restrictive alternatives for achieving the government’s interests exist. The Court emphasized that while software allowing content providers to regulate the distribution of their material does not currently exist, there are programs offering parents a reasonably effective way to prevent their children from accessing material that parents, as opposed to government, deem inappropriate. “The interest in encouraging freedom of expression in a democratic society,” Justice Stevens concluded, “outweighs any theoretical but unproven benefit of censorship” (Reno v. American Civil Liberties Union, 1997, 2351).

While the three-judge court and the Supreme Court invoked the unique nature of cyberspace in striking down the indecency provisions of the CDA, they expressly endorsed governmental power to prosecute Internet obscenity. Yet, First Amendment doctrine regarding indecency and obscenity alike rests upon certain premises about the nature of the environment in which such expression occurs. If communications technology changes that environment, thereby altering doctrine regarding the one concept, must not doctrine regarding the other concept change as well? Clues to answering this question are in Justice O’Connor’s concurring opinion in Reno (1997). She saw the CDA as an attempt to create “adult zones” on the Internet by segregating indecent material to areas beyond the reach of children, an objective that would have been constitutional had the means chosen to achieve it not violated First Amendment rights. Adult zones work, she said, when applied to a “physical world” based upon “geography” and “identity.” A child attempting to enter a nude bar, for example, would be recognized as being underage and stopped accordingly. She found the “electronic world” to be “fundamentally different,” however, since speakers and listeners need not be in close physical proximity and they can mask their identities. Nonetheless, she argued that the Internet reflects a kind of geography in that sites exist at fixed locations in cyberspace around which it is possible to construct barriers, based upon some form of adult identification, and use them to screen people seeking entry to adult sites, much as a bouncer “cards” young people wanting to get into a nightclub. While Justice O’Connor thought, “the prospects for the eventual zoning of the Internet appear promising,” she nevertheless concluded that technological limitations leave cyberspace “largely unzoned — and unzoneable” (Reno v. American Civil Liberties Union, 1997, 2354).

Justice O’Connor misunderstood the nature of cyberspace in contending that it is sufficiently akin to the physical world to be amenable to zoning. By her own admission, the anonymity and physical separation of people using the Internet dramatically alter the supervisory equation. After all, her hypothetical nightclub bouncer can readily see and thus bar underage customers, whereas a provider of adult services on the Internet cannot. Justice O’Connor’s confusion notwithstanding, her distinction
between "geographic" and "virtual" worlds is useful in analyzing the impact of the Internet on obscenity doctrine. Justice Stevens revealed an awareness of "virtual reality" when he recognized that cyberspace is situated in "no particular geographic location but available to anyone, anywhere in the world, with access to the Internet" (Reno v. American Civil Liberties Union, 1997, 2335). Yet, he missed the implications of the communications revolution for the Court's obscenity framework when he deplored a scenario wherein a parent who sends his seventeen year old college freshman information about birth control via e-mail is prosecuted under the CDA "even though neither he, his child, nor anyone in their home community, found the material 'indecent' or 'patently offensive,' if the college town's community thought otherwise" (Reno, 1997, 2348).

Justice Stevens presumably opposed such a prosecution because the geographic community containing the college had no business intruding into the transmission of the information between parent and child since the exchange was a private matter that did not affect the college community. Still, he was willing to accept the same scenario if it involved obscenity rather than indecency. Such inconsistency in dealing with the impact of the Internet on the First Amendment calls for a reconsideration of the Court's obscenity doctrine in light of the workings of cyberspace.5

III. Cyberspace and the Supreme Court's Obscenity Doctrine

Congress has long prohibited obscenity in the context of radio, television, telephones, the mail, and cable communication. Opponents of cybersmut would extend this prohibition to the Internet, but computer communication does not easily fit the framework established by the Supreme Court in Miller v. California (1973) for determining what constitutes obscenity. Under Miller (1973, 24), a jury first would have to say, "whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest." Second, the jury would have to determine "whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law." Finally, the jury would have to decide "whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." Showing that "community" has multiple meanings even when understood in purely geographic terms, the Court emphasized that by "contemporary community standards" it meant those of specific local communities rather than some undifferentiated national community. It is "neither realistic nor constitutionally sound," said the Court, "to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas or New York City" (Miller v. California, 1973, 32). Accordingly, local juries were empowered to deter-
mine what appeals to prurient interest and what is patently offensive because such judgments will vary from one community to another. As a result of this localized approach to obscenity, the First Amendment may protect sexually explicit material in one community but not in another.

The reasons that the Court offered in Miller (1973) as to why obscenity is not protected under the First Amendment show that it understood a "community" to be a discrete, homogeneous, and geographically defined locality wherein sexually explicit materials can have a tangible and adverse impact. Obscenity, the Court said, "may be validly regulated by a State in the exercise of its traditional local power to protect the general welfare of its population" (Miller v. California, 1973, 32-33, note 13). Accordingly, sex and morality "may not be exploited without limit by films or pictures exhibited or sold in places of public accommodation any more than live sex and nudity can be exhibited or sold without limit in such public places" (Miller v. California, 1973, 25-26). In Paris Adult Theatre v. Slaton (1973, 69), a companion case, the Court was even clearer in basing the power to ban obscenity on the authority of states to conclude that "public exhibition of obscene material, or commerce in such material, has a tendency to injure the community as a whole." Given the benefits to be gained from "stemming the tide of commercialized obscenity," the Court held that regulation of erotica is justified by "the interest of the public in the quality of life and the total community environment, the tone of commerce in the great city centers, and, possibly, the public safety itself" (Paris Adult Theatre v. Slaton, 57-58). In short, the Court's obscenity cases viewed "communities" as physical territories composed of relatively homogeneous individuals sharing a common understanding of the sexual mores of their neighborhoods and fearing tangible harm to themselves and to their social and economic environments from the availability therein of obscenity.

This view of community misperceives what Justice Stevens in a later obscenity case called "our diverse, mobile, metropolitan society" (Smith v. United States, 1977, 314, note 10). The atomizing forces of contemporary life, including but not limited to the Internet, are undermining the basis for obscenity law by eroding the societal homogeneity fostered by physical proximity. The Internet enables people with similar interests to find each other, for physical connection no longer is necessary to initiate and maintain relationships. Computer communication brings more people into contact with one another, thereby breaking down geographic barriers and cultural homogeneity. The range of information available to people using computers is likely to surpass that available to people in physical proximity, which further changes and diversifies opinions. As intellectual interaction increases across geographic communities, tolerance within those communities for sexual expression increases too. In fact, the Internet gives people a degree of liberating anonymity unavailable...
able to members of a physical community who may feel a need to conceal any unconventional beliefs they might hold for fear of adverse community reaction should those beliefs be revealed. Consequently, communicators via computer need not worry about conforming unduly to the values of those around them. In short, “as individuals have more choices and greater opportunities to develop their own tastes, tolerance for sexual expression can only become increasingly varied among the members of local geographical communities” (Sergent, 1996, 710).

The Supreme Court’s narrow view of “community” also ignores the vastness of cyberspace. Adult Internet sites cannot target their services to particular geographic communities and then tailor their content to meet the various decency standards of those communities. To do so, they would either have to establish data bases of people eligible to access sexually explicit material or individually monitor each request for such material, options that would be both impractical and cost prohibitive (Kabalka, 1996). Nor can service providers know the prevailing obscenity standards of every jurisdiction in the nation that might access their products. Even if they could, it would still be impossible to determine which community’s standards ought to be used to determine the permissibility of a given transmission. Unlike postal mail, computer messages are not sent to identifiable, geographically-based addresses. Service providers thus have no way of knowing where customers are because they have no control over the physical localities into which their products may wander. Even if they do know the location of receiving computers, they have no control over people who join their services in jurisdictions allowing obscenity but log in from other jurisdictions where such material is not permissible (Sergent, 1996, 710-713). As a result of these problems, service providers would have no choice but to alter the content of their sites to meet the standards of the most restrictive community having access to them. In any case, adult Internet sites administered by system operators are only one source of cybersmut. One of the biggest venues, “Usenet,” has no system operators at all but simply lists addresses for postings on particular topics. The “local community standards” framework simply cannot work here.

The difficulties of applying Miller (1973) to cyberspace can be seen in United States v. Thomas (1996), which sustained the first federal prosecution of an Internet adult site for the interstate transmission of obscenity. Robert and Carlene Thomas, operators of a major sex-oriented BBS called “Amateur Action,” distributed sexually explicit images from their service in Milipitas, California to thousands of customers around the world. They were indicted in Memphis, Tennessee, where an undercover postal agent had downloaded samples from their site, rather than in California because prosecutors believed that community attitudes toward obscen-
ity were more conservative in the “Bible Belt” than they were on the West Coast. The Thomases claimed that under *Miller* (1973) they should have been tried in California rather than in Tennessee because that was where the pictures came from and because the transmission was initiated by the postal agent, not them. They noted too that they had not advertised in Tennessee and had no physical presence there. The heart of their argument, though, was that because the Internet has broken down geographic boundaries, people in one community cannot dictate what is morally acceptable for those in another. The trial judge rejected these arguments, seeing no difference between the Thomases allowing customers to download erotica from their site and mailing out such material themselves. If an analogy to the physical world is to be made, however, a better one, wherein the Thomases would not have been liable, was the postal agent traveling to California where erotica was legal, making a purchase, and taking it back to Tennessee. The Thomases may have made the material available, but it was the agent who introduced it into a jurisdiction where it was illegal (Byassee, 1995, 212-216).

Furthermore, the belief that sexually explicit material can undermine the quality of life in a specific local community may make sense when such material appears in a tangible form such as magazines or videos that can be physically transported from one geographic location to another, and bought and sold in relatively open display. For instance, applying a geographic definition of “community” to physical establishments like adult theatres and bookstores seems reasonable because the spillover effects of these businesses, such as crime and reduced property values, can affect the “total community environment” and “tone of commerce” of the surrounding community. This regulatory approach makes little sense, however, when applied to individuals using computer modems in the privacy of their own homes to access sexual material located at Internet sites unrelated to the local physical community. Such material cannot affect the quality of life in the surrounding community because it never physically enters it but simply moves unobtrusively over telephone lines from one computer to another. Websites differ significantly from town theatres and bookstores in that they are not local, stationary places of public business where patrons can literally walk in, make a purchase, and walk out. Rather than sell tangible commodities, they transmit digital information that is indecipherable as it travels through the physical community and therefore cannot adversely affect that community. Only after it reaches its destination in the privacy of a purchaser’s computer can it be converted into a form that can be read or viewed, at which point it is no longer in the physical community in the sense of being exposed to the public eye. Such material is not foisted upon the local community by intrusive providers but is pulled into private computers by willing purchasers.
Defining obscenity in terms of “local community standards” based upon a view of “community” as a discrete, physical territory is thus inap­propriate for a medium where information is readily accessible from anywhere on earth. The vagaries of the idea of “local community standards,” the impracticality of ascertaining them for all localities across the nation, and the impossibility of identifying either the geographic source or destination of much of the material passing over the Internet prevent consumers as well as service providers from determining what level of constitutional protection is granted to erotica. Because the Supreme Court has allowed the meaning of obscenity to vary from one locality to another, prosecutors are encouraged to engage in “forum shopping” whereby they can choose among several jurisdictions the most morally conservative one in which to initiate an obscenity case so as to increase the likelihood of obtaining a conviction. Similarly, they can prosecute a provider of sexually explicit material in several jurisdictions simultaneously without violating the constitutional prohibition against double jeopardy. Fear among service providers about the time and expense of defending against such prosecutions may have a chilling effect upon the distribution of what in many localities might be acceptable material. Afraid of risking prosecution for trafficking in obscenity, Internet users would be forced to engage in self-censorship by adapting their preferences for sexually oriented material to the most puritanical locality through which their erotic transmissions might pass. The problem with Miller (1973), then, was in assuming that geographically-based localities can regulate speech in their own jurisdictions without inhibiting expression elsewhere.

IV. From Geographic Communities to “Cyber-Communities”

The problems in trying to apply established obscenity doctrine to cybersmut suggest a need to expand our understanding of the term “community.” Like the Supreme Court did in its obscenity cases, we generally think of a community as an association whose partners share membership, participate in communal affairs, imbue the collective with their moral values, and feel a commitment toward one another as parties in a common enterprise. Moreover, like the Court, we tend to equate communities with particular physical locations having discrete geographic boundaries such as a cities, states, and even nations. To be sure, physical place stimulates, shapes, and sustains a geographic community because the close physical proximity of the community’s members necessitates much face to face interaction, which not only imbues the communiting parties with a keen sense of common purpose and identity, but also promotes informed decision-making due to the extensive deliberation that inevitably accompanies sustained personal interchange. In addition to these physically situated associations, however, there are also tightly knit non-
geographic communities whose unity is based upon factors other than shared geographic location such as ethnicity, kinship, religion, language, and profession. Examples of non-geographic communities include African-Americans, Roman Catholics, political scientists, and Karl Marx’s “workers of the world.” Although members of such communities do not necessarily share physical propinquity, they are bonded together by the key element of any community: a sense of fellowship based upon shared values and interests. A group of people joined together in a common enterprise need not be geographically based before it can be called a “community” so long as it possesses the essential attributes of a community.

Does cyberspace constitute a “community,” or is it merely a vast computerized marketplace for the acquisition and distribution of sterile information? Some see the Internet as “no more than a library, entertainment center, and telephone all wrapped up into one,” making cyberspace not a community at all but “simply a huge and heterogeneous group of people accessing the Internet for an endless variety of reasons” (Heumann, 1995, 208). Cyberspace may not be a community in the traditional, physical sense, but it does possess the defining element of a community: it is composed of groups of like-minded people coming together and interacting based upon shared interests and a desire to establish mutually satisfying relationships. Howard Rheingold (1993, 1, 5) calls these groups “virtual communities,” which he defines as “computer-mediated social groups” that emerge “when enough people carry on...public discussions long enough, with sufficient human feeling, to form webs of personal relationships in cyberspace.” People in virtual communities “do just about everything people do in real life,” Rheingold argues, “but we leave our bodies behind.” E-mail, discussion groups, and the World Wide Web have created countless “cyber-communities” whose members may spend more time with people far away than they do with those in their own backyards. Whether they are on-line debating public issues, sharing an interest in a hobby, or providing support for friends with various physical or emotional problems, members of these cyber-communities have a commitment to one another and thus act as good neighbors do in traditional geographic communities. The only thing missing, but apparently not really necessary for forging a strong sense of community, is physical proximity for the cyber-community’s members.

Of course, cyberspace is not monolithic. It is best understood as a loose federation of many different and often competing communities rather than as some unified empire. Some cyber-communities are open to anyone, whereas others restrict membership on some particular basis. Hence, their orientations differ; some being professional or business-like, others more casual or family focused. Says one observer, “the immediacy and continuity of the content, as well as the informality of the exchanges
and the common interest in the subject matter, tend to reveal the personalities of the senders and to foster a sense of shared experiences and shared goals. When these interactions reach critical mass, communities are created" (Byassee, 1995, 202). Cyber-communities are thus provisional. Those able to sustain themselves prosper, perhaps splitting into subcommunities with more particularized interests and identities, while those unable to maintain their cohesion wither away (Dyson, 1995, 27). Cyber-communities lack geographic boundaries, yet they are distinguishable jurisdictions unto themselves in that they consist of people from all over the globe who have chosen to join by voluntarily logging on. The speed with which Internet users can exchange information over vast distances obviates the need for physical proximity. Although they are separated spatially, their high level of interaction gives members of cyber-communities the sense that they share the same place. As Internet communication continues to expand, says Mike Godwin of the Electronic Frontier Foundation, thinking of "local community standards" only in a geographic sense will become increasingly "philosophically bankrupt" to members of cyberspace, for "where these people's mental space is, is not geographical at all. It is communities of interest — virtual communities" (1994, 8).

If a particular group of "netizens" constitute a cyber-community wherein sexually explicit materials are not thought to be offensive, must traditional geographic communities grant them the right to send and receive such material? While this cyber-community would not be offended by computerized erotica, the larger geographic community of which they are a part might be. In the event of an obscenity prosecution, which "community standards" ought to apply: those of the geographic community or those of the cyber-community through which the material is obtained? Do the moral standards of geographic communities trump those of cyber-communities, which by their very nature transcend the boundaries of all physical jurisdictions? The answer to these questions depends upon whether the abstract, digital dimension of cyberspace is simply an extension of concrete, geographic communities. If it is, then prohibiting obscenity in cyberspace is permissible; if it is not, then such prohibition not only is unconstitutional but also seriously misguided. Invasion of substantial communal interests is necessary before expression can be punished, but the separation of Internet communication from physical communities essentially eliminates any danger to those interests by allowing opponents of cybersmut to avoid exposure to it. Computer users have considerable control over the content, receipt, and ultimate destination of material transmitted through cyberspace. If members of cyber-communities knowingly distribute objectionable material to their surrounding geographic communities, holding them liable may be appropriate. Otherwise, the ability of the geographic locale to avoid
unwanted erotica would seem to negate its interest in proscribing obscenity.

These issues are complicated by *Stanley v. Georgia* (1969), wherein the Supreme Court recognized a right to possess sexually explicit materials within the confines of one’s home as opposed to more public places. “Whatever the power of the state to control public dissemination of ideas inimical to the public morality,” said the Court, “it cannot constitutionally premise legislation on the desirability of controlling a person’s private thoughts” (*Stanley v. Georgia*, 1969, 566, emphasis added). The Court saw no danger that erotica in a private home would be viewed by minors or unwilling citizens as could happen in public places. Indeed, the Court viewed the home as a sanctuary separate from public places. Computer communication is eroding the distinction between private homes and public places, however, by making the world an extension of the home in that material can travel into homes via the “information super-highway” without having to pass through outside markets. Downloading an obscene video from the Internet is similar to purchasing one by mail: a customer places an order, an attempt is made to ensure that the customer is an adult, and the order is sent from one place to another. The difference is that the Internet customer buys nothing tangible, uses no public conduit such as the postal service in procuring the order, and never contributes to any possible deterioration of the surrounding geographic community by patronizing a local retailer of adult products. Does *Stanley* (1969) protect such transactions, or can local communities shield themselves from erotica sent over the Internet? The logic of *Stanley* (1969) suggests granting autonomy to cyber-communities, but conclusions are difficult since the Court has obscured the scope of this decision, holding that while the First Amendment allows people to control the flow of information into their homes, states can regulate the distribution of obscene materials.

For example, in *Rowan v. United States Post Office Department* (1970), the Court upheld a federal law prohibiting the mailing of sexually oriented advertisements to people who specifically indicated that they did not wish to receive them. The court stressed the privacy interest of homeowners in deciding what material would enter their homes. The Court later invalidated a federal law banning the mailing of unsolicited advertisements for contraceptives on the grounds that people have a right to decide what mail to accept and that “the level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox” (*Bolger v. Youngs Drug Products Corp.*, 1983, 74). These cases emphasized the right of people to control the flow of mail into their homes. The same principle ought to apply to material entering via the Internet, for prohibiting the transmission of erotica denies people the option of
receiving it. In United States v. Reidel (1971), however, the Court refused to extrapolate from the right of an individual to possess obscenity within the home a right under the First Amendment for a purveyor of such material to sell it to the homeowner. Drawing a distinction between private possession in the home and regulation of external speech, the Court similarly ruled in United States v. Orito (1973) that the right to possess erotica within one’s home does not include a right to get it there via the postal service. Finally, the Court made an exception to Stanley (1969) in Osborne v. Ohio (1990), holding that government’s compelling interest in combating child pornography extends not just to the production and distribution of such material but also to its possession and use, even in the privacy of one’s home. In short, because Stanley (1969) rested more upon the right to privacy than upon the First Amendment, people have a right to possess most kinds of erotica at home but may have trouble getting such material there in the first place.

Ultimately, applying a geographic understanding of “local community standards” to cyber-communities violates the logic of Miller (1973). As the Court noted, “different States vary in their tastes and attributes, and this diversity is not to be strangled by the absolutism of imposed uniformity” (Miller v. California, 1973, 33). Since the Internet crosses state lines, allowing juries to use local community standards means that computer-transmitted erotica will be judged by the standards of the most conservative geographic localities. If there is a clear likelihood of cybersmut harming a physical community, such as when children are used to produce obscenity, then application of a geographic community’s standards is appropriate. If, however, regulation is intended either to protect unwitting passersby or to prohibit obscenity in a community that does not want it, then the standards of the geographic community are inapposite inasmuch as cybersmut generally is circulated only electronically within groups of consenting adults. The geographic locales in which these “netizens” happen to reside simply are not part of the “community” in which cybersmut is exchanged and are not affected by it. As sexually explicit material continues to move from the open marketplace to private computers, “traditional concerns about obscenity, such as accessibility to children, sensibilities of the general public, and secondary effects on the neighborhood surrounding the point of distribution” will continue to lose their relevance (Harvard Law Review, 1994, 1094). With regard to cybersmut, then, the “local community standards” framework ought to be replaced with a “cyber-community standard.” Under such a standard juries would be drawn neither from computer users in general nor from devotees of cybersmut in particular. Indeed, there would be no juries because in cases of sexually explicit material confined to cyber-communities there would be no offense.
V. Adapting the First Amendment to Cyber-Communities

In expanding our understanding of "community" so as to adapt traditional First Amendment values to changing technology, two principles are crucial. First, an open and decentralized "marketplace of ideas" must be maintained. As the Supreme Court said in Associated Press v. United States (1945, 20), the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." The mass media constitute a closed system because even with cable television offering hundreds of channels, the number of forums is limited and not all views are heard since availability is a function of what sells. Moreover, system dynamics essentially make network owners information gatekeepers. Their control over access and distribution significantly burdens smaller, independent programmers who must negotiate expensive carriage agreements with large network operators. By contrast, open access networks like the Internet can accommodate an unlimited number of information providers and users, thus ensuring a variety of cyber-communities. Furthermore, because the Internet is decentralized, there is no single point for origination of content and no need for special arrangements with network operators to send information to other people using the system. Lower barriers to entry for independent information providers is especially desirable since they are more likely to reflect a diversity of opinions than are large media conglomerates and they are more difficult to control by the dominant forces in the media industry (Berman and Weitzner, 1995, 1622-1624). Special solicitude for the Internet might even reverse the trend in recent years toward ever-greater concentration of the mass media.

The second principle necessary for adapting the First Amendment to cyber-communities is to ensure their members control over information content. The Supreme Court has emphasized that "at the heart of the First Amendment lies the principle that each person should decide for him or herself the ideas and beliefs deserving of expression, consideration, and adherence" (Turner Broadcasting System v. Federal Communications Commission, 1994, 641). Lack of effective user control over "indecent" radio broadcasts largely explains the Court's support for the FCC's ban on risqué recordings during times when children could be listening (Federal Communications Commission v. Pacifica Foundation, 1978). By contrast, it invalidated the FCC's ban on "dial-a-porn" telephone services on the grounds that "placing a telephone call is not the same thing as turning on a radio and being taken by surprise by an indecent message" (Sable Communications v. Federal Communications Commission, 1989, 189). Telephone users are less a "captive audience" than are radio listeners. There are no captive audiences in cyberspace inasmuch as gaining access to Internet sites requires people voluntarily to take affirmative steps
involving more technical savvy than does turning on a radio or a television. Also, unlike broadcast viewers and listeners who are not necessarily aware of content to come and may be offended by it, customers of adult sites on the Internet know what to expect because such sites warn about their content before granting access. As interactive media continue to supplement traditional media, the very nature of communication in cyber-communities will highlight the inappropriateness of governmental regulation of information based upon its content (Berman and Weitzner, 1995, 1632-1634).

How do these two principles for protecting First Amendment values in the face of changing communications technology apply to governmental attempts to control cybersmut? Clear and narrowly drawn content regulation may be permissible, depending upon the nature of the material regulated and how computer users obtain or send it. For example, government ought to be free to prosecute the intentional distribution of actual obscenity to minors, unconsenting adults, or cyber-communities that do not wish to receive it. Attempts to ban “indecency,” however, inevitably present problems of vagueness and overbreadth, as the Court held in Reno (1997). In any case, invasion of substantial privacy interests is necessary to limit cybersmut, but the interactive nature of the Internet greatly reduces these privacy concerns by allowing computer users to avoid unwanted communications. Restrictions on the knowing receipt of erotica by adult members of cyber-communities have little justification, for when computer users control the information they receive governmental regulation is not necessary to protect their privacy interests. When they cannot block undesired information, regulation may be valid, preferably in a way designed to restore their control. A moderate course of action thus seems sensible for regulating obscenity in cyberspace. In the words of one observer, “the information superhighway should neither force the electronic media into the fold of the highly protected print media, nor should it leave them exposed to the same types of regulations as broadcasting. Rather, careful attention to the underlying interests in viewpoint diversity and user control requires a balanced approach” that may serve First Amendment values in cyber-communities better than does the Miller (1973) framework (Harvard Law Review, 1994, 1096).

Technology exists that would allow people to block cybersmut from their computers (American Civil Liberties Union v. Reno, 1996, 839-842). Conservatives consider technology to be an inadequate response to the problem of cybersmut. Libertarians fear that it would simply replace governmental censorship with private censorship, which while technically raising no First Amendment problems would still threaten freedom of expression by inhibiting the free flow of information in cyberspace (Weinberg, 1997, 453-482). Screening can be overly broad, blocking out
legitimate discussion of sexual topics as shown by the decision of “America On-Line” to ban the word “breast” from its “chat rooms,” a move that dismayed breast cancer patients participating in on-line support groups (Andrews, 1997). Even constitutionally protected speech could be forbidden. A discussion group on First Amendment issues, for example, could be banned from using the vulgar reference to the military draft that appears in *Cohen v. California* (1971). Nor do computer users necessarily know which sites get blocked or why. Many are blocked simply because overburdened software filters have not reviewed them, a particular problem for small, non-commercial sites which are likely to be rated late in the process, if at all (Harmon, 1997b). Finally, the sheer size of cyberspace makes it difficult to regulate. With more than 50 million Internet users and hundreds of thousands of information transfers a day, thousands of screeners would be necessary, thereby delaying communication and undercutting the system’s utility. As one skeptic concludes, trying to rid cyberspace of erotica “is like trying to shoot an ICBM at a gnat; it can’t be done without the absolutely most Draconian methods being used” (Lewis, 1994, 34).

Even more troubling than the practical problems of blocking software are the political implications for a society based upon the free exchange of ideas. In the physical world, opposing interests confront one another more or less openly in the political arena where their voices are readily heard as they make their arguments. We may not like what one side or another has to say, but in a relatively open political system, we have little choice but at least to listen. In cyberspace, by contrast, the right to speak does not necessarily guarantee a right to be heard. Blocking software can undercut a communications medium that promises the average person the broadest degree of speech yet known. Ironically, then, self-regulation may pose a more potent threat to freedom of expression in cyberspace than governmental censorship under the CDA ever could have done. The danger is that people may use technology to create “virtual gated communities” from which they can screen out expression they think inappropriate. As Andrew L. Shapiro of Harvard Law School’s Center for the Internet and Society warns, “democracy doesn’t work if you can turn off anyone you don’t want to hear from” (Harmon, 1997b, D6). Just as the CDA threatened to throw the proverbial baby out with the bathwater, so too might the alternative of blocking software. Lawrence Lessig refers to this growing dependence of constitutional values upon the capabilities of computer software as the “tyranny of code,” whereby program designers acquire the power to grant liberties or take them away (Harmon, 1997c, E1). Given the control over blocking technology enjoyed by such gatekeepers of the Internet as Microsoft, Netscape, and “America On Line,” “tyranny” is not too strong a word.
Although problematic, the best way to deal with cybersmut is to fine tune blocking software so as to permit informed self-regulation in a largely free market. Let those who want computerized erotica have it, so long as those who do not are able to avoid it. In this way, “the programming tastes of the many need not be held hostage to the particular sensibilities of the few, or vice versa” (Harvard Law Review, 1994, 1095). This approach is preferable to governmental censorship because it can be tailored to the values of individual families. Besides, censorship is at best an after-the-fact response to cybersmut, whereas blocking software reduces the risk of seeing it in the first place. Since these programs can block material coming from anywhere in cyberspace, they are to that extent more effective than governmental censorship, which cannot reach foreign-based Internet sites. By focusing on the voluntariness of the user rather than on the mores of the user’s geographic community, service providers would no longer have to guess the “community standards” prevailing in the user’s locale. A technological approach would thus “provide important protection for those creating ‘virtual’ communities dispersed across wide geographic areas by giving them the ability to define their ‘boundaries’ free from the harassment of individual jurics in distant locales” (Sergent, 1996, 724). Just as an on-line group of “cyber-evangelists” could set the standards for their virtual community, so too could a bevvy of “cyber-libertines” do so for theirs. By following the preferences of cyber-communities rather than those of geographic communities, a “virtual community standard” would “preserve the framework and tradition of obscenity law, while adapting to the challenges created by cyberspace” (Egan, 1996, 152).

**Conclusion**

The Internet is rapidly becoming a vital tool not only for personal and professional correspondence, but also for banking, commerce, education, recreation, politics, and the dissemination of news and other information. Like every new technology, however, the Internet presents problems as well as opportunities, especially with regard to freedom of expression. Does the revolution in computer communications require significant revision of traditional First Amendment principles first developed in the simpler context of print and broadcast media? The fundamental tenets of freedom of expression ought not be jettisoned just because communications technology changes, yet it is difficult to imagine the First Amendment continuing to exist unmodified as the Internet inexorably transforms the communications process. In grappling with the problem of cybersmut in particular, the judiciary will, in the words of Jerry Berman of the Center for Democracy and Technology, “decide the limits of free speech for the 21st century,” but “if the judges don’t understand the Internet, they may pick the wrong paradigm” (Lewis, 1996, D2).
In striking down the CDA, the Supreme Court showed an appreciation for the dynamics of the Internet against a governmental attempt to ban indecency in cyberspace. On the other hand, by assuming that the obscenity paradigm it established in Miller v. California (1973) remains undisturbed by the telecommunications revolution, the Court revealed the limitations of its understanding of the significance of cyber-communities.

Internet users operate in a realm largely independent of physical world jurisdictions. Because cyber-communities essentially are self-contained associations, the norms of the physical world do not readily fit them. Forcing those norms to fit could limit the growth of evolving information technologies and quash the new social structures to which they are giving rise. Regulation of cyberspace may be unnecessary anyway since cyber-communities continually monitor themselves and have adopted an informal code of their own called “netiquette” (Rheingold, 1993, 64). When necessary, cyber-communities can enforce their own standards of conduct as, for example, when members of an unruly Usenet newsgroup decide to appoint a moderator, or when members of a “listserv” discipline or even exile an aberrant fellow member. Such informal self-regulation by cyber-communities is possible with regard to more serious matters such as cybersmut. These new associations ought to be given a chance to develop and test their own rules and sanctions before government attempts to impose what may be less appropriate ones. “An exploration of the culture of cyberspace,” writes Ethan Katsch (1995, 1692), “may suggest as much about the future role of the First Amendment as an analysis of cases and doctrine. At the very least, experiences in cyberspace, and the expectations and values fostered by this new environment, should be examined along with judicial assessments of the relevance of past decisions and experiences.”

Properly understanding the Internet is vital because “the shape and character of our nation’s communications infrastructure is critical to our democratic values” (Berman and Weitzner, 1995, 1635). Early in our history, newspapers and the mail system helped to unite the nation. Later, television and radio brought Americans closer together. Today this role is being played by computers. Communication in cyberspace differs from traditional modes of communication in that the Internet gives individuals an opportunity to be both producers and receivers of information. Whereas the mass media are a single source of information going to multiple receivers, and common carriers are a single source of information going to either single or multiple receivers, the Internet permits communication from the many to the many, thereby blurring the distinction in the communication process between reader and reporter. Furthermore, because the Internet is a means of communication cheap enough to allow access to virtually anyone, the influence of users is based not
upon their wealth or status, as is so often the case in the physical world, but upon their ability to make and disseminate reasoned arguments. The Internet thus offers citizens an opportunity to realize the democratic ideal of the town hall meeting by providing what could become a model of "civil and thoughtful discourse leading to consensual governance" (Branscomb, 1995, 1670). In this way, the Internet holds promise for correcting some of the market failures of democracy, for democracy cannot function effectively without citizens who are informed and independent yet also connected to their fellow citizens. These are precisely the qualities that cyber-communities foster.

Perhaps the most significant aspect of cyber-communities for democratic politics is that they can shield people from the tyranny of democratic majorities and the governments representing them. James Madison and Alexis de Tocqueville recognized long ago that minorities are vulnerable in majoritarian democracies. In cyberspace, however, minorities are free to form their own enclaves operating in anonymity outside the boundaries of physical jurisdictions, thus leading to a "world of self-contained communities that cater to their own members' inclinations without interference with anyone else's" (Dyson, 1995, 27). Cyber-communities are becoming the key mediating institution of the computer age, providing a counterweight to and a check upon the power of terrestrial societies and governments. In addition, the loyalties fostered by cyber-communities may help to restore the core notion of community in a world where physical proximity, familial relationships, and associational institutions like churches and work groups no longer easily forge bonds among people. As one defender of this new order puts it, "we now have within our grasp a technology designed to bring together like-minded individuals, regardless of where they live, work, or play, to engage in the creation of a new type of democratic community: a community unbounded by geographical, temporal, or other physical barriers" (Branscomb, 1995, 1640). While there is no guarantee that new communications technology will continue the advancement of democratic values, because of the Internet we are closer than ever before to having a truly open, diverse, and user controlled "marketplace of ideas."

As with any market, of course, some of the Internet's products, such as cybersmut, may not be considered desirable by all of the market's customers, but banning them would not be worth the price paid in harm to First Amendment values as well as to the increasingly beneficial uses of computer communications. Achieving the Internet's full democratic potential requires judging it in the context of cyberspace rather than in the context of paradigms from the past, such as geographic communities or print and broadcast technology. Traditional First Amendment doctrine must not be applied peremptorily to cyber-communities because
cyberspace is not simply an electronic version of "regular space." Admittedly, "local community standards" ought to be enforced with regard to Internet obscenity, but these standards ought to be defined by cyber-communities themselves, not by geographic communities that are essentially removed from and little affected by the problem. Since established modes of analysis are not readily transferable to cyberspace, more appropriate models must be found. Doing so requires reading the First Amendment in light of what Justice Louis Brandeis called "the progress of science" (Olmstead v. United States, 1928, 474), for in the words of Thomas Jefferson, our greatest defender of democracy, "laws and institutions must go hand in hand with the progress of the human mind... As new discoveries are made... institutions must advance also, and keep pace with the times" (Jefferson, 1905, 12). By thinking about the First Amendment in new ways for a new age, we can save it from being lost in cyberspace.

Notes

1. Censorship involves two main categories of sexually explicit material: obscenity and indecency. Obscenity is legally punishable, whereas indecency generally is constitutionally protected. When for purposes of clarity these two categories need to be differentiated, this study will do so. Otherwise, it will use the rubric "cybersmut" to refer to a wide array of erotic products and services made available on the Internet with the intention of sexually arousing either their provider or those persons gaining access to them.

2. Neither the First Amendment nor the right of privacy protects "child pornography" (see New York v. Ferber, 1982; and Osborne v. Ohio, 1990). Because the Supreme Court's reasons for allowing the punishment of such material differ from its reasons for allowing the punishment of obscenity generally, child pornography is not relevant to this study.

3. A vague law is unclear about what it reaches; an overbroad law reaches too much. A law will be invalidated on grounds of vagueness if persons of "common intelligence must necessarily guess at its meaning and differ as to its application" (Connally v. General Construction Company, 1926, 391). Under the overbreadth doctrine governmental objectives "may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms" (NAACP v. Alabama, 1958). Rather, government must use narrow, carefully tailored means to achieve its objectives.

4. Justice O'Connor filed a concurring opinion, joined by Chief Justice Rehnquist. Although she agreed that section 223d of the CDA was overly broad, she believed that section 223a could be applied constitutionally in cases of deliberate transmission of indecent material to minors where no adults are among the recipients.

5. Hoping to address the Court's objections to the CDA, Congress
enacted in October 1998 the Child Online Protection Act (47 U.S.C.A. 231), which made it a crime for commercial Internet sites to make available to those under age seventeen material deemed "harmful to minors." This law was clearer and more narrow than the CDA in that it did not apply to all Internet users and targeted obscenity rather than mere indecency. Nevertheless, a federal judge blocked its enforcement on the grounds that like the CDA it had a "chilling effect" on constitutionally protected expression since the difficulty of verifying patrons' ages would force many non-obscene yet sexually frank Internet sites to censor themselves rather than risk prosecution (American Civil Liberties Union v. Reno II, 1999). This ruling is currently pending before the Third Circuit Court of Appeals.

6. The cornerstone of modern First Amendment theory, the marketplace metaphor posits that free expression is valuable more for its societal benefits, such as the search for truth and the process of self-government, than for its intrinsic worth to individual speakers. It assumes that truth will be most easily identified and falsehood most easily rejected if government stays out of the marketplace (see Milton, 1951; Mill, 1956; and the dissenting opinion of Justice Oliver Wendell Holmes in Abrams v. United States, 1919). Despite its prominence, the marketplace idea has its critics (see Schauer, 1982; and Ingber, 1984).

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Pennsylvania Women's Campaign Communication: A Content Analysis of Brochures from 1996 State Assembly Races

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This paper examines campaign communication of women who ran for the Pennsylvania State Assembly in 1996. The statements made in their campaign brochures were content analyzed to see if messages in this medium were similar to those identified in the literature about female candidates' television advertising. Specifically the issues, traits, and attacks mentioned in the brochures were examined. Differences between incumbents and challengers, winners and losers, and Democrats, Republicans, and Independents were also examined.

As elections have become more candidate-centered, campaign advertising has grown in importance. The messages in advertisements have become highly scrutinized by political scientists, journalists, and consultants. Specifically, attention to the similarities and differences between how female and male candidates promote themselves has contributed to addressing the question of why there continues to be a relatively small number of women in elected office.

Attention to women's political advertising has focused primarily on the television advertisements of those running for Congress and Governor (Debelko & Herrnson, 1997; Johnston & White, 1994; Kahn, 1993; Kahn, 1994; Proctor et al., 1994). However, the most impressive gains made by women in politics have been at the lower levels of government; female membership in state legislatures tripled from 1974 to 1994 (Rule, 1996). Since the lack of women “in the pipeline” is a key explanation for women's underrepresentation (Duerst-Lahti, 1998), it is important to examine advertising in campaigns for an important political entry point — the state legislature (Ford & Dolan, 1996).

Focusing on state legislative races requires examining forms of political advertising appropriate to this level of campaign. Theodore Sheckels (1994, 324) reminds political communication scholars not to be “mesmerized by television, especially when dealing with non-national campaigns.” However, despite brochures being a common campaign communication device in local races (Grey, 1994), they have generally gone ignored. Only Paul Raymond (1987) has systematically examined brochures, and his analysis does not consider the candidates’ gender. Therefore, there is much to be learned about the messages in female candidates’ political brochures.
There are reasons to suspect that women's communication for lower level offices might differ from their advertisements for higher offices. Leonard Williams (1998) warns scholars not to assume that women's advertising will be the same regardless of the office sought. After all, voters' willingness to support female candidates varies by office (Dolan, 1997) and their expectations for candidates differ by government position (Huddy & Terkildsen, 1993). In an effort to give the voters what they want, women seeking higher offices might emphasize different issues and qualifications than those running for lower level offices. To discuss differences between the content of state-level brochures and that of television advertising for national offices and governorships, we need to review the findings of research on women's campaign communication.

Studies repeatedly reveal that women's television campaign advertisements discuss issues more than candidate traits (Johnston & White, 1994; Kahn, 1994; Kahn & Goldenberg, 1991; Kahn & Gordon, 1997; Raymond, 1987). They also discuss "female issues" more than other issues (Kahn, 1993; Kahn & Gordon, 1997; Witt et al., 1994), although Kahn (1994) shows gubernatorial candidates as an exception to this. "Female issues" are those issues for which "women are seen as superior" (Kahn, 1994, 166) and are operationally defined as education, environment, health care, family issues, and social welfare.

Attacks on opponents are infrequent in women's television campaign advertising (Johnston & White, 1994; Kahn & Gordon, 1997) perhaps due to the reluctance to appear "unladylike" (Witt et al., 1994). However, Leonard Williams (1994) found that about one-third of the female senatorial candidates whose ads he studied attacked their opponents. When women do explicitly critique their opponents, the focus is more likely to be on issues rather than candidate qualifications or traits (Benze & Declercq, 1985b; Johnston & White, 1994; Kahn, 1993; Kahn & Gordon, 1997).

In terms of the character traits that women candidates promote, the literature is mixed. Early research of women campaigning for the House, Senate, and statewide offices indicates that women conform to feminine traits stereotypically by promoting warmth and compassion more than toughness (Benze & Declercq, 1985a). Williams (1994, 1998) confirmed that female Senate candidates stressed feminine traits (especially empathy) more than other traits. However, the extensive work of Kim Fridkin Kahn (1993; 1994; Kahn & Gordon, 1997) clearly points in the other direction. This work illustrates that women seeking seats in the U.S. Senate and governorships spend more time challenging feminine stereotypes than reinforcing them. They emphasize traits like leadership and experience rather than honesty, compassion, warmth, trustworthiness, and empathy. The level of office could make a difference since "typical feminine traits are considered more suitable for lower or non-elective levels
of office” (Huddy & Terkildsen, 1993, 504).

This article examines whether these characteristics found in television advertising of women running for high-level offices, such as governor and Senator, were also found in brochure advertising of women seeking state-level congressional seats. It does so by examining brochures used by women running for the Pennsylvania State Assembly in 1996. Pennsylvania is an interesting, but not necessarily representative, place to start exploring this question since it has a reputation for being “inhospitable toward women candidates” (Witt et al., 1994, 5) despite the number of women in the Pennsylvania State Assembly doubling (to 12%) in the past two decades (Rule, 1996). If the findings from the research on women candidates’ television advertising hold true for brochures at the State Assembly level, then the brochures should:

1) contain more issue appeals than candidate traits;
2) emphasize certain issues (those identified as “female issues”) over other issues;
3) infrequently attack opponents;
4) emphasize feminine candidate traits more than masculine traits.

Data and Coding

Letters asking for copies of campaign brochures were sent to 55 candidates running for representative in the General Assembly of Pennsylvania in 1996 who had female names. A follow-up letter was sent to those who did not send brochures. Of the 55 candidates contacted, 29 (53%) responded to the letter, with 21 (38%) sending brochures. The other eight indicated that they had not used brochures. Of the 21 who sent brochures: eleven won their elections, ten lost them; 12 were Democrats, six were Republicans, and three were Independents; eleven were challengers and ten were incumbents. Of those who sent brochures, all of

<table>
<thead>
<tr>
<th>Party</th>
<th>Loser</th>
<th>Winner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td>(6)</td>
<td>(6)</td>
</tr>
<tr>
<td>Republican</td>
<td>17%</td>
<td>83%</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(5)</td>
</tr>
<tr>
<td>Independent</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>(0)</td>
</tr>
</tbody>
</table>

Table 1
Relationship between Party and Election Outcome

NOTE: Cell sizes are too small for reliable statistical calculations.
the incumbents won their elections and only one challenger, a Democrat, won hers. Table 1 illustrates the relationship between party and election outcome.

Although brochures varied in length, style, professionalism, and breadth, they were standard introductory brochures, which focused on general appeals introducing the candidate to the general voters, rather than targeting messages for specific audiences, like partisans or the elderly. The brochures seemed designed in part to increase name recognition since even the shortest brochures mentioned the candidates' name more than once. The minimum number of times the candidates' name appeared was three and the maximum was 18 with the average being eight.

One way that the brochures varied was in their use of photographs. One candidate did not use any photographs and another used 14. The average number of pictures used on a brochure was 2.3 and the mode was 1 (10 brochures had one picture). The most common use of photography was to include a single photo of the candidate (typically a formal face shot). Incumbents included photographs of themselves with children and senior citizens who were not members of their own families, whereas no challengers did. Six candidates included photographs of their family, but for only one candidate was this her sole photograph.

Thirteen of the candidates included some reference to themselves as a wife, a mother, and/or a daughter. Of these 13, ten emphasized this reference by either including a photograph of her family, making the reference in bold type or in color, or putting it at the top of her list of qualifications. The references to being a wife or mother were often explicitly linked to governing skills. For example, one candidate claimed in her list of "Reasons to Vote for ____" that "her husband was confined in a wheelchair for eight years, she understands the needs of the disabled." More Democrats than Republicans included references to their families. Incumbents and challengers were equally likely to do so.

The analysis that follows uses a content analysis of the brochures treating statements, sometimes referred to here as references or claims, as the unit of analysis. Statements were all sentences or sentence fragments that appeared on the brochure. All statements were coded by the author for "Topic:" Issues, candidate traits (characteristics of the candidate, such as honesty or strength), opponent attacks (any criticisms of the opponent whether by name or not), group references (such as the candidate's identification with a party or interest group), candidate qualifications (credentials of the candidate, such as public service or motherhood), and other (a residual category for statements of the "Vote for Candidate ____" nature).

In addition, all issue references were coded for the specific subject discussed and recoded into "female issues," "male issues," and "other" using the definition of these which is common in the literature.
ences to candidate traits were coded for the specific trait mentioned. These
traits were recoded into "feminine traits," "masculine traits," and "other"
generally using Williams' (1994) coding scheme. The background char­
cacteristics of the candidate whose brochures contained these statements
were also coded. These characteristics were: party (Democrat, Republi­
can, or Independent), election outcome (won or lost), and candidate sta­
tus (incumbent or challenger).

Findings

The 21 brochures yielded 625 statements. The number for individual
candidates varied greatly from six to 68. The average number of state­
ments in a brochure was 12. The overall distribution of appeals is shown
in the total column of Table 2. Clearly this medium allows ample room
for candidates to offer multiple messages.

Similar to television advertising of other female candidates, there were
more references to issues than other types of appeals. Issue claims (234)
made up 37% of all statements. Qualifications were the second most fre­

<table>
<thead>
<tr>
<th>Type</th>
<th>Challenger</th>
<th>Incumbent</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issues</td>
<td>29%</td>
<td>42%</td>
<td>234</td>
</tr>
<tr>
<td></td>
<td>(85)</td>
<td>(142)</td>
<td></td>
</tr>
<tr>
<td>Qualification</td>
<td>47%</td>
<td>21%</td>
<td>208</td>
</tr>
<tr>
<td></td>
<td>(85)</td>
<td>(69)</td>
<td></td>
</tr>
<tr>
<td>Traits</td>
<td>16%</td>
<td>23%</td>
<td>124</td>
</tr>
<tr>
<td></td>
<td>(85)</td>
<td>(78)</td>
<td></td>
</tr>
<tr>
<td>Attack</td>
<td>2%</td>
<td>0%</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>(85)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Groups</td>
<td>4%</td>
<td>10%</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>(85)</td>
<td>(32)</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
<td>1%</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>(85)</td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>293</td>
<td>332</td>
<td>625</td>
</tr>
</tbody>
</table>

Chi Square 66.8; Cramer's V = .32; Significant at .001 level
When the small cells are eliminated by omitting "Attack" and "Other:
Chi Square 54.3; Cramer's V = .30; Significant at .001 level
quent type of reference with 208 (33% of the total). There were 124 references to character traits (20% of the total) and 45 group references (7% of the total). Also similar to television advertising was the lack of attacks on opponents. These were very rare (only seven, or 1%). The average number of appeals per candidate was: 11.1 for issues, 9.9 for qualifications, 5.9 for traits, 2.1 for groups, and .3 for attacks.

Table 2 also demonstrates the mix of statement types used by challengers and incumbents. These two groups differed significantly in the types of appeals they used. Incumbents were more likely to use issue appeals, character traits, and group appeals than challengers were. Challengers were more likely to discuss their qualifications and to attack their opponents than incumbents were. This could be because challengers lack the legitimacy that is inherent in the incumbency status of their opponents and therefore need to explicitly assert it. Since incumbency and winning strongly co-varied (with one exception, a Democratic challenger

<table>
<thead>
<tr>
<th>Table 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Appeal by Party</td>
</tr>
<tr>
<td>Type</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>Issues</td>
</tr>
<tr>
<td>Qualification</td>
</tr>
<tr>
<td>Traits</td>
</tr>
<tr>
<td>Attack</td>
</tr>
<tr>
<td>Groups</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Chi Square 78.2; Cramer's V = .25; Significant at .001 level
When the small cells are eliminated by omitting "Attack" and "Other:"
Chi Square 58.9; Cramer's V = .22; Significant at .001 level
When the small cells are eliminated by omitting "Attack," "Other," and Independent:
Chi Square 50.1; Cramer's V = .30; Significant at .001 level
who won), the observed differences between incumbents and challengers were also true when winners were compared to losers. Republicans were more likely to make references to issues and character traits, while Democrats were more likely to discuss their qualifications, attack opponents, and make group references (see Table 3).

**Issues** — Table 4 illustrates the distribution of issue positions taken in the brochures. The most frequent was education with 38 mentions (18% of the total number of issue references). The second most frequent was taxes (29 mentions, 14%), then health care (19 mentions, 9%), and crime (18 mentions, 9%). These specific issues were grouped according to whether or not they fit the definition of "female issues" broadly defined in the literature as issues that have a nurturing aspect to them (including health care, education, welfare, children, environment, etc.) or "male issues" (including jobs, economy, taxes, agriculture, crime, and foreign aff-
There were slightly more references to "female issues" (95 or 45%) than "male" (87 or 42%). Although the difference between the two was not large (48% "male" compared to 52% "female" when "other issues" were omitted), it is in the direction identified by the television advertising literature (Kahn, 1993; Kahn & Gordon, 1997).

There were no significant differences in terms of the types of issues used ("women’s" or "men’s") when challengers were compared to incumbents, winners were compared to losers, and Democrats, Republicans, and Independents were compared to each other. The only significant difference appears between Democratic winners and losers. Democratic winners were more likely to discuss "female issues" than "male issues" (see Table 5). This finding might demonstrate the benefit that Democratic women have of playing to an agenda both in keeping with their gender stereotypes and, to some extent, assumptions about their party.

Opponent Critiques—The infrequency of opponent critiques (7, only 1% of all references) conform to the literature, which indicates that women do not frequently attack (Johnston & White, 1994; Kahn & Gordon, 1997). Even when the brochures, rather than claims within them, were used as the unit of analysis, the frequency of attacks (present in 3 out of 21 brochures or one-seventh) falls short of Williams’ (1994, 1998) one-third.

All of the attacks coded here were made by Democratic challengers who lost. Two of these candidates did not name their opponents. One of these two simply implied that there was something wrong with the incumbent by saying that people should vote for someone who is “Caring . . . for a change.” The other noted that she was the “only candidate in the _______ district with a deep business background.” A third candidate reprinted a local newspaper article in her brochure, which contained five attacks on her opponent. On the surface, using a newspaper article to

<table>
<thead>
<tr>
<th>Type of Issue</th>
<th>Election Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Loser</td>
</tr>
<tr>
<td>&quot;Female&quot;</td>
<td>39%</td>
</tr>
<tr>
<td></td>
<td>(14)</td>
</tr>
<tr>
<td>&quot;Male&quot;</td>
<td>61%</td>
</tr>
<tr>
<td></td>
<td>(22)</td>
</tr>
</tbody>
</table>

Cramer’s V=.22
Significant at .05 level
introduce opponent criticism is in keeping with advice that candidates can avoid backlash by having others launch attacks. A closer look at this brochure indicates that the advice was not taken since the article reproduced includes comments made by the candidate criticizing her opponent (for policy positions and his support for his own pay raise). Overall, the minimal number of references to opponents was predictable given the television advertising research, but the nature of the criticisms were not since they went beyond issue critiques. The small number of candidates who made these critiques and the unsuccessfulness of their campaigns should curtail any sweeping interpretation of what this says about office-level differences in negative campaigning.

Traits—Character traits were coded into 14 different categories. The most common of these categories was “hardworking,” which included 27 references (22%). The second most frequent category was “caring” (20, 16%). When incumbents and challengers were compared, differences of five percent or greater existed for four traits. A larger percentage of challengers’ claims were about their strength (11% vs. 4% for incumbents) and expertise (11% vs. 6% for incumbents), while incumbents more frequently mentioned their activeness (9% vs. 4% for challengers) and caring (19% vs. 11% for challengers). The gap for mentioning caring was even larger for winners and losers (20% of winners’ traits fell into the “caring” category compared to 10% for losers). No losers included claims of independence whereas 6% of the winners’ traits claimed fell in this category.

When the traits promoted by candidates of different parties were compared, Independents differed from members of the major parties. Only three of the 14 traits were claimed by Independents: expertise (60%), honesty (20%), and hard work (20%). Independents discussed their expertise much more than others since these claims made up only 6% of those offered by Democrats and Republicans. Republicans and Democrats differed by more than 5% in the following categories: leadership (with Democrats mentioning this more often, 17% to 8%), activity (with Republicans mentioning this more often, 14% to 3%), caring (comprising 20% for Republicans and only 14% for Democrats), and hard work (with Democrats claiming this quality in 29% of their traits mentioned compared to 12% for Republicans). To some extent these messages seem to be contradicting negative party stereotypes (such as Republicans being uncaring).

Traits were recoded into categories used by Williams (1994) in his study of female Senate candidates’ television advertising. These categories included: compassion, empathy, integrity, activity, strength, knowledge, and a residual group. Williams argued that compassion and empathy were the feminine traits; strength, activity, and knowledge were the masculine ones; and integrity was neither. Since all of the traits categorized
Table 6

<table>
<thead>
<tr>
<th>Type of Trait Appeal</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>&quot;Feminine Traits&quot;</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compassion</td>
<td>20</td>
<td>16%</td>
</tr>
<tr>
<td>Empathy</td>
<td>6</td>
<td>5%</td>
</tr>
<tr>
<td>Integrity</td>
<td>12</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>38</td>
<td>31%</td>
</tr>
<tr>
<td><strong>&quot;Masculine Traits&quot;</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Activity</td>
<td>40</td>
<td>32%</td>
</tr>
<tr>
<td>Strength</td>
<td>29</td>
<td>23%</td>
</tr>
<tr>
<td>Knowledge</td>
<td>10</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>79 /</td>
<td>63%</td>
</tr>
<tr>
<td><strong>&quot;Other&quot;</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
<td>6%</td>
</tr>
</tbody>
</table>

Note: Here as integrity were about honesty, a characteristic identified by Kahn (1993; 1994) as fitting feminine candidate stereotypes, it will be coded as such here. Table 6 demonstrates the prevalence of each type of trait. Even counting the integrity category as feminine, masculine traits appeared more than twice as often as feminine traits (64% compared to 31%). These results contrast sharply with Williams’ results that showed 62% of the traits claimed by women Senators in their television advertisements were feminine compared to 27% that were masculine. These findings are much more consistent with the findings of Kahn (1994, 108) which were that 81% of the traits claimed by gubernatorial candidates and 78% of those claimed by Senate candidates were masculine. The results fail to confirm the expectation that women competing for lower level offices would be more likely to emphasize feminine traits and instead reinforce the idea that women advertise against type in order to conform to masculine stereotypes of leadership. This conformity appears “across-the-board,” as there were no significant differences in the frequency of claiming “female” versus “male” traits when candidates from different parties, with different election outcomes, and different status — incumbents or challengers — were compared.

Conclusions

Campaign brochures of women running for the Pennsylvania State
Assembly in 1996 conveyed messages that in many ways were similar to those found in television campaign advertising for higher offices. They promoted issues more than other appeals, rarely critiqued their opponents, and focused slightly more on “female issues.” However, more traits claimed were masculine lending support to Kahn’s work (1993; 1994) rather than the work of others (Benze & Declercq, 1985a; Williams, 1994).

The great range of appeals used in the brochures demonstrates how this form of campaign communication gives candidates an opportunity to take positions on many issues and demonstrate both masculine and feminine traits. Candidates do not seem to treat campaigning through brochures as a zero-sum game, thus forcing them to choose between appeals. In this way, brochures are a very different form of communication than television ads, which are much more expensive and brief. The scarcity of television ad time provides less flexibility for making multiple appeals. In these brochures, rather than choose between appeals (feminine or masculine, this kind of issue or that kind, issues or not), candidates make variety of claims. Nevertheless, for the most part the emphasis in women’s ads follows that of television advertising: emphasis on issues, few opponent attacks, and more masculine traits than feminine.

Notes

1. The author would like to thank Martha Bailey, Kathy Dolan, James Hoefler, Stephanie Slocum-Shaffer, and the reviewers for their suggestions. She would also like to express appreciation to Vickie Kuhn for her invaluable help acquiring the brochures and to the women candidates who provided them. An earlier version of this article was presented at the Southwestern Political Science Association Meeting in March 1998.

2. The names and addresses were obtained from the “Official Results for the 1996 General Election” issued by the Pennsylvania Bureau of Commissions, Elections, and Legislation. Only individuals with clearly identifiable female names were sent letters. Those with androgynous names (such as Pat, Chris, and Tracy) were not contacted, even though women were among this group.

3. It is likely that some of the women who did not reply did not issue brochures due to a lack of resources or a lack of competition. Therefore, it would be inappropriate to consider the response rate 38%.

4. Of the 55 candidates with female names who were running, 25 won. Thirty were Democrats, 21 were Republicans, and four were Independents; therefore, Republican candidates were underrepresented in the sample.

5. This means that 100% of the references made by “losers” were made by challengers and 92% of the comments made by “winners” were made by incumbents.
6. These included references for voters to "make a change."

7. It is important to note that the theoretical justification for this dichotomy is underdeveloped despite its frequent usage. In fact, the continued assumption that traits and issues are gendered might reinforce unfounded stereotypes. This article does not address or rectify this potential problem since the focus on comparing State Assembly brochures to the literature on television advertising necessitates use of the same concepts and definitions.

8. The relationship between appeal types and winner/loser is Chi square 53.3; Cramer's V = .29; Significant at .001 level. When "attack" and "other" were omitted, the relationship is Chi Square 41; Cramer's V = .26; Significant at .001 level.

9. Of the 234 issue statements, 23 could not be coded because they were too vague.

10. Even when the "neither" category was excluded from the analysis, these differences remained insignificant. When Democrats and Republicans were compared and Independents were excluded, there was still no significant difference.

11. These were: independent, strong (or aggressive, fighter, tough, courageous, assertive), leader (or experienced, proven, respected), knowledgeable (or intelligent, expert, know how, informed, thoughtful, well-traveled), active (or involved, outspoken, tireless, feisty, energetic), caring (or empathetic, listens, concerned, accessible, works for you, responsive, or can be counted on), outsider/new, honest (or trustworthy, reliable, keeps promises, integrity, principled, ethical, or responsible), cooperative/coalition builder, learns (or open-minded, nonideological), excited (or eager, spirited, enthusiastic), effective gets results, hardworking (or industrious, committed, studies), and other (hopeful, thrifty, organized, proud, or ready).

12. We need to recognize that Kahn did not have a neutral category. When references coded as "other" are omitted from the brochures calculation, 68% of the traits claimed were "masculine."

13. Nor were there significant differences when "other" traits were excluded from the analysis and when Independent candidates were omitted.

14. Nor were there significant differences when "other" traits were excluded from the analysis and when Independent candidates were omitted.

Bibliography


Regulation Negotiation: Lessons Learned from Failure to Reach Agreement, A Case Study of the Pennsylvania Department of Environmental Protection

Paula A. Duda  
Kutztown University

This article examines the use of regulation negotiation as an alternative to traditional rule making processes in state level bureaucracies. Direct observation of the Special Protection Water Program regulation negotiations at the Pennsylvania Department of Environmental Protection from January, 1995 through August, 1996, shows that regulation negotiation can only be applied to issues with clearly defined policy alternatives, a limited number of affected parties and a distinct but not imminent deadline. All parties must be willing to bargain or negotiated agreement will not be reached. On a positive note, a survey of regulation negotiation participants revealed that agency administrators, environmental advocacy groups, and the regulated business community all perceive real benefits in the process.

In an age of rampant court challenges to federal and state governmental regulations, the process known as regulation negotiation has been heralded as a viable alternative to traditional rulemaking processes. First introduced to the federal government in the early 1980's, regulation negotiation is now making headway at the state level for such issues as environmental, safety, and land-use regulations. This article focuses upon a particular case study in regulation negotiation, the Pennsylvania Department of Environmental Protection (DEP) Special Protection Water Program Regulation Negotiation (reg/neg). In this instance, the case study is of interest, not for the results produced, but as a lesson in failure to achieve a negotiated agreement.

Methodology

This case study is drawn from in-depth information gathered using the non-participant observation method. The author was allowed to act as an impartial observer of the reg/neg process from August of 1995 through April of 1996. The author attended all general reg/neg sessions, and was given copies of all meeting notes, nonpublic "break-out group" work sessions, and all relevant technical and legal documents circulated by the regulatory agencies and reg/neg participants. As the reg/neg neared completion, the DEP authorized a phone survey of the reg/neg participants. The department wanted to gain some feedback on the process in order to make adjustments for future reg/negs. In March of 1996,
Mary Margaret Golten of CDR Associates formulated a survey to obtain feedback from the participants in the Special Protection Waters Program Regulation Negotiation (reg/neg). The author then used these questions as the basis for a revised survey questionnaire. A Kutztown University Political Science graduate assistant administered the survey using telephone and personal interviews from March through June 1996. In addition to the survey, the author conducted several in-depth telephone interviews immediately following the final reg/neg meeting in August of 1996. All survey respondents and interview participants were identified only as belonging to the business community, the environmental community, or a governmental agency. This anonymity allowed the respondents to share freely their perceptions of the process and of the outcome of the reg/neg.

Certainly the official sponsorship of the survey and the perception of this author as an unbiased observer greatly aided the quantity and quality of the responses. By the time the survey was administered, participants from the business and environmental communities were worried about press leaks occurring prior to the issuing of the final reports. However the participants were also eager to have their side of the story heard. Since the respondents were aware that the survey results would be reported to the DEP, they responded openly to the pros and cons of both the reg/neg process and the particulars of this hotly contested regulatory issue.

**What is Regulation Negotiation?**

In the past two decades, the federal bureaucracy has experimented with alternative techniques to traditional rulemaking procedures in an attempt to reduce court challenges to legislation and to produce better regulations. Among these techniques is the process known as regulation negotiation or negotiated rulemaking. Regulation negotiation (reg-neg) has been used at the federal level by various regulatory agencies including the Environmental Protection Agency, the Federal Aviation Administration, Occupational Safety and Health Administration, the Nuclear Regulatory Commission and the Federal Trade Commission since the early 1980's. The Negotiated Rulemaking Act of 1990 (P.L. 101-648, 1990) formalized the regulation negotiation procedure in the federal bureaucracy.

Simply put, regulation negotiation is an alternative method for drafting proposed agency rules or regulations, relying upon discussion and compromise among the regulated community, public interest groups, and government officials. The resulting regulations are then placed for public comment following traditional rulemaking process. The philosophy behind the process is that early involvement of affected parties will produce better regulations and reduce court challenges after implementation. (CDR Associates, 1995).
Regulation negotiation consists of two phases, the convening process and the actual negotiations phase. Prior to the convening process, regulations appropriate for negotiation must be carefully chosen, since not all issues readily lend themselves to the negotiation process. During the convening phase, all possible affected stakeholders are identified and notified of the impending negotiations. The list of actual participants is narrowed down using interviews, meetings and public comment to determine the various interests and their representative groups (CDR Associates).

During the negotiation phase, stakeholders share technical information, express opposing viewpoints on the proposed regulations, and draft a final agreement within a specified time limit. This phase demands ongoing commitment of all stakeholders and of the regulatory agency itself (CDR Associates).

Criteria for Success

Successful reg/negs, that is those resulting in some level of agreement among the stakeholders, presuppose certain conditions regarding the issues and participants in the process. First, the agency must carefully select the issue or regulations for negotiation. The EPA has set fairly straightforward criteria for rule selection. The proposed rule must be in the middle range of development, neither in the final stages nor years away from implementation. A distinct deadline for completion of the regulations helps to move the process along. The rule must involve a limited number of stakeholders and issues. For example, complex, multiparty disputes involving unsettled issues of science or technology are generally not good targets for reg/neg. Lastly, the rule must pertain to distinct regulations as opposed to general agency policies (Fiorino, 1988; Fiorino and Kurtz, 1988; Harter, 1982).

Secondly, all affected parties must be identified and then induced to come to the bargaining table. Theory has shown that the stakeholders must have a reason to bargain, either through fear of traditional rulemaking or from a perceived advantage in the reg/neg process, a rough form of cost/benefit analysis. (Nakamura, Church & Cooper, 1991; Langbein & Kerwin, 1985).

Thirdly, once the stakeholders have been lured or forced to the table, all parties must engage in good faith negotiations based upon honest exchange of information, good communication and willingness to compromise grounded in self-interest. It is highly unlikely that groups will compromise on issues involving what they perceive to be the fundamental values of their organization. Likewise, the existence of a BATNA (Best Alternative to a Negotiated Agreement) for any group of stakeholders spells death for negotiated agreement. All stakeholders must subscribe
to the viewpoint that they are better off with a negotiated agreement than with a settlement imposed by the courts or legislature or produced by the traditional rulemaking process. Regulatory agency commitment to the regulation negotiation is also crucial to success at this stage. (Burns, 1990; Pritzker, 1990; Amy, 1987; Harter, 1986, 1982).

**The Pennsylvania DEP Experience**

Pennsylvania’s foray into the realm of regulation negotiation began as an experiment at several state regulatory agencies. In early 1995, Secretary John Seif, head of the newly created Department of Environmental Protection, directed the Bureau of Water Quality Management (BWQM) to use the reg/neg process to solve a complex issue then dogging the agency. The BWQM needed to create new regulations for the implementation of the federally mandated Special Protection (Antidegradation) Waters Program (DEP Reg-Neg Operating Principles, 7/14/95). This program, first promulgated by the EPA in 1975 and refined in 1983, requires all states to adopt a statewide antidegradation water policy in accordance with the federal guidelines. (48 Federal Register, 1983; 40 Federal Register, 1975). The federal guidelines call for three classes or tiers of water protection. These tiers are designed to limit the amount and type of discharges allowed into any body of water (lake, stream, river, etc.). Discharges include such things as run-off from farm operations, chemicals or metals from manufacturing processes or storm water drainage from residential developments.

Tier 1 is the absolute floor of water quality in the U.S. Waters classified as Tier 1 must be protected to maintain all “existing in-stream uses as of November 23, 1975” (48 Federal Register, 1983) and must meet minimum federal water quality standards. Waters in this class may be degraded to the minimum standard as long as the “existing” uses (for example supporting a specific fish population) are protected. Tier 2 waters are known as High Quality Waters. Waters in this classification exceed basic quality needed to support aquatic life and human recreation. These waters may also be degraded if substantial economic and social justifications are demonstrated (EPA Handbook, 1994). Tier 3 waters are labeled as Outstanding National Resource Waters (ONRW) and include but are not limited to “waters of national and State parks and wildlife refuges and waters of exceptional recreational or ecological significance” (48 Federal Register, 1983). No new or expanded discharges are allowed into these waters (EPA Handbook, 1994).

In compliance with the federal mandate, the state of Pennsylvania developed its own Antidegradation Program (Special Protection Waters) in 1975. The Pennsylvania program consisted of only two levels of waters designated for special protection from increased discharges, High
Quality Waters (HQ) and Exceptional Value Waters (EV) (25 PA Code, Chapter 93). A hastily completed initial survey of all Pennsylvania streams in 1975 created bureaucratic problems. Due to limited departmental resources, many streams were placed into a default category of High Quality, based on existing biological information from all state sources (e.g., PA Fish and Game Commission). At the start of the reg/neg, approximately 54% of Pennsylvania’s streams had been assessed by the DEP (formerly DER) Bureau of Water Quality Management with the remainder falling into the default High Quality category (DEP Reg-Neg Observations, 8/17 & 9/19, DEP Handout #1). Petitions for redesignation of streams, either up or downward, were handled by the state Environmental Quality Board as outlined in the formal state rulemaking procedures, Chapter 93 of the Pennsylvania Code and the Pennsylvania Clean Streams Law (35 P.S. 691.1-691.1001,1937). Needless to say, this redesignation process could be time consuming for both business and environmental groups.

Herein lay the seeds of the regulation negotiation involving the Pennsylvania antidegradation policy: a two-tier system incompatible with the federal guidelines, an incomplete assessment of all PA streams, and an involved petition process for classifying unassessed or reclassifying assessed streams. In June of 1994, during its three-year review of the program, the EPA rejected portions of the regulations as inconsistent with federal policy. In early 1995, the Raymond Proffitt Foundation, a nonprofit environmental group representing the Lenape Indian Tribe, filed a lawsuit against the EPA for failure to enforce the federal water standards in Pennsylvania. The heat was officially turned up on the DEP to rewrite the Pennsylvania Antidegradation regulations (Reg-Neg Phase I Report, April 1, 1996).

By January of 1995, the DEP, Bureau of Water Quality Management had initiated the reg/neg process through a public hearing and comment session. Stakeholders were identified and ground rules for the reg/neg were in place by June, with the first official meeting set for July 10, 1995. At that time, the deadline for completion of the process was set for September of 1995. The group set the following goals: developing regulatory language for the antidegradation program, redesigning the waterbody designation process, and providing guidelines for exceptions to the antidegradation policy. Developing regulatory language meant creating a three-tiered system for classifying Pennsylvania’s waterbodies. These three tiers needed to be in strict accordance with the EPA guidelines. The designation process included setting a timeline for classification of streams and water bodies. Perhaps the most controversial issue of the reg/neg involved the exceptions to the regulations. The stakeholders were charged with setting up guidelines for cases where economic de-
development considerations outweighed environmental concerns, a policy known as Social and Economic Justification (SEJ). In effect, SEJ allows additional discharges into protected High Quality waterbodies in those instances where the regulations severely handicap or prevent local or state economic development (DEP Reg-Neg Operating Principles, 7/14/95).

A discussion of the tenor of the ongoing negotiations is important to understanding the resulting difficulties in achieving a negotiated agreement. The reg/neg process stretched well beyond the anticipated deadline of September 1995 and actually concluded in mid-August of 1996. Due to the ongoing Proffitt lawsuit, the entire process was overshadowed by the threat of EPA preemption through a court-imposed settlement. The atmosphere of each session progressed from formal discussion to open discussion to pressured decision-making to vocal disagreement, ending in a standoff between the two competing viewpoints, the business or regulated group versus the environmental community. Federal and state governmental agencies were also stakeholders at the table. DEP participated throughout as an advisor but not as a direct stakeholder in the process. In fact, DEP exhibited full commitment to the process, providing both technical information and agency resources as needed (Reg / Neg Observations 7/10/95, 8/17/95, 9/19/95, 10/16/95, 12/18/95).

The opening sessions of the reg/neg were primarily occupied by defining operating principles for the groups and establishing working relationships through the use of small, mixed-interest working groups. By the fall of 1995, the entire group was moving toward specific definition of terms, in particular, definitions of the three tiers of water quality. Defining terms and then building procedures for classification proved to be no small task due to competing scientific and technical standards of water quality. For example, what factors should be considered in defining the federally mandated, three tiers of water quality degradation? Once classified, how much water quality degradation should be allowed for Tiers 1 and 2? How would this degradation be measured, using biological methods, chemical methods or a combination of the two? Even the EPA experts offered multiple solutions to these questions. There was no single agreed upon scientific method but rather several equally acceptable alternatives, depending upon your viewpoint (Reg/Neg Observations 9/19/95, 10/16/95).

By the end of 1995, the DEP Secretary began to push for some sort of report. The stakeholders agreed to concentrate their efforts upon a preliminary report, highlighting areas of agreement and also underscoring areas of dissent. In the process of negotiating this document, cracks in the cooperative facade of the group began to appear. The stakeholders aligned themselves along traditional divisions, environmentalists versus business and agriculture. By March of 1996, all stakeholders did sign
a preliminary final Phase I Report. Substantial areas of disagreement on key issues, however, characterized this document. No agreement was reached on the controversial issue of Tier 3 waters (restricted from degradation and hence basically restricted from development). No definition of social and economic justification (SEJ) for exceptions in Tier 2 waters was provided. Only definitions of Tier 1 and Tier 2 waters and some general scientific standards for their classification were finalized in this report. Stakeholders, instead, deferred the final report and the "tough" issues until the summer of 1996 (Reg/Neg Observations 12/18/95, 3/11/96; DEP Reg/Neg Phase I Report, 4/1/96).

At a key "final" meeting in August of 1996, negotiations broke down. No single final report could be issued and, in fact, many previously agreed upon issues were withdrawn from the bargaining table. Instead of one set of recommendations for proposed regulations, two separate reports were issued: one from the regulated community and one from the conservation stakeholders. By the last week of August, the EPA, under a court order, had preempted Pennsylvania DEP and published its own set of proposed rules for the Special Protection Waters Program. By all accounts, the regulation negotiation process had failed to produce the anticipated results. A concrete agreement could not be reached on proposed regulations and federal preemption was not avoided (Conservation Stakeholders, 8/2/96; EPA Proposed Rules, 8/26/96; Regulated Community Stakeholders 8/19/96).

Failure or Learning Experience?

Should the entire regulation negotiation process be written off as a failure in this instance? What were the hidden problems in the process? What important issues were not addressed? Was the reg/neg totally unsuccessful in bringing the regulated and conservation communities together? Should reg/neg be used again? If yes, under what circumstances? The results of the survey and phone interviews provide some insight into these issues.

Table One illustrates the composition of the survey respondents. Of the twenty-five individuals surveyed, ten came from the environmental or conservation community, five from governmental agencies, and nine from the business or regulated community. In general, participants expressed satisfaction with the way in which the reg/neg was initially convened (93%) but a little more than half (56%) felt that some important groups were missing from the bargaining table. Most notably, they cited the lack of a larger environmental organization such as the Sierra Club. In the in-depth interviews, a representative of the business stakeholders questioned the presence of certain governmental agencies as voting stakeholders. The governmental agencies were perceived as aligning them-
selves with the environmental community. Most respondents felt that the level of individual and organizational commitment to the reg/neg process was good (58%) to very good (21%) (Reg/Neg Survey, 1996).

The major problems cited were deadlines, issue focus, and process. The looming deadline created by the ongoing lawsuit and the associated threat of EPA preemption were seen as shaping the entire reg/neg. Participants explained that too many issues had to be resolved in too short of a time, resulting in vague definitions of standards and hasty, forced compromise. The consensus process, which is central to regulation negotiation tactics, was also greatly criticized. Eighty percent of the respondents supported early and firm consensus. The problem, cited again and again, and reaffirmed in the in-depth interviews, was the practice of reaching agreement at one stage and then revisiting the issue, or “reneging” in their terminology, at a later date. For example, the percentage of degradation allowed in High Quality waters was reopened for discussion in the final series of meetings despite the fact that this number had been agreed upon months earlier (Reg/Neg Survey, 1996).

In addition, participants cited problems with the technical expertise of the facilitator and the type and amount of technical information available to the stakeholders. While 60% of those surveyed preferred a facilitator with expertise in the subject matter, governmental representatives, in particular, stated that the facilitator’s lack of technical expertise hindered the process. Environmental stakeholders complained of difficulties in obtaining sufficient technical background information and prob-
lems with the transmission of meeting summaries, work group papers, and technical data (Tables Two, Three and Four). Business and governmental stakeholders, on the other hand, felt insufficiently prepared for the reg/neg process itself. As Table Five through Seven illustrate, environmentalists were more comfortable with the reg/neg process than other participants (Reg/Neg Survey, 1996).

On the positive side, the survey corresponded exactly to effects documented in other studies. Among the positive effects cited were improved understanding of each other's viewpoints (92%) and better future working relationships among business, environmental, and governmental groups (100%). All stakeholders surveyed expressed a willingness to participate in the reg/neg process again, and nearly all (96%) would recommend the process to others. In later interviews, it was confirmed that, despite the failure to produce a negotiated agreement, participants still felt the process was superior to the traditional written submission of comments or oral testimony on proposed regulations (Reg/Neg Survey, 1996).

Analysis and Discussion

Does the reg/neg process work? Perhaps a better question is "Was regulation/negotiation an appropriate problem solving technique in this situation?" Obviously, the Pennsylvania DEP Special Protection Water Program reg/neg failed to produce an agreement on recommendations for proposed regulations. The reg/neg did have some beneficial outcomes in terms of potential for increased cooperation in the future between environmental and business stakeholders, potential for better working relationships between governmental regulating agencies and business, and fuller understanding of state and federal regulatory procedures by the business community. But good will and better public relations were simply byproducts of the process. Ultimately, these byproducts are a hard sell to top level political administrators and elected officials seeking concrete results, namely proposed regulations. So what went wrong in this scenario?

Returning to our criteria for success, we can highlight three specific problems with the use of reg/neg for the Special Protection Water Program regulations: 1) complexity and time constraints surrounding the issue, 2) lack of inducement to bargain, and 3) perceived existence of a BATNA.

1) The issue. As Fiorino and Kurtz (1988) point out in their study of regulation negotiation at the EPA, an issue is 'ripe' for the reg/neg process when there are clearly defined technical issues with a variety of alternate solutions, hence creating bargaining room or trade-offs. An example might be choosing between chemical versus biological measures of stream water quality. Reg/neg also works best when the issues in-
### TABLE TWO
Were there appropriate briefings on the data provided in advance of the negotiations?

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### TABLE THREE
ENVIRONMENTALISTS: Were there appropriate briefings on the data provided in advance of the negotiations?

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### TABLE FOUR
BUSINESS: Were there appropriate briefings on the data provided in advance of negotiations?

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TABLE FIVE
Did stakeholders know enough about the reg/neg facilitation and negotiation process?

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TABLE SIX
ENVIRONMENTALISTS: Did stakeholders know enough about the reg/neg facilitation and negotiation process?

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TABLE SEVEN
BUSINESS: Did stakeholders know enough about the reg/neg facilitation and negotiation process?

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volve implementation or "how to" questions rather than issues of long term policy. Lastly, a specified deadline helps to encourage negotiations but a tight deadline may place undue pressure upon the process (Fiorino, 1988; Fiorino and Kurtz, 1985; Harter, 1982).

The Special Protection Waters Program fails to meet all of the aforementioned guidelines for issue choice. Stakeholders were expected to define three levels of water quality without clearly agreed upon scientific standards for measuring water degradation or base lines for classifying streams for initial water quality levels. In addition, these definitions were not neutral in that stream classification would have long term effects upon land values, economic development, and government enforcement. Stakeholders were being asked to both define policy and then produce regulations to enforce the policy. Add to this the looming deadline imposed by the Proffitt Foundation lawsuit and the threat of EPA preemption and you have the makings of vague policy recommendations in order to facilitate hasty consensus.

2) Lack of inducement to bargain. Regulation negotiation is based upon the principle of self-interest: both sides have something to gain and something to win. The key to successful negotiations is compromise founded on good communication and good faith bargaining. Regulation negotiation, however, assumes that both sides will approach the table willing and able to compromise. But what about those "fundamental values" of the organization which simply cannot be negotiated? Studies have shown that it is highly unlikely that agreement can be reached when the issue involves disagreement on the fundamental values of the stakeholders' organizations (Burns, 1990; Pritzker, 1990; Amy, 1987; Harter, 1986, 1982).

In this instance, the fundamental values of the two main camps came into direct conflict. The environmentalists are strongly committed to the highest level of protection for the state's water resources, even if this protection entails foregoing development on some choice pieces of real estate. While the environmental groups are not anti-development per se, they push for the use of the best technology available for environmental protection, regardless of cost. As stated in the in-depth interviews, environmentalists feared the use of Social and Economic Justification (SEJ) standards as an easy way around the regulations. They feared that simply justifying the planned development through economic development benefits would substantially weaken water quality protection (Reg/Neg Survey and Interviews, 1996).

The business or regulated community, on the other hand, is committed to development for profit. This is not to say that the regulated community supports development at any cost but business is willing to base regulations for water quality degradation on the business principle of cost/benefit. This would mean allowing for development and potential
water degradation on some properties while totally foregoing development in other areas deemed as Exception Value watersheds. Thus in terms of the reg/neg outcome, the regulated community was looking for an uncomplicated permit and development process in order to limit overall development costs (Reg/Neg Survey and Interviews, 1996).

To the outside observer, compromise may appear possible. To the participants, seated at the table, perception of the intransigence of the “others” dominated. Business saw the environmentalists as totally unwilling to make any “reasonable” compromises on the issues of SEJ while the environmentalists saw the regulated community as committed to weakening water protection through the creation of loopholes. In the end these perceptions hardened and resulted in the total breakdown of the reg/neg (Reg/Neg Survey and Interviews, 1996).

Charges of failure to negotiate in good faith were also made by both sides. Specifically, business felt that the environmentalists undermined the negotiations in the final meeting by introducing last minute changes and by reneging on prior agreements such as the formulas for High Quality Water classification and the agreed upon standards of Exceptional Value Waters. Environmentalists stated that they felt pressured into agreement on the interim report and were frankly not satisfied with the biological and chemical standards used for measuring degradation and water quality. Both sides felt that neither group kept to the original areas of consensus. (Reg/Neg Survey and Interviews, 1996).

In this case, the conflict of fundamental values is particularly volatile in that it involved some fairly high stakes. Referring back to the EPA standards, once a body of water is classified as Tier 3, it is absolutely protected from development. This translates into a considerable loss for any business or individual holding large tracts of undeveloped land, particularly in the center of the state. Tier 2 classification allows the leeway for development if, and only if, Social and Economic Justification exists. If environmentalists win the battle over definition and application of classifications, they can ensure protection of vast areas of Pennsylvania wilderness, currently held in private ownership. If the business community defines the classification system and controls the definition of SEJ, the development process could be greatly streamlined as compared to present procedures.

3) Perceived existence of a BATNA. The existence of a real or perceived BATNA, Best Alternative to a Negotiated Agreement, makes regulation negotiation impossible, because it simply removes the incentive to bargain. If the groups believe that they have another out, why compromise? In this case study, environmentalists perceived the ongoing Proffitt Foundation lawsuit as a very effective BATNA. This is confirmed in several instances. Although invited to the reg/neg, the major environmental
groups, most notably the Sierra Club, declined to participate in the regulation negotiation, citing the ongoing lawsuit. In the in-depth interviews, environmentalists specifically stated that the lawsuit provided a fall back position, an alternative to compromise with the business community during the reg/neg process (Reg-Neg Observations, 7/10/95, 8/17/95; DEP Phase I Report 5/1/96; Reg/Neg Interviews, 8/96). Environmental groups were not making a clear choice between the burdensome, traditional rulemaking process and regulation negotiation. The courts still remained as an alternative (Melnick, 1983).

In contrast, the regulated community feared preemption by the EPA or imposition of regulations through rulemaking by the DEP. As gleaned from the interviews and surveys, business firmly believed that the alternative to a negotiated settlement would be less flexible and more burdensome regulations. The business stakeholders strongly expressed the perception that the environmental regulatory bureaucracy, at both the federal and state level, was out of touch with the needs of business (Reg/Neg Survey and Interviews, 1996). For the regulated community, there was no BATNA. As for the environmental community, they had twenty-five years of experience with using the court system to ensure enforcement of existing standards and to push for more stringent regulations than those promulgated by government regulatory agencies. It made sense to place their trust in the courts rather than in an as yet, untried process at the state level.

Thus, these facets of the Special Protection Waters Program regulation negotiation — complexity of the issue, time constraints, challenges to fundamental group values, and the omnipresent BATNA — made this a poor choice for negotiated settlement.

Implications for Policy Makers

What are the implications for policy makers? Is regulation negotiation applicable at the state level? The answer is a most definite yes, but with some major limitations and specific guidelines. The following suggestions are compiled from the case study survey and prior research on the effectiveness of regulation negotiation:

1) Limit the issue. This means limiting both the scope and number of issues addressed. Regulation negotiation cannot be used to hammer out solutions to complex problems. It cannot be used to define technical solutions where the experts have not yet defined clear technical standards. In this example, the biologists and environmental scientists could not agree upon a single method for determining the amount of water quality degradation taking place. They could not agree upon a definition of water quality (biological standards versus chemical standards), and they could not agree upon a definition of waterbody (e.g. whether
or not to include streams, ground waters, tributaries). The negotiable issue of how much water quality degradation to allow could not be addressed since the underlying standards where so ill defined. This issue did not fit the concept of “ripe” for decision.

2) Identify all relevant viewpoints but limit the number of groups at the bargaining table. An agreement, negotiated without the most important participants is, of course, useless. The professional facilitators and the Pennsylvania DEP staff seemed to have identified the major representatives of the environmental and business community in the state. However, the loss of the Sierra Club, at the table (they were invited but declined to attend due to the ongoing lawsuit), created the proverbial BATNA; the environmentalists could and would settle this issue in the courts, if necessary.

3) Provide sufficient training and information both in terms of the technical issues and the regulation negotiation process itself. The survey revealed that, in Pennsylvania at least, the regulated community felt unfamiliar with the reg/neg process itself while the environmentalists, who had been involved in several other state reg/negs, were very comfortable with the process. This, by the way, is contrary to other research findings (Nakamura, Church and Cooper, 1991; Amy, 1987; Bingham, 1986) in which business is found to be most proficient in the negotiation process. At any rate, all parties must be thoroughly trained in the concepts of negotiations, consensus, and compromise.

In addition, all participants must have access to a variety of technical information from outside, neutral experts such as research universities. Stakeholders must also provide and readily share their own data and research on technical issues. Information aids in formulating concrete alternatives for negotiation.

4) Make use of an outside, professional negotiation firm. While the research emphasizes use of professional negotiators without technical expertise in the subject matter (Nakamura, Church and Cooper, 1991; Amy, 1987; Bingham, 1986), our survey shows that stakeholders preferred negotiators with some understanding of the technical issues. The use of an outside firm also ensures the perception of neutrality of the process by the stakeholder.

5) Allow the program agency to maintain an active role in the reg/neg. Program staff of the participating agency are strongly encouraged to take an active role in the entire process, either as full participants or by offering input and providing data. Support for the outcomes of the reg/neg must also be demonstrated at the highest levels of the bureaucracy. Stakeholders must have the sense that their recommendations carry some policy weight so that the process is not the proverbial exercise in futility. In Pennsylvania, the DEP reg/neg received written support from the Sec-
retary as well as guarantees that the department would use any regulations suggested by the reg-neg stakeholders to formulate the proposed regulations.

6) Set definite deadlines for the reg/neg process. The key however is to place time limits but not time constraints. The entire DEP reg/neg was permeated with the feeling that "something had to be done" as soon as possible. As pointed out previously, this rush to consensus contributed to the demise of the final agreement.

7) Beware of the existence of a BATNA. As soon as any of the stakeholders have an alternative to a negotiated agreement, they will take it. Without the incentive to bargain, consensus cannot be generated. As long as any party feels they can achieve their goals through the traditional rulemaking process or through the courts, they will, logically enough, choose the path of highest gain with the least compromise.

Regulation negotiation or mediated dispute resolution in general relies upon a theoretical approach to policy implementation known as the “systems changing” theory. Challenges to policy implementation are seen as the result of certain patterns of interaction and certain power relationships among institutional interests in society. In this theory, government’s role is to reallocate responsibilities, obligations and power among interest groups. Regulation negotiation is a natural outgrowth of this theory. It is viewed as a low cost method of changing old patterns of behavior, of changing existing power arrangements. At the bargaining table, all interests are given equal power in creating the policy outcome. All participants are equally expected to give up something, to alter their entrenched viewpoints (McDonnell and Elmore, 1987; Nakamura, Church and Cooper, 1991).

How does this theory apply to the DEP case study? The entire premise of the Antidegradation Policy Reg-Neg was based upon the restructuring of alliances and adversarial relationships in Pennsylvania. An “us versus them,” business versus all environmental interests (government and private) mentality had to be altered in the early stages of the reg-neg. While the survey results highlight some success in changing interest group perceptions and attitudes toward one another and toward the DEP, the reg/neg failed to alter the basic power structure. In this instance, not all groups were on a level playing field. The environmental groups maintained an outside source of bargaining power, namely the courts.

**Beyond the Pennsylvania Experience**

The observations and recommendations arising from this Pennsylvania based case study are validated by comparable experiences with Alternative Dispute Resolution (ADR) throughout the United States. A number of studies at the federal, state and local level suggest conditions
for reaching negotiated agreement similar to those derived from the DEP reg/neg (Fischer, 1997; Manring, 1994; Hunter and Brisbin, 1991). This DEP case study, however, focuses upon regulation-negotiation as a sub-category of consensus building, decision-making techniques. Regulation-negotiation, while sharing many of the characteristics of dispute mediation, is not simply a means for interpreting and applying existing administrative rules. Regulation-negotiation carries the additional burden of creating the rules governing any future disputes among the participants. In fact, these new regulations will affect the interaction between and among stakeholders and government for years to come. The regulation-negotiation process, therefore, must be carefully crafted not simply to reach agreement, but also to ensure the proper balance among governmental, business and public interest groups. Given both the monetary and political costs of the regulation negotiation process, the failure to produce a set of water quality regulations in Pennsylvania can serve as a cautionary example for other states considering the reg-neg process.

Regulation negotiation is not the answer for every issue. It is time consuming and resource intensive. In this case study, the process took nearly a year and a half and involved major time commitments on the part of the stakeholders and DEP personnel. It can produce seemingly intangible benefits in terms of improvement in working relationships among agencies, environmental groups, and the regulated community. This conclusion was borne out by the survey and interview results and by the DEP’s willingness to continue using reg/neg. However, improved relationships and the potential reduction or avoidance of future lawsuits are not readily quantifiable outcomes. It can therefore be difficult to justify the cost/benefit ratio of regulation negotiation. When, as in this case, a regulation negotiation fails to produce a single set of rules, it can be even harder to sell the process to top level agency officials.

Regulation negotiation is not a magical alternative to the traditional rulemaking process. It can be an effective tool of regulatory policy making, but the key to its success lies in the choice of issues, the structure of the reg/neg, and the commitment of the government agencies involved. Unless faced with major legal or legislative change, traditional adversarial rulemaking will continue to dominate policy implementation. Regulation negotiation will remain a second choice for interest group participation in the rulemaking process.
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James R. Marbach
Seton Hall University*

This resource guide is designed to guide and assist individuals researching contemporary Pennsylvania government and politics. It describes many of the primary and secondary sources available, as well as some of the more significant Internet sites. In addition to sections on the various branches of Pennsylvania government, this resource guide also reviews the information about campaigns and elections, the media, local government, and research centers in the Commonwealth.

Individuals seeking information about Pennsylvania government and politics may consult a myriad of sources. The following description of resources is by no means exhaustive. The information contained is limited to books, articles and other sources of information that have been produced or made available since 1970.

State Government Sources

The commonwealth itself provides the most comprehensive source of information about the structure and activities of the Pennsylvania government. Researchers interested in an overview of the structure of state government should start by visiting the commonwealth’s homepage at HYPERLINK http://www.state.pa.us www.state.pa.us. From this site, the researcher will be able to access information on and contact every agency in the executive and legislative branches of government. One should note, however, that this site only contains information that has been compiled within the last ten years.

For those interested in obtaining material compiled before the information highway was constructed, the Pennsylvania State Library, located in Harrisburg, contains the most comprehensive collection of government information published by state agencies, commissions and boards. It also holds copies of the legislative proceedings and judicial rulings. One should consult the Checklist of Official Pennsylvania Publications for a listing of the library’s holdings. The Checklist is a monthly pub-

* The author would like to express his appreciation to Ellis Katz, Tom Baldino and the anonymous reviewers whose comments helped to strengthen this article.
lication that also lists all the reports and bulletins issued by state executive agencies. A similar source is the Directory of State Publications, which was originally issued in 1952 by the Bureau of Publications and has since been taken over by the Department of General Services. The state library also issues the Year’s Work in Pennsylvania Studies, a comprehensive bibliography that cites sources that examine every aspect of Pennsylvania life. The public records of the state are also held in the Pennsylvania State Archives. Located in Harrisburg, the Archives’ purpose is “to acquire, preserve and make available for study the permanently valuable public records of the Commonwealth, with particular attention to be given to the records of State Government.”

A Directory of Libraries is available from the State Library. This directory lists the locations of libraries throughout the Commonwealth that receive state documents from the Pennsylvania State Library. For a listing of other publications, contact the State Bookstore, operated by the Department of General Services. The holdings of hundreds of the state’s public, academic, school and specialized libraries are available through Access Pennsylvania, an Internet consortium offering a statewide catalog. It is located at http://accesspa.brodart.com.

The Pennsylvania Administrative Code defines the organization, powers and duties of executive agencies and departments. The rules and regulations issued by various bureaus and agencies are also listed. Similar, though dated, information can be found in the ABC’s of Pennsylvania Government, which was compiled by the Secretary of the Senate for distribution to members in 1976. It presents information on the Constitution, General Assembly, Executive and Judicial branches in a question-answer format. The manual is indexed for easy reference.

Each executive department also has an office of public relations that reports its activities. Many offer a newsletter and other reports to the public via the Internet at no charge. A sample of such newsletters includes the Department of Labor and Industry’s Job Service, the Department of Agriculture’s Pennsylvania Agricultural News, and the Department of Education’s Fast Forward, Inside Education, and Pennsylvania Education. While such newsletters may lack critical insight into the department’s policies, readers will be given basic programmatic information and some indication of the agency’s priorities.

An excellent source of basic information on the state of Pennsylvania and its governmental branches, departments and agencies is the Pennsylvania Manual. The Manual is published biennially by the Department of General Services. It includes a chronology of the state’s history, the constitution, biographies of elected officials, recent election results and other general information. Most libraries in the state contain copies, as will the local offices of state representatives and senators.


The League of Women Voters produced *Key to the Keystone State: Pennsylvania*, 4th edition, which is a basic guidebook on the structure and operation of Pennsylvania government. This book also describes the policy formation process in the state, as well as, all the major institutions. David J. Cuff, has edited *The Atlas of Pennsylvania* (Philadelphia: Temple University Press, 1989). It provides excellent information on the
state’s land and resources, history, demographics, economic activity and principal cities, Philadelphia and Pittsburgh. Pennsylvania Magazine is a general interest publication that deals with Pennsylvania lifestyle and related topics. The magazine occasionally covers current political issues.


National newspapers and magazines such as The New York Times, The Economist, Time, Newsweek, and U.S. News and World Report provide some coverage of current events in Pennsylvania. Those interested in Pennsylvania’s congressional delegation or elections will find Congressional Quarterly Weekly Reports, Roll Call and the National Journal invaluable sources of information. Scholarly analysis of various aspects of Pennsylvania politics can be found in journals such as Church & State, The Annals of the American Academy of Political and Social Science, Public Management, Polity, and The Journal of Politics.

The Commonwealth has been the subject of significant academic inquiry. Since 1973, over 385 dissertations have been written on Pennsylvania in the broad subject areas of business and economics, geography and regional planning, history, and law and politics. In addition, during this time period over 160 dissertations have examined Philadelphia, while approximately 50 have dealt with Pittsburgh. Descriptions of these monographs are available through University Microfilm Dissertation Abstracts.

Pennsylvania History


For those interested in regional history, local historical associations exist in many counties. A complete list of these associations is available in Victoria D. Brow and Deborah M. Miller, Pennsylvania Directory of Historical Organizations (PHMC, 1976).

Several periodicals are also dedicated to documenting and retracing Pennsylvania history. Some of the most prominent journals are the Penn-
The Pennsylvania Constitution


The Legislative Branch

For those interested in searching for information about the General Assembly (www.legis.state.pa.us), there are several sources to consult. Initially, one should refer to the Pennsylvania Legislative Directory, which is published for each legislative session in two volumes, one for the House of Representatives and one for the Senate. The Directory gives a brief biographical sketch of each legislator serving in that session and his/her
committee assignments, as well as the rules that govern each chamber. Another source identifying the members of the legislature is Richard Zeiger and Lynelle Jolley, eds. *Guidebook to Pennsylvania Legislators 1995-1996* (Cal Journal, 1995). The daily proceedings of each chamber can be found in *The Commonwealth of Pennsylvania Legislative Journal*. Copies are available from the Secretary of the Senate, the Chief Clerk of the House, or from individual legislators.

A related source has been compiled by Capitol Info of Richboro, PA. It is a *Pocket Directory of the Pennsylvania Legislature* that includes biographies of the legislators, media sources and recent election results. *Legislators and Government Officials of the Delaware Valley*, compiled by the Greater Philadelphia Chamber of Commerce provides a complete listing of the names, addresses and phone numbers of local, state and federal representatives and government officials throughout the tri-state area.

The *Pennsylvania Code* lists all the laws that have been officially enacted by the General Assembly and signed by the Governor. It also includes court rules, legislative acts, and administrative regulations. For a more systematic examination of state laws, one should use *Purdon’s Pennsylvania Statutes*, which has compiled and annotated all the laws adopted by the legislature since 1700.

The enactment of legislation is described in *The Biography of a Bill* and is available through the Chief Clerk of the House. The Pennsylvania Chamber of Business and Industry’s *Know Your Legislature* (1987) offers a similar explanation. Other state sources providing information about the legislative process include *For Your Information: a Directory to Legislative Personnel, Services and Procedures* (1983) and *Preliminary Report: Commission on the Operation of the House* (1979), both are prepared by the Bi-Partisan Management Committee of the House.


If one is interested in a specific piece of legislation, or how individual legislators voted, the Republican Policy Committee of the House produces *Critical Vote Profiles: The Most Important Roll Call Votes of the Session*. This publication first began in the 1979-80 session. The Pennsylvania Cham-
ber of Business and Industry publishes the *Legislative Reporter*, a weekly newsletter which contains information on bills introduced, hearings scheduled, floor activity, and the impact of legislation on business. The Chamber also offers *Legiscope*, a computerized service designed to track the progress of bills through the Assembly. Consult the Chamber for the cost and availability of each service. The Commonwealth Register, located in Harrisburg, offers a similar but expensive subscription service.

Those researching interest groups will find a complete listing of registered organizations for any given session in *Commonwealth of Pennsylvania Registered Lobbyists*, compiled by the Legislative Data Processing Center.

**The Executive Branch**

After visiting the state’s homepage or thumbing through *The Pennsylvania Manual* for a description of the various executive departments, one might look to the *Executive Budget of the Commonwealth of Pennsylvania*, which offers an excellent summary of each department’s and agency’s expenditures and projected revenues. The budget will give the reader an indication of the governor’s social, economic and political priorities for the coming year. The Governor’s Office (HYPERLINK http://www.state.pa.us/PA.Exec/Governor/overview.html) also produces many reports on executive activities and conditions that have an impact upon the state. Increasingly, these reports are available through the internet.


The Legislative Reference Bureau publishes *The Pennsylvania Bulletin*, which contains a complete weekly listing of the notices and regulations issued by every executive agency. As noted previously, most executive agencies and departments issue press releases, publish newsletters and maintain individual homepages. A listing of the reports generated by agencies created by interstate compacts between two or more states is

The Judicial Branch

The opinions of the justices of the Pennsylvania Supreme Court (HYPERLINK http://www.courts.state.pa.us www.courts.state.pa.us) are published in Pennsylvania State Reports (Sayre, PA: Murrelle Printing Co.) Lower state courts decisions appear in Pennsylvania Superior Court Reports (Sayre, PA: Murrelle Printing Co.) and Pennsylvania Commonwealth Court Reports.


Several of the Commonwealth’s law schools publish law reviews that often address legal issues in Pennsylvania. These journals include the Dickinson Law Review, Temple Law Review, University of Pennsylvania Law Review, Villanova Law Review and the Widener Law Review. In many of the following legal periodicals and journals, one will often find articles dealing with various aspects of the state’s judicial system:

- Beaver County Legal Journal
- Berks County Law Journal
- Blair County Legal Bulletin
- Bucks County Law Reporter
- Chester County Law Reporter
- Lackawanna Jurist
- Lancaster Law Review
- Lehigh Law Journal
- Monroe Legal Reporter
- Montgomery County Law Report
- Pennsylvania Law Journal Reporter
- Pennsylvania Lawyer
- Pittsburgh Legal Journal
- Washington County Reports
- Westmoreland Law Journal
- York Legal Record

Campaigns and Elections

The Pennsylvania Manual contains the historical vote for all the Commonwealth’s gubernatorial election. It also provides the results of the most recent national and statewide races. Those interested in specific election results or campaign expense reports should contact the Bureau of Elections, a division of the Pennsylvania Department of State. For more general information on the electoral process, consult All About Elections in Pennsylvania, which is published by the Department of State.

An insight into the 1994 statewide elections is provided by G. Terry Madonna and Berwood Yost, Pennsylvania Votes, 1994 (Millersville: Cent-


**Fiscal and Economic Data**


The federal government, especially the Departments of Commerce, Labor, and Treasury, collects and publishes an enormous amount of economic data concerning the commonwealth. *Census Tracts* on Pennsylvania and its Metropolitan Statistical Areas are also available. The *United States Statistical Abstract* contains raw numbers for all the states on subjects such as population, health and nutrition, education, law enforcement, elections, government finances and employment. Most of the information produced by federal agencies is available on the Internet at www.fedworld.gov.

If one is interested in an analysis of the economic trends influencing the state, one should contact the Pennsylvania Economy League (P.E.L) for a list of the dozens of studies it has published on various aspects of the Commonwealth’s economy. The League also publishes a number of newsletters including *Citizen’s Business*, its eastern division report and *Capital Perspective*, which is issued by the Harrisburg office. The P.E.L.
Factbook offers the reader a compendium of facts and figures in a concise, useful manner. For additional analysis, one should also refer to Don E. Eberly, ed., Leading Pennsylvania into the 21st Century: Policy Strategies for the Future, (Harrisburg: Commonwealth Foundation for Public Policy Alternatives, 1990).


Local Government

There are a number of sources that one might utilize in investigating the development and practice of local government in the state. Pennsylvanian: The Magazine of Local Governments, published by Local Pennsylvanian Incorporated, contains articles of general interest to those concerned with local government as well as reports from the various local government associations organized throughout the state. Leslie H. Shaw has edited four volumes of Municipal Reference Guide (National Resource, 1997), one for each of the Commonwealth’s major regions. From 1982 through 1989, the Pennsylvania Intergovernmental Council, a private, nonprofit organization, published Pennsylvania Intergovernmental Quarterly. It now issues Housing Development Digest as a quarterly publication.

Those interested in specific forms of local government or local issues, may directly contact the Pennsylvania League of Cities, the Pennsylvania State Association of Boroughs, the Pennsylvania State Association of County Commissioners, and the Pennsylvania State Association of Township Supervisors. All these associations have offices in Harrisburg. One should also refer to the Index to Current Urban Documents, which provides information on the official documents issued by many of Pennsylvania’s urban areas.


**Race Relations**

The Print Media

Pennsylvania enjoys a number of large daily circulation newspapers. The Harrisburg Patriot-Evening News offers excellent coverage of state government and state agencies that are headquartered in its back yard. For other large dailies, those with a circulation of over 80,000 such as the Allentown Morning Call, Philadelphia Daily News, Philadelphia Inquirer, Pittsburgh Post-Gazette, and Reading Eagle, state government news often occupies mid-section reporting. On occasion, the New York Times will also cover the activities of the Commonwealth. Issues of the Lancaster Intelligencer Journal, the New Era, the York Daily Record and York Dispatch, the Citizen’s Voice and Times Leader, both of Wilkes-Barre, the Scranton Times, and Erie Daily Times are quite useful in providing a regional perspective to government policies and activities.


Three popular magazines which occasionally feature articles on local and state politics and politicians are Philadelphia Magazine, Pittsburgh Magazine and Susquehanna Magazine. Pennsylvania Illustrated provides its readers information on current affairs within the state. On the academic side, the Pennsylvania Political Science Association publishes Commonwealth, an annual journal that includes occasional articles on the state.

Research Centers

Within the higher education system of Pennsylvania a number of research centers have been created. Temple University is home to the Center for the Study of Federalism (www.temple.edu/federalism/federalism.html), an interdisciplinary research, educational and service institute that is dedicated to the study of federal principles. It has published a number of studies on Pennsylvania politics and political culture. The Center also conducts research, seminars and conferences, and public service programs that deal with various aspects of state and local politics. The Center for Public Policy (www.temple.edu/CPP) is also headquartered at Temple. The Center has a number of institutes under its auspices including the Institute for Survey Research and the Institute for Public Policy Studies. It serves as an interdisciplinary forum for coordinating, conducting and disseminating research on policy related topics of interest to both the academic community and the public at large on Philadelphia and the Greater Delaware Valley Region.

The University of Pittsburgh has created the University Center for
Social and Urban Research (www.pitt.edu/~ucsur). It, too, has an extensive publications catalog, much of which focuses on Pittsburgh and Western Pennsylvania. Penn State University’s Institute of State and Regional Affairs at the Harrisburg Campus houses the Pennsylvania State Data Center. It was established in 1981, by Executive Order of the Governor, as Pennsylvania’s official source of population and economic statistics and services. It provides clients, such as businesses, individuals, and governments, with data on business activity, procurement opportunities, demographic trends and resource directories.

The Center for Politics and Public Affairs at Millersville University (www.millers.edu/~politics/index.htm) was created in 1986. The Center conducts the Keystone Poll for KYW-TV (Philadelphia), the Philadelphia Daily News and the Harrisburg Patriot. Its poll, along with election results and other political data are available at its website. Its mission includes educational and public policy programs such as its Legislative Fellow Program, the Lancaster YWCA Women in Politics course, a Scholar-in-Residence program, a Harrisburg Internship Semester and lecture series on the Environment, Bill of Rights and Public Policy. Its educational seminars include topics such as Home Rule and Pennsylvania Education. The Robert B. and Helen S. Meyner Center for the Study of State and Local Government at Lafayette College (HYPERLINK http://www.lafayette.edu/publius/index.html) promotes research and engages in public service training and outreach to state and local officials and civic groups. The center, in cooperation with the Center for the Study of Federalism, publishes Publius: The Journal of Federalism.

There are also three private organizations dedicated to examining various aspects of Pennsylvania government and politics. As mentioned previously, the Pennsylvania Economy League (HYPERLINK http://www.libertynet.org/pel) has assumed the task of analyzing many aspects of the Commonwealth’s economy and government spending programs. The Commonwealth Foundation (HYPERLINK http://www.commonwealthpa.org) is a non-partisan think tank, “committed to generating new ideas based upon the principles of limited government and private enterprise.” The Foundation is located in Harrisburg. The third organization is the Allegheny Institute (www.alleghenyinstitute.org), whose mission is to formulate and promote conservative public policies at the local government level. The Institute was founded on March 1, 1995 and primarily serves officials in Western Pennsylvania.
Appendix

I. State Agencies

General
Pennsylvania State Bookstore
20 S. Third Street
Harrisburg, PA 17101
(717) 787-5109

B. Legislative Branch
Legislative Reference Bureau
Room 641, Main Capitol Building
Harrisburg, PA 17120-0033
(717) 787-4223

Secretary of the Pennsylvania State Senate
Room 462, Main Capitol Building
Harrisburg, PA 17120
(717) 787-5920

Chief Clerk,
Pennsylvania House of Representatives
Room 129, Main Capitol Building
Harrisburg, PA 17120
(717) 787-2372

Chief Clerk,
Pennsylvania State Senate
Room 350, Main Capitol Building
Harrisburg, PA 17120
(717) 787-7163

C. Executive Branch
Office of the Governor
Room 225, Main Capitol Building
Harrisburg, PA 17120
(800) 932-0784

Budget Analysis Bureau
P.O. Box 1045
Harrisburg, PA 17108-1045
(717) 787-3429

Department of Community Affairs
317 Forum Building
Harrisburg, PA 17120
(717) 787-7160

Pennsylvania State Archives
Third and North Streets
Harrisburg, PA 17120
(717) 787-2891

Department of General Services
Room 515, North Office Building
Harrisburg, PA 17125
(717) 787-2121

Department of Revenue
11th Floor, Strawberry Square
Harrisburg, PA 17128-1100

Department of State
Room 302, North Office Building
Harrisburg, PA 17120
(717) 787-7630

Pennsylvania Historical and Museum Commission
P.O. Box 1026
Harrisburg, PA 17108-1026
(717) 787-2891

Pennsylvania Economic Development Partnership
Department of Commerce
Forum Building, Room 433
Harrisburg, PA 17120
(717) 783-5053

II. Organizations

Center for Politics and Public Affairs
Millersville University
Millersville, PA 17551
(717) 872-3488

Center for Public Policy
Temple University (025-25)
Philadelphia, PA 19122
(215) 204-6696

Center for the Study of Federalism
Temple University (300-00)
1616 Walnut Street, Suite 507
Philadelphia, PA 19103
(215) 204-1480
The Commonwealth Foundation for Public Policy Alternatives
600 North Second Street, Suite 400
Harrisburg, PA 17101
(717) 231-4850

Greater Philadelphia Chamber of Commerce
1346 Chestnut Street, Suite 800
Philadelphia, PA 19107
(215) 545-8135

League of Women Voters, Pennsylvania
226 Forrester Street
Harrisburg, PA 17102-3320
(717) 234-1576

Meyner Center for the Study of State and Local Government
Lafayette College
Kirby Hall of Civil Rights
Easton, PA 18042
(610) 250-5598

Pennsylvania Chamber of Business and Industry
222 North Third Street
Harrisburg, PA 17101-1596
(717) 255-3252

Pennsylvania Economy League, Eastern Division
1211 Chestnut Street, Suite 600
Philadelphia, PA 19102
(215) 864-9562

Pennsylvania Economy League, State Division
600 N. Third Street
Harrisburg, PA 17101
(717) 234-3151

Pennsylvania Intergovernmental Council
P.O. Box 11880
Harrisburg, PA 17108-1880
(717) 783-3700

Pennsylvania State Data Center
Penn State, Harrisburg
Institute of State and Regional Affairs
Middletown, PA 17057-4898
(717) 948-6336

University Center for Social and Urban Research
121 University Place
University of Pittsburgh
Pittsburgh, PA 15260
(412) 624-5442

IV. Governmental Associations

Democratic Party State Committee
510 N. Third Street
Harrisburg, PA 17101
(717) 238-0914

Pennsylvania League of Cities
2608 N. Third Street
Harrisburg, PA 17110
(717) 236-9469

Pennsylvania State Association of Boroughs
2941 N. Front Street
Harrisburg, PA 17110
(717) 236-9526

Pennsylvania State Association of County Commissioners
17 N. Front Street
Harrisburg, PA 17101
(717) 232-7554

Pennsylvania State Association of Township Supervisors
3001 Gettysburg Road
Camp Hill, PA 17011

Republican Party State Committee
112 State Street
Harrisburg, PA 17101
(717) 234-4901