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PI SIGMA ALPHA REVIEW

Volume 9, 1991

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VOLUME 9, 1991

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EDITOR'S PREFACE

The Pi Sigma Alpha Review is published annually by the Beta Mu chapter of Pi Sigma Alpha, in cooperation with the Brigham Young University Political Science Department. This year's *Review* is the product of many dedicated hours by both students and faculty.

We would like to express our thanks to all those who submitted papers for this year's writing contest. We would also like to thank Professors Hollist, Midgley, and Daynes for participating in the blind judging of contest papers. Although all the papers published in the *Review* were winners of the writing contest, Kathleen Tait's paper was judged best overall.

Douglas-John Drennan, Brant Bishop, and Burke Norton all helped a great deal by encouraging students to submit papers and by editing the winning papers. Douglas-John Drennan was especially helpful in the tedious technical editing process. Lisa Miller helped with the conversion of all the documents to Word Perfect and made endless editing changes. My sincerest thanks goes to all these people; their efforts have greatly shaped this year's volume.

As a final note, Pi Sigma Alpha and the Political Science Department do not accept responsibility for statements of fact or opinion made by the contributors.

Stan A. Mortensen

PI SIGMA ALPHA REVIEW

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Unrecorded Volunteer Contributions in Congressional Elections

by

Kathleen Tait

Introduction

In his book *Congress: The Electoral Connection*, David Mayhew claims that most of what occurs in the United States Congress can be explained by the congressman's drive for re-election (Mayhew 1974, 13). If we accept Mayhew's thesis, it stands to reason that campaigns are a very significant part of the national political process and that the factors that cause candidates to win or lose elections are central to the study of congressional election campaigns. One of the most obvious factors in determining the success of a candidate to win elections is his or her ability to raise funds. In examining races for constitutional offices and the U.S. Senate, it was found that "heavy campaign spending by either party . . . is highly correlated to victory: the heavy spenders winning 72 percent of the time. In cases where one party spends 80 percent or more of the money, the party engaged in heavy

spending wins all of the time" (Magleby 1986, 28).

Because of reforms in campaign finance law in the last decade, contributions made to candidates and expenditures made by candidates are recorded and disclosed. Although there seems to be a correlation between a candidate's expenditures and the election outcome, much campaign activity goes unrecorded. An important example of this "unrecorded element" of campaigns, often included in the larger subject of "soft money," is volunteerism. Candidates are not required to report the volunteer time contributed to their campaigns, whether it be contributed by individuals or groups of individuals, such as labor unions and tax exempt (501(c)) organizations. There seems to be at least one invisible variable in the equation for a campaign's success: contributions of unrecorded volunteer services. Because volunteer work goes unrecorded, it is difficult to tell exactly what impact it has

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on individual campaigns or federal elections on the whole.

By one estimate, the "effective use of volunteers can reduce a campaign's payroll by 20 percent" (Webb and Mockus 1981, 19). Twenty percent of a small local election may not be significant, but millions of dollars are spent on federal elections. In 1984, Jesse Helms (R-NC) spent \$16.5 million in his campaign for re-election to the U.S. Senate. His opponent, James Hunt, spent \$9.5 million just to lose (Ladd 1986, 1). Considering the astronomical expenditures of some Congressional elections, this means that volunteer work could have quite a sizeable impact on campaigns. Further, it is likely that volunteers have a much greater impact on campaigns than simply a reduction in campaign costs, which will be discussed later.

Unfortunately, because it is not recorded, volunteer work is impossible to quantify. This may be the reason that not much attention is given to volunteerism in campaign finance literature. My review of the literature is certainly not exhaustive, but I did not find the topic I will discuss in this paper addressed at any length in the literature I surveyed. In the remainder of this paper, I will first discuss campaign volunteerism in general. I will then look at labor unions and how campaigns may benefit from them in ways that are unrecorded. Lastly, I will do a brief examination of how tax exempt organizations make unrecorded volunteer contributions to campaigns.

Volunteers

Volunteers are worth more to a campaign than the free labor they provide. "The presence of volunteers gives a campaign visibility and the appearance of momentum.

Volunteers suggest to voters that the candidate is worthy of commitment" (Webb and Mockus 1981, 20). Webb and Mockus further claim that not only do volunteers "help deliver messages to voters--by licking envelopes, writing notes or telephoning friends--they are messages in themselves" (1981, 20). Many voters know very little about the group of candidates from which they must choose. But those voters who have a family member, friend, or neighbor that has volunteered for one of the candidates may be more likely to vote for that candidate. Volunteers perform more services for a campaign than their delineated responsibilities suggest. In this way, volunteers are worth more to a candidate than the money he would lose paying hired help to perform the same labor.

Yet, despite the other advantages, the biggest and most obvious advantage of using volunteers is that they provide a lot of work for no cost; and there is no requirement to report volunteer contribution of time to the Federal Elections Commission. The Code of Federal Regulations (CFR) states:

The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a political contribution (11 CFR 100.7(b)(3)).

Not only is volunteer work free, but through one clause in the campaign finance law, volunteer work can actually make it possible for a Political Action Committee (PAC) or political party to contribute more to a campaign than it would otherwise be allowed. This clause in the Code of Federal Regulations is referred to as the "volunteer intensive activity loophole." It reads as follows:

The payment by a candidate for any public office (including State or local office), or by such can-

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didate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used *in connection with volunteer activities* (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) *is not a contribution to such candidate* for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For the purposes of 11 CFR 100.7(b)(16), the term "*direct mail*" means any mailing(s) by commercial vendors or mailing(s) made from lists which were not developed by the candidate (11 CFR 100.7(b)(16) emphasis mine).

The definition of the term "direct mail" is crucial to the way in which organizations are able to take advantage of this clause. The portion of the CFR quoted above states that the cost of materials for the purpose of direct mail is considered a campaign contribution--regardless of whether a volunteer works on this material. If, however, commercial vendors do not perform the mailing of the material, and the mailing list used is developed by the candidate or his campaign, then the material is not considered to be direct mail.

Limitations set on mailing lists should not to be taken lightly. In fact, "the single most important factor in the success of direct mail fund raising is the list you use" (Beaudry and Schaeffer 1986, 171). This does not mean, however, that candidates who must generate their own mailing lists are at a serious disadvantage. Beaudry and Schaeffer explain to campaigners that "there's no better list than [their] own of proven contributors" (1986, 171). So the restriction on the origin of the mailing list is probably not as big of a hindrance as it

might seem to candidates who choose to take advantage of this loophole.

As Brooks Jackson of the *Wall Street Journal* claims, political parties, political actions committees, or other groups who promote candidates for federal office, can--and do--take advantage of this clause through political and fund raising mailings. Jackson explains that an organization, such as the Republican National Committee, can fund the printing and postage of elaborate and expensive mailings and prepare peel away preprinted labels for the mailings (Jackson 1988). As long as volunteer hands place the address labels on these mailings, no part of the cost of the mailings is considered--for the purpose of contribution limitations--to be a contribution to the campaign of the promoted candidate. This kind of activity is considered to be "volunteer intensive" and thus does not need to be reported as a contribution. Here we see that a proper understanding of the Code of Federal Regulations is crucial to the effective utilization of campaign funds.

Ed Goaz, former legal counsel at the Republican National Committee, claims in reference to the "volunteer intensive activity loophole," that no party has an exclusive advantage over the other in using and interpreting campaign finance law. He does admit, however, that this particular loophole was both discovered by and is used most by Republicans (Goaz 1988). So, although Democrats tend to benefit more from volunteerism in general, Republicans seem especially adept at taking advantage of this particular loophole in the federal code.

Of course with all of the advantages of using volunteers also come some disadvantages. Unlike paid employees, volunteers have no obligation to perform quality work--and nothing to lose if they don't. They are often unreliable and are even considered a

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"pain in the neck" (Webb and Mockus 1981, 19). Various campaigns may see the disadvantages to using volunteers to be greater than the advantages and, therefore, choose to use hired help rather than volunteers.

Although it is impossible to tell with the available data, it appears that Democrats use volunteers more than Republicans. It is logical that various socio-economic factors have an effect on how an individual will contribute to her party, or the candidate of her choice. For those who have sufficient money, it may be easier to contribute dollars than time, while those who earn very little money may find that all they can contribute is their time. This means that, because the Democratic party is known as the party of the poor and tends to attract the blue-collar work force, it is likely that Republicans donate dollars and Democrats donate time. In their article on effective utilization of campaign volunteers, Webb and Mockus cite a nationwide poll sponsored by Targeting Systems, Inc. of Washington, D.C. which suggests that behind professors and students, "blue-collar workers seem to be the third most likely source of campaign workers" (Webb and Mockus 1981, 20).

Although the national composition of the volunteer force may seem primarily Democratic, regionally, this is not always the case. Kay Christiansen, former campaign manager to Rep. Wayne Owens (D-UT), believes that in Utah there are several factors that work against the national trend. In a state where the overwhelming majority of the populace is Republican, where labor unions are not particularly strong, and where civic involvement is encouraged of the many noncareer mothers in the state, it is easy to imagine a Republican volunteer force much stronger than a Democratic one (Christiansen 1988). This heightened Republican volunteering may be one of the

factors that cause the GOP to continually have so much success in Utah. Bob Burnek of the *Deseret News* agrees with this theory and points out that indeed Utah is atypical on almost any issue dealing with partisanship (Burnek 1988).

Although not every campaign chooses to use volunteers, they can be an important part of a campaign that does choose to use them. Volunteers can help the image of a campaign, affect the voting decisions of their families and friends, and provide a significant force of labor at no cost. Labor unions are one of the best and most organized ways for a campaign to get volunteers, as well as being another interesting area in which unrecorded contributions of service to campaigns occur.

Labor Unions

Labor unions can be an important resource of support for election campaigns in several ways. Unions may distribute material and communicate (via phone banks or otherwise) to their "members, executive or administrative personnel, other employees, and their families," supporting one candidate over another in a federal election (11 CFR 114.4(c)). When unions wish to communicate with the general public, however, that communication must be purely educational or participational, meaning that it must be non-partisan. The Code of Federal Regulations (CFR) states that labor unions may

1. make non-partisan registration and get-out-the-vote communications to the general public (11 CFR 114.4(b)(2)),
2. distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by the official election administrators (11 CFR 114.4(b)(3)),

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3. prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election (11 CFR 114.4(b)(4)), and
4. prepare and distribute to the general public non-partisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions (11 CFR 114.4(b)(5)).

The CFR also enumerates many criteria by which these activities may be judged to be partisan. It would appear that any attempt at partisan campaigning to the general public by labor unions would be prohibited by the CFR. All of these criteria, however, pertain to the nature of the printed or spoken message given; there are no regulations that dictate who these educational or participational campaigns must be directed toward. If a get-out-the-vote drive is targeted at a certain segment of the population already known to be likely to vote Democrat, then, although the drive is not illegally partisan, the results may very well be partisan.

In addition to the support that labor unions give as organizations, Brooks Jackson of the *Wall Street Journal* claims that they also supply the Democrats a pool of workers not available to Republicans (Jackson 1988). Unions are convenient for Democrats not only because of their partisanship and the number of volunteers they can provide, but because they are particularly well equipped to do campaign work. Jackson explains that "a lot of what unions do is run elections" within their own organizations, and are therefore well prepared to make the transition to work on national election campaigns. Once labor union members make the decision to use their own time to volunteer to work on a campaign, they are individual volunteers. At this

point, they are no longer constrained by the CFR that limits the activity of their union.

Besides the obvious advantage of manpower, labor unions also often have phone banks in operation. This is a great advantage to candidates who have good relations with unions--usually Democrat candidates. A union uses its phone bank in the daytime for inter-organizational work and then leases the phone bank to a campaign after normal business hours for campaign work (Jackson 1988). This kind of arrangement proves to be particularly convenient for those campaigns who are supported by labor unions. Beaudry and Schaeffer instruct campaign managers that the smart approach is to go to a "friendly business, labor union, or civic organization that has multiple phone lines" (Beaudry and Schaeffer 1986, 100). The Code of Federal Regulations states that

persons . . . who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the *normal and usual rental charge*, as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of the facilities (11 CFR 114.9(d), emphasis mine).

"Normal and usual rental charge" is defined in the Code of Federal Regulations as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." (11 CFR 100.7(a)(1)(iii) (B)).

It is difficult, however, to apply this definition to the rental of a phone bank; a phone bank is such an uncommon item of rental that it is almost impossible to determine its going market rate. Because of the affinity labor unions generally have for Democrats, it seems reasonable that labor unions would lease their phone banks to

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Democrats at a very low rate. As a result, Democrats can, for a small fee, lease labor union phone banks that are already in place. Workers who are used to manning the phones for the union can volunteer to work on the campaign after hours. On the other hand, for Republicans to set up a phone bank, they must pay for the installation and rental of phones, as well as find--and often pay for--workers to man them.

"Installation can become a very expensive proposition since local phone companies extract large deposits from political campaigns" (Beaudry and Schaeffer 1986, 100). And indeed this is true. Central Communications Consultants of Salt Lake City informs that the rental charge for 30 standard single-line phones is \$500 per month. On top of that, the phone company's (Mountain Bell in this case) charge for the use of 30 phone lines would be \$1,500 per month. If a phone system is installed (a separate charge), the use of the lines would cost \$500 per month. This means that over a six-month period, a campaign could pay between \$6,000 and \$12,000 for each phone bank they have in operation across the country. This is a sizeable financial burden for a campaign to bear.

The National Right to Work Committee prepared a complaint filed in March of 1984 by Ralph Hettinga claiming that "eight labor unions had made prohibited in-kind contributions by providing telephone services and equipment and office space to Walter Mondale's presidential prenomination campaign at less than fair market value" (Alexander 1987, 48). But how can the "fair market value" of such services be accurately assessed? We can determine how much it would cost for a campaign to run a phone on its own (above paragraph), but that does not determine the fair market value of the part-time rental of a phone bank; if a cam-

paign uses the phone bank of another organization after hours, then using the cost to run a phone bank independently certainly would be an excessive rental fee.

It is important to note that there is somewhat of a Republican equivalent to the Democrat-favored labor union; it is the corporation. Throughout the Code of Federal Regulations, corporations and labor unions are discussed together, as if they were the same type of organization. Often there will be a section of code addressing labor union behavior followed by a nearly identical section of code addressing the activity of corporations. So it is important to remember that any tactic used by labor unions to benefit Democrats may also be used by corporations to benefit Republicans.

There are some factors concerning non-reported benefits of service that seem to give a campaign which is more closely tied to labor unions an advantage over a campaign that is supported by a corporation. Some of these factors have already been mentioned. First, the nature of labor unions is such that they already have phone banks set up. They are political organizations, accustomed to using phone banks for internal politics. Corporations, on the other hand, do not have the same type of political structure and do not have the same kind of need for a phone bank as do labor unions.

Second, those who belong to labor unions are more likely to be volunteers. The Target Systems, Inc. poll, referred to earlier in this paper, states that after professors and students, blue collar workers are the third most likely group to volunteer time to political campaigns. Apparently, white collar workers--those who would most likely be corporation employees--were not likely enough to volunteer to be mentioned. While it is true that some blue-collar workers are members of unions and employees of corpo-

rations at the same time, there are some important differences. The composition of the leadership of the two organizations is very different.

The leadership of labor unions is composed of blue-collar workers, which is very different from the executive, uppermiddle class composition of corporation leadership. Also, the organization from which an individual gains his or her identity should be considered. Blue-collar workers are consistently more loyal to their unions than their corporate employers.

Third, labor unions are renowned for being a serious political force in that their members will vote as a block for the candidate they endorse--usually a Democratic candidate. Although corporation executives are likely to have the same interests among themselves and therefore vote for the same candidates, corporations do not have the same history of voting loyally in blocks.

Clearly, labor unions are an important sources of unreported volunteer service contributions in the acts they perform as a union and as a vehicle by which to attract prospective campaign volunteers. These same types of valuable contributions to campaigns are provided by other organizations which are, unlike labor unions, not constrained by the Federal Election Commission.

501c Organizations

Beyond labor unions, Democrats enjoy another major source of unrecorded volunteer contributions. The "Non-Profit/ Democrat Political Network," as labeled in a recent National Republican Senatorial Committee report prepared by Bob Bissen, the Director of Special Projects at the National Republican Senatorial Committee, has

emerged as another source of "volunteer-like" effort.. The tax-exempt organizations (known as 501(c) organizations) in this network perform many of the same functions normally performed by volunteers; these are activities that here too are not reportable to the Federal Elections Commission.

The two 501(c) organizations in the "network" that concern themselves with political campaigns are 501(c)(3) (charitable or educational) organizations, and 501(c)(4) (social welfare) organizations (*Tax-Exempt Organizations* 1987, 6). The report explains that understanding the limitations on political activity that these organizations have helps to explain what the organizations do.

A 501(c)(3) organization "may not participate directly on behalf of, or in opposition to, any candidate for public office." Like labor unions, it can perform educational and participational communication activities directed toward the general public. A 501(c)(4) organization "must operate primarily in a manner designed to further the common good by bringing about social improvement and civic betterment." The group may be clearly partisan and may openly support or oppose a candidate "as long as the primary purpose of the group remains promotion of social welfare" (*Tax-Exempt Organizations* 1987, 6). "Social welfare" is obviously a broad category; this kind of ambiguity certainly accounts for the freedom with which these groups act, a subject which will be discussed later.

The above mentioned report, known as the Kasten Report, claims that there are many 501(c) organizations that involve themselves in political campaigns, but that "there is a nationwide network of groups [in 25 states] working together" headed by the group known as Citizen Action. The report states that "shared office space, affiliates listed on letterhead and similar boards of

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directors and officers help tie the various groups together" (*Tax-Exempt Organizations* 1987, 1).

The groups in this network were found to perform many of the same volunteer efforts previously discussed in the labor union section of this paper. A Citizen Action brochure explains some of the services it provides for candidates the group chooses to support.

1. The Electoral Canvass. A membership contact, voter education and get-out-the-vote program.
2. Volunteer recruitment.
3. Issues development and briefing papers.
4. Phone banks.
5. Media. Free media on the candidate's stands on the issues and paid media in targeted races.
6. Professional staff assistance. Citizen Action staff are trained and experienced in campaign management and a variety of campaign skills (*Tax-Exempt Organizations* 1987, 2).

The Kasten Report was prepared in reaction to the experience of Senator Bob Kasten (R-WI) with the Wisconsin Action Coalition (WAC) in his 1986 Senatorial race against Ed Garvey. WAC campaigned to defeat Kasten in his efforts to become re-elected, but did not succeed. The report claims that other Republican senators and Senate candidates across the nation were similarly attacked by groups like WAC. "In races nationwide groups such as WAC tried, and in many cases succeeded, in having a major impact on behalf of the Democrat in the race" (*Tax-Exempt Organizations* 1987, 1).

In the Wisconsin Kasten/Garvey senatorial race, WAC and other 501(c) organizations affiliated with the national Action Coalition, spearheaded a "truth drive," passing out flyers and holding press conferences. WAC claims that on election day it

made 18,500 get-out-the-vote phone calls and believes itself to be responsible for 2-4 percent of the total votes cast for Ed Garvey (*Tax-Exempt Organizations* 1987, 5).

The report claims that WAC "is one of a growing number of groups that have taken advantage of their Internal Revenue Service 501(c) (3) or 501(c)(4) tax exempt status and become increasingly active in political campaigns, providing either direct or indirect assistance to candidates" (*Tax-Exempt Organizations* 1987, 1). As mentioned, a national 501(c) organization, known as Citizen Action is the parent group of many of these organizations (*Tax-Exempt Organizations* 1987, 2).

Steve Taggart of the Public Affairs Advisory Group in Salt Lake City claims that much of what Kasten experienced in Wisconsin also occurred in various 1986 state and national races in Idaho. Taggart reports that Idaho Fair Share, a 501(c) organization, performed get-out-the-voter drives, sent lawn sign crews, and created publicity in much the same way WAC did in Wisconsin. Idaho Fair Share even performed "die-ins" (where participants lay seemingly lifeless on the ground) to attract media attention (Taggart 1988).

These 501(c) organizations must answer to the Internal Revenue Service, but federal and state regulation of them is minimal and much of their activity goes unreported. Organizations such as those discussed above do not necessarily have to be in support of Democratic candidates. All of those in this 1986 "network," however, supported Democrats and such organizations seemed to have a significant impact on the outcome of at least one congressional election.

Ben Ginsberg, of the National Republican Senatorial Committee, stated in a telephone interview that there are no "behind the scenes" groups like those discussed

above for Republican candidates (Ginsberg 1988). This suggests that although both parties can benefit from the unrecorded volunteer services of 501(c) organizations, both parties don't.

It would be valid to investigate the legality of the behavior of these tax-exempt organizations, and further, it might be a valuable exercise to scrutinize the law concerning these types of organizations. For the purpose of this paper, however, the significance of the activities of these organizations and others lies in their unrecorded effect on the outcome of federal elections. Because contributions of volunteer effort are not considered contributions according to the Code of Federal Regulations, a supportive organization (PAC, political party, 501(c) group, etc.) can donate large sums of money in addition to the volunteer effort they coordinate and provide without going over their contribution limit. A candidate can have the advantage of claiming to be the "poor" man in the race when in actuality, he may be receiving the same benefits as his opponent who must pay for these services. Also, if they are unrecorded, then they are very likely also going to be uncalculated. In other words, when engineering elections or studying the causes of victory or defeat in elections, we may be ignoring some very significant factors.

Conclusions

Beyond a candidate's ability to raise campaign funds is his or her ability to use those funds effectively. If any of the factors in the formula for a successful election campaign is overlooked, then the campaign may be mishandled. When Federal Election Statistics are released, it is easy to find the number of dollars spent in the campaign of

a congressional election candidate, but because candidates are not required to record and report volunteer activity, it is very difficult, if not impossible, to uncover this information. It is then only a hope to be able to determine the significance of these activities in federal elections.

Judging from the reaction of some to unrecorded volunteer contributions, we can conclude that they have at least some significance. Critics of the Federal Election Commission claim that certain "expenditures may be legal but they escape federal campaign disclosure requirements," and that they have created a "underground political economy" (Alexander 1987, 54). These critics list several such expenditures, including:

Use of corporate and union or membership organization treasury funds to pay the costs of nonreportable communications with employees, stockholders or members advocating the election or defeat of specific candidates.

Use by tax-exempt foundations of unlimited and undisclosed tax-deductible money--some of it channeled to the foundations by national party committees and their allies--to pay for ostensibly nonpartisan but carefully targeted voter registration and turnout drives (Alexander 1987, 53).

The ethics of much of what goes on in this underground political economy are questionable. Is it ethical to keep the letter of a law but act in a way that is contrary to the intent of that law? The logic of the law is also somewhat problematic. If the loopholes that are currently discovered and used exist, then how many more undiscovered loopholes may there be? There are certainly more than I have discussed in this paper.

These are all very valid topics of discussion but, after having studied the subject of unrecorded volunteer contributions made to election campaigns, it would be difficult for me to editorialize on the ethical aspects of this underground political economy or make

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recommendations for a change in federal policy or federal election law. There is simply not enough data to make a thorough study of this situation, or problem, as many see it. The only definite conclusion I can make is that unrecorded volunteer campaign contributions and the effect they have on federal elections is an area that needs further research.

Tenuously, I can also make some other conclusions. It seems that labor unions and tax-exempt organizations give Democrats a serious advantage over Republicans in the area of volunteer contributions, and this advantage is not reported. Some may consider this to be a just advantage that merely raises Democrats up to equal ground in campaign resources with Republicans, who consistently benefit from dollar contributions. Others may consider it to be an unfair advantage--one that should be ended by forcing organizations to report contributions of volunteer effort, counting them against their contributions limitations.

I would suggest an approach that takes both of these sides of the argument into consideration. Contribution of volunteer effort ought to be quantified and reported, but not counted against an individual's or

organization's contribution limit. This would accomplish several important ends. First, those who are now able to falsely claim to be financial underdogs could no longer do so in the same manner that they have been. Second, forcing volunteer contributions to be counted as part of an organization's contribution limits would discourage volunteerism, and in turn discourage much of the populace from important active participation in the political process. Under my proposal, campaigns would still be rewarded for using volunteer labor. It stands to reason that the greater the awareness of, and value placed on, volunteer activity--of the many types heretofore discussed--the more likely members of this democracy will be to participate. This, in turn, increases the integrity of our idea of true representation. Lastly, with the mandatory reporting of volunteer activity, the art of engineering campaigns moves closer to being a science. This will not only provide academics with fascinating and useful information, but it may result in increased use of volunteers in campaigns. And this, in turn, could very well result in less money being spent on now astronomically expensive congressional elections.

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Political Perestroika and the Rise of Rukh

Ukrainian Nationalism, 1989-90

by

Scott Cooper

Introduction

The Soviet Union without the Ukraine may never have become a superpower. The Ukraine's fertile soil, situated in a relatively mild climate, has been breadbasket to Russia for almost four centuries. Its rich mineral resources provided much of the coal and iron necessary for Stalin's industrialization, and its millions of skilled workers provided much of the manpower. In fact, Roman Szporluk points out that, because Great Russians make up only about 52 percent of the Soviet Union, the Ukrainians and Byelorussians (between them comprising 20 percent of the population) are the crucial, marginal factor which allows continued Slavic domination of the diverse Soviet empire (1986, 153). Without their cooperation, the empire would be too unwieldy and unstable.

Precisely because of the Ukraine's importance, any nationalist or separatist feeling within the Ukraine must be taken seriously. Soviet historians attempt to minimize the differences between Russians and their Ukrainian kin. The Communist Party officially predicts and proclaims the gradual merger of the two nationalities into one people (Chirovsky 1984a, 17). In spite of this, the Party has been unable to stamp out Ukrainian nationalism, even by extreme methods. And in the Gorbachev era nationalist feeling has exploded from hiding, apparently only strengthened by centuries of Russian domination and decades of Soviet oppression. This paper will trace the development of this nationalist feeling in order to show how historical factors have led to recent, dramatic changes in Ukrainian politics. I will focus especially on this feeling of nationalism, to the exclusion of economic factors, in explaining Ukrainian political change. While economic factors are obvi-

ously a critical element in recent events, space restrictions prevent me from discussing these factors in any detail.

Kievan-Rus' and Polish Rule

The Ukraine first existed as the Kievan-Rus' state, which reached the peak of its territorial expansion under Prince Vladimir one thousand years ago. Vladimir ruled virtually all of the European portion of the present-day USSR, from the Black Sea in the south to the White Sea in the north, and from the Danube in the west to the Volga basin in the east (Chirovsky 1984a, 124). But, because of its size, Vladimir's empire proved too weak to survive, although he tried to unify it by Christianizing his subjects. In the years 1236 to 1240 the weakened kingdom was thoroughly conquered by the invading Mongols. One hundred years later, the weakened Mongols were displaced by a Lithuanian-Rus' commonwealth. But the commonwealth was short-lived; in 1385, Lithuania united with a stronger Poland and ended Rus' sovereignty. Also at this time, the name "Ukraine" (literally, "at the edge") emerged because of the nation's position at the border of Europe and Asia.

Catholic Poland ruled the Ukraine for almost three centuries but was bitterly resisted by the Orthodox Ukrainian nation. Poland exploited the Ukraine's resources and population without preventing attacks by Crimean Tatars and other invaders from the East (Chirovsky 1984b, 28-29). The result of this unrest was the emergence of the Cossacks, groups that fled Polish rule for the vast steppes of the eastern and southern Ukraine, which were free of foreign domination. By the mid-1500s these Cossacks had elected a "hetman" as their leader and considered themselves autonomous. This

Cossack state is the historical source of modern Ukrainian nationalism. The memory of this period of autonomy has driven twentieth century nationalists to seek greater freedom from Moscow.

Bohdan Khmelnytsky and Russian Rule

The year 1648 marked the triumphant peak of the Cossack state; Hetman Bohdan Khmelnytsky destroyed the Polish army and declared the Ukraine a sovereign state. As usual, however, Ukrainian independence was short-lived. By 1654 continued war with Poland had weakened the Ukraine dramatically and Khmelnytsky was forced to form an alliance with the newly emergent Muscovite Empire. Ukrainian historians claim that Khmelnytsky's 1654 treaty with Russia was merely a military alliance (Chirovsky 1984b, 183), but for over three centuries Russian and Soviet leaders have interpreted the treaty as a complete Ukrainian submission to Moscow.

Russia, as the stronger power, was able to interpret the treaty as it saw fit, despite Ukrainian protest. Ukrainian autonomy gradually decreased until, from 1763 to 1783, Catherine the Great introduced serfdom to the Ukraine, tying the peasants to the land. The next century and a half of tsarist rule failed, however, to "Russify" the Ukrainian people; history had given the Ukraine a taste of autonomy and independence which tsarist restrictions could not overcome.

Bolshevik Rule

Upon seizing power in 1917, one of the Bolsheviks' first acts was a "Declaration of

the Rights of the Peoples of Russia," which granted sovereignty and even separation to the Russian Empire's nationalities (Dmytryshyn 1977, 485). The Ukrainian Rada (or parliament) in Kiev established an independent Ukrainian Peoples Republic within days. The next two years saw bitter civil war in the Ukraine, which was alternately controlled by the Bolshevik Red Army, Germany, Ukrainian nationalists, the White Army, and finally by the Red Army. In 1921 the Ukraine was split between Poland and Russia and on December 30, 1922, the Ukrainian Soviet Socialist Republic, with its capital at Kiev, entered the Soviet Union.

By the mid-1920s, Mykola Skrypnyk, a Ukrainian Bolshevik who advocated the "Ukrainization" of the republic, was the dominant political figure in the Ukraine. Although his power was limited, he was able to increase the number of Ukrainians in the party elite, the use of the Ukrainian language in political life, and the number of books and newspapers published in Ukrainian (Mace 1983, 305). This limited Ukrainization, however, was terminated by Stalin by 1932. Skrypnyk was denounced and committed suicide. The forced collectivization of 1932-33 crushed the Ukrainian peasantry and the accompanying famine left millions dead.

The Ukrainians' next brief taste of freedom came when Nazi troops "liberated" them during World War II. The Ukraine soon turned against the oppressive German rule and fought the Germans until the Red Army returned to the Ukraine in 1944--at which point the Ukrainian nationalists turned their weapons against the communists. Bilocerkowycz states that anti-Soviet guerilla activities continued until 1950, with isolated attacks as late as 1956 (1988, 20).

Since Stalin

Since Stalin's death, nationalism has been expressed mainly through the dissident movement. These dissidents have called for increasing Ukrainian autonomy and Ukrainization as well as for basic human rights. Each of the postwar communist leaders of the Ukraine has treated dissent harshly; the dissidents of the post-Stalin era have faced lengthy jail sentences, forced exile, and "psychiatric treatment." But the dissident movement has survived. Bilinsky even suggest that the crackdowns have only produced "professional oppositionists" who have survived labor camps and returned to dissent (1983, 9).

Between 1953 and 1976 both the First and Second Secretaries of the Ukrainian Communist Party have been Ukrainians. Even more importantly, the Ukrainian First Secretary has been on the Soviet Politburo since 1953. Thus, the traditional importance of the Second Secretary of the non-Russian republics has diminished in the Ukraine: each of the First Secretaries (Shelest, Shcherbitsky, and Ivashko) has been even more powerful than his Second Secretary. Almost all of the top positions in the Ukrainian party, government, and KGB have been filled by Ukrainians. As mentioned previously, Ukrainians fill a crucial role in the continued Slavic domination of the Soviet Union. In fact, the Ukraine actually "exports" cadres to Moscow rather than importing them (Gustafson and Mann 1988, 37). This obviously implies that the Ukrainians have attained a high amount of trust in Moscow. But Motyl also points out that moving a Ukrainian party official to Moscow has the added advantage of separating him from any independent power base in the Ukraine, "preventing the formation of a

native--autonomous--Ukrainian elite" (1987, 123).

This policy of isolation has not been entirely successful though. In the 1950s, Pyotr Shelest managed to form a strong power base from which he pushed for greater Ukrainian sovereignty within the Soviet Union and for cultural individuality, much as Skrypnyk had done in the 1920s. His Ukrainization led eventually to his replacement in 1972 by Vladimir Shcherbitsky, who also established an independent power base. Shcherbitsky, however, was strongly pro-Russian and an enemy of Ukrainization.

Shcherbitsky's success shows that Ukrainian communists are useful to the Soviet regime; Shelest's removal shows that those same Ukrainian communists must tread carefully to avoid offending Moscow. Ukrainian nationalism is anathema to Soviet leaders, even when mixed with a heavy dose of communism. Up until the Gorbachev period, the Ukraine and the Ukrainian Communist Party were tied firmly to Moscow. Even though the various republics are constitutionally sovereign states, "their sovereignty seems to be limited only in all the areas in which they might want to take action" (Hough and Fainsod 1979, 483).

Gorbachev and Perestroika

Mikhail Gorbachev's rise to power has obviously brought unprecedented change to the Soviet Union. But initial change came very slowly to the Ukraine. Ruled under the iron fist of longtime Ukrainian Party leader Vladimir Shcherbitsky, the Ukraine was among the most conservative republics. Shcherbitsky's grip was not even loosened by the nuclear disaster at Chernobyl. Long after Gorbachev had removed all other Brezhnev-era members of the Soviet Politbu-

ro, Shcherbitsky held on to power in the Ukraine and in the Politburo. His power and longevity in office probably stem from his tight control of the Ukrainian party machine and of the Ukraine's mineral, industrial, and agricultural resources, which are vital to the economic success of the country as a whole (Keller 1989a, A6).

Shcherbitsky's grip began to fail in early 1989. Under pressure from Moscow, the Ukraine held parliamentary elections which allowed some degree of competition. Even though Shcherbitsky himself ran without opposition, several key Ukrainian party figures were embarrassed by newcomers (Keller 1989a, A6). It was an unmistakable sign of dissatisfaction with the Ukrainian Communist Party and thus with Shcherbitsky himself. Then, in July the Ukraine's all-important mines were paralyzed by a miners strike and the formation of unofficial (hence, illegal) committees to represent the republic's miners. With Moscow pressuring him to solve the strikes peacefully and with an unprecedented number of protesters involved (tens or hundreds of thousands of people), Shcherbitsky was unable to resort to the repressive methods by which he had ruled the Ukraine for seventeen years. He was forced to yield to some of the miners' demands.

Perhaps the crucial event was the formation in September, 1989, of Rukh, the Ukrainian People's Movement for Restructuring. Rukh's founding congress united a wide variety of different groups including priests from both the Orthodox Church and the (still illegal) Ukrainian Catholic Church, reform-minded communists and intellectuals, environmentalist "Greens," and the radical, prison-hardened "professional oppositionists" of the Ukraine Helsinki Union. Each group had its own goals and demands--from reform of the socialist system to outright secession

from the Soviet Union--but they seemed to unite in the recurring chant, "Shcherbitsky . . . Resign" (*Komsomolskaya Pravda* 1989, 2). Their common platform demanded greater changes in the Ukrainian economy, concern for the environment, and development of the Ukrainian culture (*Izvestia* 1989, 3).

Ivashko

The unification of such a broad range of opposition groups mortally wounded Shcherbitsky's power base. Within weeks of the Rukh congress, Gorbachev was able to remove Shcherbitsky from the Soviet Politburo and, one week later, from the head of the Ukrainian Party. His replacement was Vladimir Ivashko, a protege of Shcherbitsky, who nonetheless saw the need for economic reform. He offered to help Rukh obtain legal status and to cooperate with the nationalists as long as they refrained from advocating secession from the USSR (Keller 1989b, A13). In this way he hoped to moderate Rukh's most extreme demands.

Unfortunately for Ivashko, events were already moving rapidly, especially in the western Ukraine which had been free of Soviet rule until World War II and which was less Russified than the eastern portion of the republic. Frequent demonstrations continued and in late October more than one hundred peoples' fronts from all over the USSR met at Chelyabinsk to discuss the democratization of the Soviet Union. One writer called the meeting "a people's Duma that is trying to sum up and express all the opinions in our society," referring to the tsarist Duma, a sort of weak parliament (Zhavoronkov 1989, 13). Each new demonstration and each new meeting and organiza-

tion put further pressure on Ivashko and Gorbachev to make more radical changes.

The year 1989 had marked a turning point in Ukrainian politics. Popular unrest had led to greater liberalization and to the fall of the Ukraine's party chief. But the underlying problems were not resolved and Ivashko too would prove unable to stem the rising flood of public anger and disillusionment.

1990 Elections

The republic-wide elections of February and March, 1990, shifted the political balance in the Ukraine. The odds were stacked fairly heavily against Rukh: It could not officially nominate candidates because it was not recognized in time by the government, it was not allowed to publish its own newspaper, and the Communist Party was able to guarantee safe seats to many of its own officials (Keller 1990, A12). In spite of these difficulties, Rukh-approved candidates managed to win one-fourth of the seats in the Ukrainian Supreme Soviet. Also, Ivashko and many other senior communists were unable to win on the first ballot and were forced into run-off elections. By contrast, many Rukh leaders won on the first ballot, including several former political prisoners representing the Ukraine Helsinki Union (Keller 1990, A12). Ivashko eventually, but not easily, retained his seat and was elected chairman of the republic's parliament, making him head of both the Ukrainian Party and government.

In July, Ukrainian miners provoked a political avalanche by threatening another strike. Their basic demands included the resignation of the government (because of its failure to carry out the promises of the previous year) and the removal of the Party

from economic decision-making (*Izvestia* 1990, 1, 3). The Ukrainian parliament, with many of its conservative communist majority in Moscow for the Communist Party Congress, felt itself unable to deal with the strike and so it ordered all missing members to return to Kiev immediately (Tsikora 1990a, 2). The majority returned but Ivashko, as a Politburo member and a key figure in the Party Congress, was unable to return. Criticizing both the parliament's order to return and those communists in the Ukrainian parliament who had supported the order, Ivashko resigned his chairmanship of the Ukrainian Supreme Soviet (while retaining his leadership of the party).

Sovereignty

His replacement, Leonid Kravchuk, the Second Secretary of the Ukrainian Communist Party, was not elected for two weeks. This interval saw remarkable changes in the Ukraine. On July 16, 1990, the Ukrainian Supreme Soviet overwhelmingly declared (355 to 4) the republic's political sovereignty (Clines 1990a, A1). In startlingly clear language, parliament claimed the "supremacy, independence, fullness, and indivisibility of the republic's power on its territory and its independence and equality in external relations" (Clines 1990a, A10). The declaration claimed for the Ukraine the right to its own citizenship; the right to control its own natural resources; the right to create its own financial, currency, and economic systems; the right to annul laws passed in Moscow; and the right to control troops on its own territory (*Pravda* 1990, 2; Clines 1990a, A1, A10). The Ukraine did not claim full independence, but its declaration was reminiscent of the sovereign Cossack state of the sixteenth and seventeenth centu-

ries. The *New York Times* noted that the "declaration was crafted to reflect the Ukraine's rich history of centuries of dynasty and principality, when Kiev was a major political, commercial, and cultural center" (Clines 1990a, A10).

The declaration of sovereignty marked the Ukraine as one of the most radical of the Soviet Union's fifteen republics. Only the three Baltic republics have gone further and claimed the right to secede from the union. It is important to note the near unanimity of the vote, indicating that both communist and Rukh delegates to the Ukrainian Supreme Soviet saw the need (or felt the public pressure) for radical change. The fifteen republics will soon be negotiating a new treaty of union with Moscow and the Ukraine appears to have staked out a rigid negotiating position. It remains to be seen whether Gorbachev has the power to force compromise on the republics.

These steps towards sovereignty, however, proved only the prelude to even greater demands. With store shelves consistently empty, the Ukrainian discontent continues to grow. On September 30, Rukh and other nationalist groups held a huge procession and rally in downtown Kiev. *Izvestia* reported that over one hundred thousand people attended, making it the largest such unofficial rally held in Kiev in the post-World War II era (Tsikora 1990b, 1-2). The next day saw the beginning of a republic-wide strike which, although it included only a fraction of the republic's workers, increased the perception of discontent. The Ukrainian Supreme Soviet certainly must have noticed. The following day's events added to the pressure: Policemen and protesters clashed near the Supreme Soviet building, leaving twenty demonstrators and fifteen policemen injured (Tsikora 1990c, 2).

Student Protest

A small group of students escalated the situation one step further in early October. As an outgrowth of the relatively unsuccessful work stoppage, about two hundred students started a hunger strike in a tent city they had constructed in Kiev's central plaza, at the very feet of the imposing statue of Lenin. (Somewhat ironically, the plaza is named the Square of the October Revolution.) The hunger strike mushroomed into republic-wide student protest. Tens of thousands of students travelled to Kiev in support. Colleges across the city and republic were barricaded and closed by students refusing to attend classes. Demonstrators in other cities voiced their support. According to the *New York Times*,

The student demonstration appeared to provide what Rukh and other opposition outlets had not yet been able to apply, a simple focus, with doctors dramatically measuring the hunger strikers' health, for venting dissatisfaction with the communist status quo and its hard economic times (Clines 1990b, A4).

The student demands increased the radicalization of Ukrainian politics. Criticizing the only-partially democratic elections of the previous spring, students called for a republic-wide referendum on whether or not to dissolve the parliament and hold new elections. This referendum would in effect be a vote of confidence in the parliament (Reuters 1990, A6). The hunger strikers also demanded a new constitution implementing the July declaration of sovereignty, laws allowing Ukrainian military recruits to serve on Ukrainian soil, confiscation of the Communist Party's vast property holdings, and the resignation of the Ukraine's Prime Minister, Vitaly Masol (Clines 1990b, A1, A4).

Two weeks later, the Ukrainian Supreme Soviet accepted most of the demands. Prime Minister Masol agreed to step down and the Supreme Soviet agreed to a new constitution, a referendum on dissolving parliament, and a law keeping Ukrainian troops in the Ukraine. In short, they agreed to begin putting into law those rights claimed in theory in July. This will certainly meet with opposition in Moscow, increasing the Ukraine's conflict with Gorbachev. In addition, a substantial portion of the Ukrainian population opposes these changes. This group includes not only communists with a stake in the status quo but also ethnic Russians worried by an increasingly anti-Russian Ukrainian nationalism. Finally, the student protest has forced Rukh to further radicalize its own demands (Clines 1990b, A4). Previously Rukh had avoided calling for outright independence (although some groups under the Rukh umbrella had done so). Now, in order to stay in the lead of public opinion, Rukh fully endorsed complete independence from the USSR.

Conclusions

Lenin remarked once that "for us to lose the Ukraine would be the same as losing our head" (Keller 1989b, A13). An observer viewing the Ukraine in 1985 might have assumed (as many did) that the Ukraine had no strong nationalist feelings and the Ukrainian and Russian nations had virtually become one. With the exception of a few dissident groups, the Ukraine seemed passively content with its role in the Soviet state. Recent events, though, have proved this view false. It is becoming increasingly clear that the Ukrainian nation exists and remembers its past independence, however short-lived. And seventy years of commu-

nist repression has only deepened that feeling. The explosive nature of that sentiment surprised both Western and communist observers--including Mikhail Gorbachev. Today, Ukrainian public discussion is almost controlled by nationalist voices. The dismal economic situation fans the flames of dissent. Even the communist-dominated parliament has rebelled and demanded greater freedom and autonomy than Moscow appears willing to offer. Unless Gorbachev is able to neutralize the Ukraine's current momentum, the Soviet Union may have to learn to live without its head.

Gorbachev does have a few remaining cards to play though. First, the Ukrainian

parliament, although rebellious, is still controlled by Communist Party members with a personal stake in the status quo. Second, the Ukraine's sizable Russian minority and the Russification of the eastern Ukraine provide a check on any thoughts of independence. Third, the powers of the state, especially the Army, are still controlled by Moscow, giving Gorbachev very real leverage in overcoming rebellion. Will Gorbachev resort to such drastic measures to hold the Soviet Union together? It appears increasingly possible that he or some other Soviet leader will face just such a choice in the Ukraine in the not-so-distant future.

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The Future of the Spanish State

in the Wake of Regionalistic Nationalism and Separatist Fervor

by

Deidre J. Jensen

Introduction

In the post-World War II era, demands for regional autonomy have been a recurring feature in Western Europe. These demands have been based on the inability of the modern nation-state to solve all of the political, economic, and social problems it faces. As regions are continually confronted with an inadequate central government that is limited by a lack of resources and political will, those peoples who feel most alienated, deprived, or exploited will agitate for more control over their own affairs. Nowhere is this situation more prevalent than in modern Spain.

Since its founding, Spain has been a nation of varied cultures, languages, governments, and histories. Although attempts have been made to unify these diverse peoples, the historical differences between the regions have

continued to threaten the existence of the centralized state. Moxon-Browne gives two explanations for this grave situation. First, as a result of the historical uneven economic development of Spain, a situation of "internal colonialism" has emerged. This has been characterized by the exploitation of the poorer regions by those that are more economically advanced and by the refusal of the economically strong regions to contribute to the development of the rest of the nation. The economic deprivation on the one hand and the refusal to share the wealth on the other, especially when coupled with ethnic pride, have both led to nationalistic fervor, agitation for regionalist autonomy, and, at times, the use of violent methods (Moxon-Browne 1989, 41).

Second, as in the Basque country, periods of rapid industrialization have brought many immigrants into the region. The resulting social upheaval has created a feeling of alienation among the native people, a

fervent ethnic and cultural consciousness, and a desperate grasp for their traditional and historical roots. This emerging nationalism has also quickly led to a desire for regional autonomy (Moxon-Browne 1989, 41). Although not exclusive, these are two of the many possible explanations for the regionalist sentiment which has continually influenced the history of Spain. Even though the Spanish government has tried to address this problem by granting partial autonomy to the regions, many regions such as Catalunya, the Basque country, and others will not be satisfied without further concessions. If concessions are not made, there is a possibility that at least the Basque country and Catalunya, the most economically strong regions in Spain, will demand their independence. Unless this situation changes drastically, the continuance of a unified Spanish state will be threatened by escalating conflicts between the regions agitating for more autonomy and the central government fighting to save its disintegrating nation.

Historical Background

Spain, until the fifteenth century, had been a nation of diverse peoples separated by geographical boundaries and ruled by separate governments. When modern Spain was finally unified through the marriage of Queen Isabel of Castile and King Ferdinand of Aragón in 1469, the capture of the last Arab stronghold in Granada in 1492, and the annexation of the Northern kingdom of Navarre in 1512, Spain had already developed somewhat of a federal system of government. For example, when Charles I (the grandson of Ferdinand and Isabel) came to power, he was not known as the King of Spain but rather as the King of Castile,

León, Aragón, Navarre, etc. Not only that, but he had to promise to "respect the administrative, legal, financial, and cultural idiosyncracies of each kingdom or principality" (Newton 1983, 100). This federal system lasted until the seventeenth century when the Bourbons of France tried to unify the administration of the country. Spain was soon divided into fifty artificial provinces which cut across regional boundaries. This situation did not change until the nineteenth century.

A multitude of wars during the 1800s retarded Spain's material progress and increased social and political divisions within the country. In the meantime, frustration with the inertia and interference of the Madrid bureaucracy led the Basque country and Catalunya to pursue their own paths of economic development. Failure of the centralized government to create a nationwide industrial complex coupled with the rising nationalist sentiment of the Basque country and Catalunya meant that by the 1900s, economic, social, and political differences between the regions and the central government were irreconcilable. Although attempts at granting partial autonomy to the regions were made initially, following the Civil War (1936-39), General Franco, the military dictator, prohibited any evidence of regionalism and autonomy. He desired a unified state with one language (Castilian), one leader (Franco), and one church (Catholic). His regime was one of intolerance, repression, and centralization. However, his programs only succeeded in revitalizing regional cultures and creating strong opposition to the concept of a unified Spain. Following his death, the presence of regionalist nationalism and the desire for autonomy was greater than it ever had been previously.

The post-Franco era was characterized by a resurgence in the autonomy movement, which occurred for a variety of economic, political, cultural, and demographic reasons. In part, it was a reaction to years of oppressive government centralization throughout the history of Spain. Also, it began because of the social tensions which had arisen between the immigrants and native peoples in various regions throughout the country. In addition, it could be attributed to the uneven economic development between the regions and the methods taken by the central government to remedy that situation. Finally, it was a result of increased regionalist nationalism, ethnic consciousness, and deep-seated historical differences which were impossible to reconcile (Donaghy and Newton 1987, 98). Whatever the reason, the regions in the post-Franco era demanded autonomy and decentralization. Their demands were met by the constitution of 1978, the Constitution of the refurbished democratic Spain.

The Constitution of 1978

The Constitution of 1978 was a document of compromise which, although not ideal, was considered to be the primary step towards more regional autonomy. It contains an interesting mixture of centralized government and regional autonomy which is neither a federal system nor a nation-state system. It primarily discusses the rights of regions, the process of becoming autonomous, and the roles and responsibilities of both the central and regional governments.

The regions of Spain are guaranteed autonomy in Article 2 of the Constitution. This article states that the "constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible

motherland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed" (Donaghy and Newton 1987, 100). (See appendix one). It is interesting to note that the central government mentions the indissoluble union of the state before it mentions autonomy to express the overriding idea that the centralized state will continue even in the presence of autonomy.

After autonomy is guaranteed, Article 143.1 talks about the territorial basis for the establishment of autonomous regions. It declares that only "adjoining provinces with common historical, cultural and economic characteristics . . . will be able to accede to self-government and form autonomous communities" (Donaghy and Newton 1987, 100). This historical basis not only ensures autonomous privileges but it is the deciding factor in the length of time it will take to acquire autonomy. The regions, such as the Basque country, Catalunya, and Galicia, which had historically voted in a referendum to be autonomous could proceed quickly towards full autonomy. The rest of the regions would have to wait five years after the approval of their statutes before they could gain the same full autonomy guaranteed to the historic regions. According to Donaghy and Newton, this was to give them time to organize their own governmental institutions for housing, public works, forestry, environmental protection, museums, libraries, cultural affairs, tourism, social welfare, health, and hygiene, etc. After the regions gained autonomy, they would have the primary control and jurisdiction over each of these areas in their own territories (Donaghy and Newton 1987, 113).

In addition to being able to control the areas mentioned above, each autonomous government is guaranteed the right to create and execute its own laws, to exercise finan-

cial autonomy (within the state's overall responsibility for taxation), to control its own budgets and educational system, to write its own statutes (regional constitutions), to establish the parameters of its relationship with the central government, and to have its own capital city, flag, civil service, and supreme court.

In contrast, there are certain powers which belong solely to the central government. These include immigration, political asylum, defence and the armed forces, customs and trade barriers, the monetary system, general economic planning, authorization of elections and referendums, overall administration of justice, and the signing of international agreements and treaties (Donaghy and Newton 1987, 114-115).

In addition, the constitution declares that certain powers can be delegated by the Federal Parliament to be shared by both the federal and the regional governments. These powers include the overall system of communications, the ports and airports of general interest, the post and telecommunications, the control of air-space and transport, and the academic professional qualifications.

The Spanish Constitution as it exists today contains many strengths. It delegates a great deal of authority to autonomous regions while at the same time maintaining the unity and cohesion of the state under a centralized government. It is an extremely important document for the Spaniards because it is the first constitution to acknowledge the multinational and multilingual character of Spanish society and to establish the principle of governmental decentralization. However, having these strengths does not necessarily mean that this constitution will be acceptable indefinitely. As regions are experimenting more with autonomy they are beginning to feel independent of the

central government. In fact, certain ones are even considering total independence as their next step. Since most of those advocating separatism are the economically strong regions such as the Basque country and Catalunya, it would be financially destructive to Spain if they succeeded. Not only that, but it is quite possible that separation and independence for these regions could create a tidal wave of regionalistic sentiment which would result in the dissolution of at least part of the Spanish nation. For these reasons, the Spanish central government is fighting against further separatist concessions. The future of this struggle could bring about many significant changes in favor of one side or the other. At this point all that is certain is that autonomy has been granted and will not be relinquished easily, neither the central government nor the separatist regions plan to budge on their demands, and, at some point in the future, concessions will need to be made by somebody. In order to understand the events that will surely happen, it is necessary to discuss 1) the factors which have caused regionalism to occur; 2) the extreme cases of separatism-Catalunya and the Basque country; 3) regionalism in other areas of Spain; 4) the response of the central government; and 5) what the future holds for the continuance of Spain, the modern state.

Catalunya

Catalunya is a region of Spain which borders France to the north, the Mediterranean Sea to the west, the Ebro basin to the east, and coastal hills to the south. Because of her geographical location, she has been relatively isolated throughout a large part of her history from the other areas of the Iberian peninsula. As a result, her history

has been distinct from that of the rest of Spain.

Up until the fifteenth century, Catalunya was an autonomous region ruled by the counts of Barcelona. In 1289 the Generalitat de Catalunya was established which "defined the traditional Catalan liberties and privileges as a bastion against the Centralizing encroachments of the Spanish Crown" (Moxon-Browne 1989, 25). Catalunya's political identity was not threatened until the male line of the counts of Barcelona became extinct in 1410 and the Catholic kings unified Spain, including Catalunya, in 1469. At this point, Castile exercised the most influence because of an economic boom, her monopoly on trade with the Americas, and few legal barriers. As a result, Catalunya "which had been the major component of the Catalan-Aragonese monarchy, lost political importance and influence although it retained control over its own affairs" (Coverdale 1979, 25).

Finally, in the seventeenth century it was able to reassert its influence by refusing to join the Hapsburg monarchy until its autonomy had been guaranteed (1653). However, with the entrance of the Bourbon kings during the 1700s, Catalunya lost the autonomy she had gained. This loss was soon offset by her growing economic vitality; she was even more prosperous in 1760 than was Castile. During the 1700s regional differences persisted but the Catalans supported the Spanish monarchy during the French Revolution and the Napoleonic Wars. In fact, Coverdale believes that by this time, "a workable equilibrium had been reached in which Catalunya could participate in a larger Spanish national undertaking without renouncing altogether its linguistic and ethnic identity" (1989, 26).

This equilibrium was disturbed, however, during the 1830s when the liberals at-

tempted to impose a centralized government on Spain. Nevertheless, during this time Catalunya's economic strength was unequalled, she experienced a cultural renaissance, her language was used in literature and science, her citizens studied her history, a pride in her traditional institutions emerged, and a fervent nationalism created the desire for autonomy. Autonomy came in 1932 but it was rescinded shortly after Franco came to power following the Spanish Civil War. In addition, Franco prohibited the use of Catalán in schools and books, declared that cultural associations were illegal, and prohibited all Catalan cultural expressions. In Catalunya during the Franco regime, this fierce repression served only to "unite her people in widespread opposition to a hated, centralist regime" (Newton 1983, 109) and to "reinforce the desire of the Catalans to regain their autonomy" (Moxon-Browne 1989, 48). In the post-Franco era, Catalunya pushed for autonomy and, in the Constitution of 1978, was one of the first three regions to achieve it. In this way alone she was different than the majority of the other regions of Spain.

However, Catalunya's distinctiveness with the rest of Spain goes much deeper than her history. Her citizens just simply feel different than and separate from their fellow Spaniards. A *New York Times* article dated 26 September 1989 described the Catalans in the following way:

Hard working, prosperous and deeply proud of their Catalan language and culture, the people of Barcelona Spain make no secret of their belief that their city's selection as the site for the 1992 Olympic Games is further proof that they are just a touch superior to other Spaniards.

According to Moxon-Browne, the superiority that the Catalans feel is based on "past history, linguistic distinctiveness, and a

feeling of being different from the Castilian majority in Spain" (1989, 49). This feeling is demonstrated more clearly in appendix two which shows that nearly 40 percent of the citizens of Catalunya feel more Catalan than they do Spanish. In other words, they identify more with their region than with their nation. Another poll among young people in Barcelona in 1984 showed the same results. Moxon-Browne declares that "27 percent said they felt 'only Catalan' and a further 16 percent felt more 'Catalan than Spanish'" (1989, 48). Furthermore, the Catalans define their identity in terms of their language and culture instead of in terms of the Spanish culture and the Castilian language (Gunther, Sani, and Shabad 1988, 319). Because of this regional nationalism and immense pride in their culture and their history, many Catalans would like to see an independent state (19 percent in the 1984 poll) and most would like to receive more autonomy from the central government. This is shown clearly by the end result of the 1984 elections in which the foremost nationalist party, the CiU, won an absolute majority in the parliament with 46.6 per cent of the vote. Since 64.4 per cent of the voters went to the polls, it is obvious that many of the Catalan people support their regional parties and government (Moxon-Browne 1989, 49). (Further information on the percentages of Catalan support for more autonomy is available in appendix three). Therefore, although the Catalan region most likely will not separate from Spain in the near future, the presence of a desire for more autonomy or for independence will be a continual threat to the nation-state of Spain in the years to come.

Regionalist nationalism and distinctiveness is manifested by the pride of the Catalans in their language. The Catalans believe that theirs is a "language of culture,

with an important literature and a significant number of scientific works published" (Coverdale 1979, 23-24). The language, Catalán, is a mixture of French and Spanish. Throughout Catalunya everything is written in this language primarily and then the Castilian language follows. Conversations on the street are normally held in Catalán. In addition, and this is true in many other areas of Spain, the greatest majority of citizens speak their regional language at home and over half speak it regularly in the workplace. In fact, "language is clearly a badge of Catalan identity: those who do not speak it find jobs difficult to get and the pressure to learn the language and become integrated into Catalan society is therefore almost irresistible" (Moxon-Browne 1989, 49). In other words, in order to preserve their culture, the Catalans not only use Catalán in their homes but also they force the immigrant community to learn the language and customs and, therefore, to be Catalanized (Gunther, Sani and Shabad 1988, 319).

The Catalans probably would not have such a dramatic influence over the immigrants in their region if they did not have such a strong economy. Immigrants come from regions all over Spain to take advantage of the monetary rewards to be had in the industrial and service sectors of the booming Catalan economy. Not only does this economy provide jobs to Spaniards but it also contributes a large percentage of revenue to the Spanish government. Therefore, it is important to the continued vitality of the Spanish state. The Catalans realize their vital role and take pride in their economic prowess. This economic prowess, for some, is an encouraging factor on the road to separatism because they believe that Catalunya is strong enough to survive as an independent state. Others also justify sepa-

ration based on economic prowess but for a different reason. These Catalans believe that they have been the victims of economic discrimination at the hands of the central government because of the "inegalitarian impact of Spanish taxation and spending policies. . . . Nationalist leaders have long maintained that revenues derived from the Basque area and Catalunya [to be used for the development of the poorer areas of Spain] have far exceeded the value of public services received by them" (Gunther, Sani, and Shabad 1988, 325). Therefore, pride in their economic prowess, culture, language, and history and feelings of economic discrimination play a major role in the justification by many Catalans of increased autonomy and/or separation from the Spanish state.

The Basque Country

The Basque country is a region of Spain which borders France to the west, the Bay of Biscay to the north, los Montes Cantábricos to the east and small mountains to the south. Because it is at the most northern point of the Iberian peninsula, the Basque country, like Catalunya, has been relatively isolated throughout a large part of her history. As a result, her history has been distinct from that of the rest of Spain.

At the time of the formation of the Spanish state by the Catholic kings, the provinces of the Basque country had already belonged to the crown of Castile for several centuries. According to Moxon-Browne, the Basques had been allowed to use *fueros*, local statutes, since the seventh century (1989, 51). In addition, they had been allowed to retain "their local customs, institutions, and languages throughout the sixteenth, seventeenth, and eighteenth centu-

ries" (Coverdale 1979, 32) in exchange for their allegiance to Castile and their use of the Castilian language in both government and culture. Because of this arrangement, the centralization of the Spanish state did not affect the Basque country as terribly as it did Catalunya. During the nineteenth century, the Basque country was able to pursue regionalist policies and soon became the center of Spanish heavy industry and mining. As a result, the Basques were able to participate even more effectively in the economic and political life of Spain.

Basque autonomy was first challenged and eradicated when the liberals came to power in the early nineteenth century. The *fueros* were abolished in 1876 and customs posts on the Ebro were removed. Because of this, the Basques lost "an important symbol and component of economic autonomy" (Moxon-Browne 1989, 51). In order to reassert their independence, the Basques formed a nationalist party (PNV) in 1895 under the tutelage of Sabina de Arana. This party was based on a close identification with the Catholic church and a desire for ethnic purity, especially in the wake of the immigration brought on by the Basque industrialization process. The nationalist party renamed the Basque country Euskadi, made a new flag, and encouraged people to speak the Basque language. Although it did not receive much popular support initially, it became the forerunner to the intensely Basque nationalist party of today, the ETA.

The ETA (Euskadi ta askatasuna) was originally a simple nationalist movement in the 1950s. It began in response to the repressive policies pursued by the Franco dictatorship. Franco had deprived the Basque provinces of their economic and administrative autonomy, prohibited the use and teaching of the Basque language, burned Basque books, forbidden Basque musical

instruments and the wearing of the Basque national colors, removed the Basque language from tombstones and public buildings, and Castilianized all names and inscriptions. In response to this, the ETA organized and dedicated itself to the independence of the Basque country from Spain.

When it was first organized, the ETA did not advocate violence as an acceptable method of achieving change. However, the organization soon committed itself to armed struggle (1967) in response to the Francoist tactics it had to combat. Since 1968, over 600 murders of Spanish public officials and police officers have been committed in the name of regionalist nationalism (*The Christian Science Monitor*, January 31, 1989). ETA has justified its actions on the grounds that it must raise consciousness among the Basque people, protect the people against the repressive apparatus of the central government, and confront the government in the only language it understands (Moxon-Browne 1989, 55). Not even the concessions made in the Constitution of 1978 have stemmed the terrorist activities. Actually, the transition to democracy was accompanied by an "increase of violence--from 29 deaths in 1977, to 88 in 1978, to 131 in 1979" (Gunther, Sani, and Shabad 1988, 246). In 1988 alone, nineteen people were killed (*Washington Post*, February 26, 1989). Even though the ETA called a self-imposed truce for two months during 1989, the violence will probably not cease until the Basque country is granted independence from Spain. Although support for ETA's violent tactics is not widespread in the Basque country (only 42 percent of the extreme nationalists and 9 percent of the more moderate group sympathize with ETA), the organization does reflect the sentiments of a large section of the Basque

population who want more autonomy or independence at any cost.

The desire for Basque independence is so strong (as shown in appendix three) because of the intense regionalist nationalism which is prevalent there among certain groups. This nationalism can be attributed to many factors, one of which is the influx into the Basque country of non-Basque immigrants and businessmen who have created social upheaval and have diluted the ethnic purity of the Basque people. Therefore, the Basques desire to disassociate themselves from further ethnic contamination through independence. Moreover, the Basque nationalist ideology is based on a "dedication to the Catholic faith, the belief that all Basques should be united across the Pyrenees, and the assertion that language should be the defining characteristic of the Basque race" (Moxon-Browne 1989, 52). Again, regionalist supporters assert that independence or more autonomy would aid the Basques in achieving these nationalistic goals.

Another reason for their separatist desires is that many Basques do not consider themselves to be Spaniards at all. Appendix two shows that at least half of the Basque people do not readily associate themselves with the Spaniards. Instead, the Basques "rest their claim to autonomy on their ethnic, cultural and, above all, linguistic distinctiveness" (Newton 1983, 112) from the rest of Spain. In other words, they believe they are a separate ethnic group whose language is an obvious manifestation of this. In reality, there is some truth to their assertions. The Basque language is distinct in that its origins are unknown and it has no connection with any other European language. Because of this, the Basques are able to guard the purity of their language and, with it, create a barrier for the mixing

of foreign blood with the ethnic purity of their race. Therefore, their language is an important factor in their struggle for autonomy, independence, and ethnic purity.

Another important factor is their economic prowess. Like Catalunya, the Basque country is one of the more developed regions of Spain. Therefore, it can be reasonably confident that, were it to gain its independence, it would be able to survive on its own. It too rallies around the idea of economic discrimination by the central government in its justification for separatism. Like Catalunya, it pays nearly a third of all taxes and receives only a small percentage of services in return. Therefore, pride in their economic prowess, culture, language, and history and feelings of economic discrimination play a major role in the justification by many Basques of separation from the Spanish state.

Other Regions

Although the separatist or autonomist fervor in other regions is not nearly so pronounced as it is in Catalunya and the Basque country, regionalist sentiments do exist elsewhere in Spain. During the drafting of the Constitution of 1978,

preferences for varying degrees of autonomy and even for independence, as well as support for regional parties, were present in other culturally and linguistically distinct regions, such as Navarra, Valencia, the Balearic Islands, Andalucía and the Canary Islands [who had] no previous aspirations for, or historical experiences with, self-government (Gunther, Sani, and Shabad, 382).

For example, one of the most startling results of the 1979 election was the success of the Partido Socialista de Andalucía (PSA). This party received 11 percent of

the vote in Andalucía and obtained five out of the fifty-nine seats allotted to the region. "The meteoric rise of the PSA was the most dramatic instance of the spread of demands for autonomy in Castilian-speaking and indisputably 'Spanish' regions of the country" (Gunther, Sani, and Shabad 1988, 383). Support in the other regions for more autonomy and/or independence can be found in appendix three. Although most regions at this time do not advocate independence, many at least want limited autonomy from the central government. After experiencing the ability to control their own affairs it is possible that more regions will advocate greater autonomy in the future, especially if concessions are made in the Basque country and Catalunya.

The desires for autonomy in other regions are based on various factors. First, the existence of various languages other than Castilian, such as Gallego Portuguese, Andaluciano, Valenciano, etc., encourages an association with a region instead of with the state. Next, the geographical features which cut across the Iberian peninsula have isolated various regions from one another and, as a result, have resulted in distinct peoples with distinct histories. The historical differences are compounded by the cultural influences each region has had (such as the Arabs who settled southern Spain as opposed to the Romans, Christians, and Europeans who settled northern Spain). Furthermore, the economic discrimination which the poorer regions have suffered at the hands of the larger regions, especially under internal colonialism, has created a fierce loyalty to oppressed regions. And, finally, the historical lack of control over their own affairs has made many Spanish citizens desire more regional autonomy or independence. Each of these factors plays a certain role in the regionalist sentiment of

each area of the peninsula. Although this sentiment is not as pronounced in the other regions and those who strive for autonomy may be in the minority, regionalist sentiment of whatever degree or intensity is dangerous to the continued existence of the Spanish state.

The Central Government's Response

To assert the overall authority of the state, the Spanish government declared in the Constitution of 1978 that Castilian was the official language of the state and that all Spaniards must know and use it. In addition, the central administration has been very protective of the rights guaranteed it by the constitution and has refused to grant more concessions to the regions (for example, it refuses to negotiate with the ETA separatists in the Basque country). To discourage further separatist fervor the Spanish Parliament has passed anti-terrorist legislation which gives the police the right to search homes of suspected ETA members without a warrant and to intercept mail and telephone conversations (Moxon-Browne 1989, 57-58). In addition, the government has offered amnesty to those individuals who will agree in writing to renounce terrorism. These are a few of the tactics the central government is presently using to quell the regionalist nationalism that is plaguing the Spanish state. However, all the evidence shows that "the process of devolving political power to the regions is far from complete and daunting problems remain to be surmounted" (Donaghy and Newton 1987, 117).

First, the central government needs to decide whether it wants a centralized, federal, or disunified governmental system. If it is not moving in the direction it desires, it

should act accordingly. Regardless of which system the centralized government chooses, creative choices and innovative policies are required to ensure that the system is successful. For example, Lancaster suggests that the government lower the costs of staying with Spain for the highly separatist areas, such as the Basque country, through tax incentives (1987, 586). Whether or not the government considers this solution to be valid, it will soon need to come up with ideas of its own in order to win the war of devolution.

In addition to this, the government must impose limits to the autonomy of regions. Granting autonomous powers "may mean yielding some of the powers which central authorities themselves believe to be necessary to the uniform provision of effective government" (Moxon-Browne, 64). Already,

a sense of identification with the Spanish state is intersected by strong ties of allegiance to regional governments. The concept of the Spanish nation inevitability risks being further diluted as voters look to regional governments for bread-and-butter services, and to regional flags and other symbols for expressions of cultural distinctiveness (Moxon-Browne, 63).

This problem is further exacerbated if the regional government, like that of Catalunya, provides superior services than those provided by the central government. If the central government does not move quickly to assert its influence in some way over its citizens in the various regions, it will soon be thought of as an incapable and outmoded institution. This process could take time but it will eventually lead to the total devolution of the Spanish state.

Second, the government must decide how it will be able financially to handle the process of devolution which seems to be

occurring. Paying for eighteen separate governments instead of only one is a very expensive proposition and will require much forethought. In addition, Newton believes that a major financial test of the current system will be the ability of the central government to,

tackle the serious economic problems faced by regions like Andalusia, Galicia, Extremadura, and Castile while not alienating the richer areas like the Basque Country, Catalunya, Asturias and Cantabria which will be obliged to contribute to their development through the Interterritorial Compensation Fund (125).

This will be a difficult task considering the fierce resentment of the economically advanced regions toward this system.

Finally, the government must decide how to deal with the lack of solidarity that exists between the differing regions which, at this point, threatens the continuance of the Spanish state. This problem is obvious in the constant fighting between the Basques and the central government and in the resentment of the Basque country and Catalunya to the uneven distribution of services under the Interterritorial Compensation Fund. Furthermore, interregional problems could occur between those regions who believe that they deserve preferential treatment because of their history and ethnicity, such as the Basque country and Catalunya, and those regions which are created simply because of geographical factors. The central government must devise a plan to ensure equality while, at the same time, abating the cries for preferential treatment (Donaghy and Newton 1987, 118). This, like all the other issues which need to be addressed, will be difficult to solve but it is vital to the survival of the current governmental system and the continuance of the modern state of Spain.

Conclusion

Although the problems I have just considered bode ill for the continuance of the Spanish state, the regionalist nationalistic sentiments by no means guarantee the total devolution of Spain. First, these sentiments do not necessarily represent the viewpoints of every citizen of Spain. In fact, in certain areas those with regionalistic sentiments are in the minority. For many others, a strong sense of state nationalism and pride in España exists which eclipses the regional nationalism. Second, despite varied cultures and histories, all Spaniards share certain experiences and elements of their culture with all other Spaniards. Ironically, argues Newton, one of the most prevalent characteristics common to all Spaniards is precisely their tendency to separatism. In other words, the more separatist a Catalan, a Basque, or an Andalusian is, the more Spanish he reveals himself to be. (1983, 127) If citizens focus more on the ties they have with their neighbors than on the ways in which they are different, this common culture could be the saving grace of the Spanish state. Finally, all regions must be willing to compromise. The Castilians must renounce the idea that the nation was created only by them and must, instead, accept the specific contributions of each region. It must also be willing to accept a more decentralized and diverse state. On the other hand, the regions, while enjoying their autonomy, must remember to demonstrate their loyalty to the whole, and must temper their own demands so as to achieve what is in the best interest for everyone involved. If many of these things do not happen, Spain as we know it will soon disintegrate into a collection of economically strong regional states and a unified nation comprised of

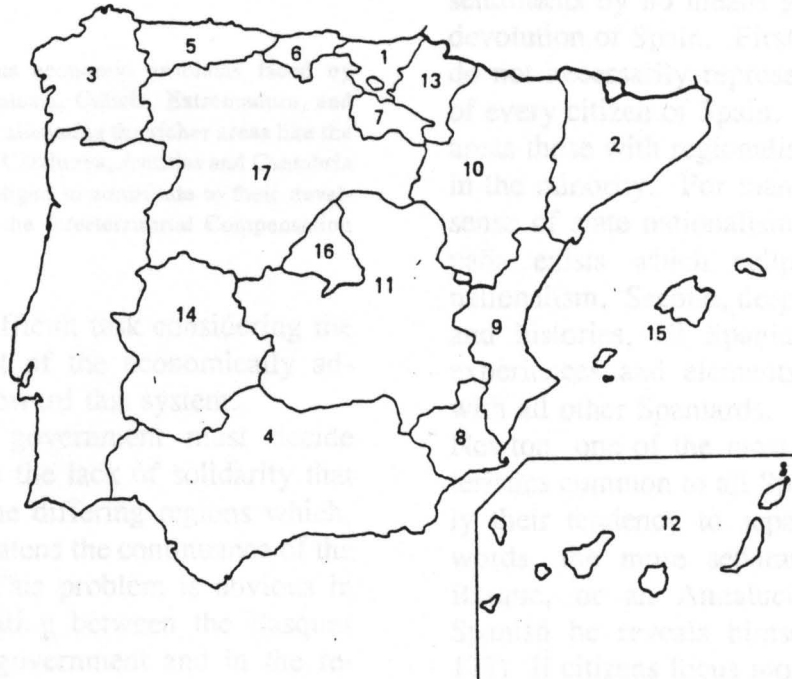
economically backward entities. If many of these important changes are made, Spain

as a unified state will continue to rule effectively for centuries to come.

APPENDIX ONE

The Autonomous Communities of Spain

Donaghy pg. 99



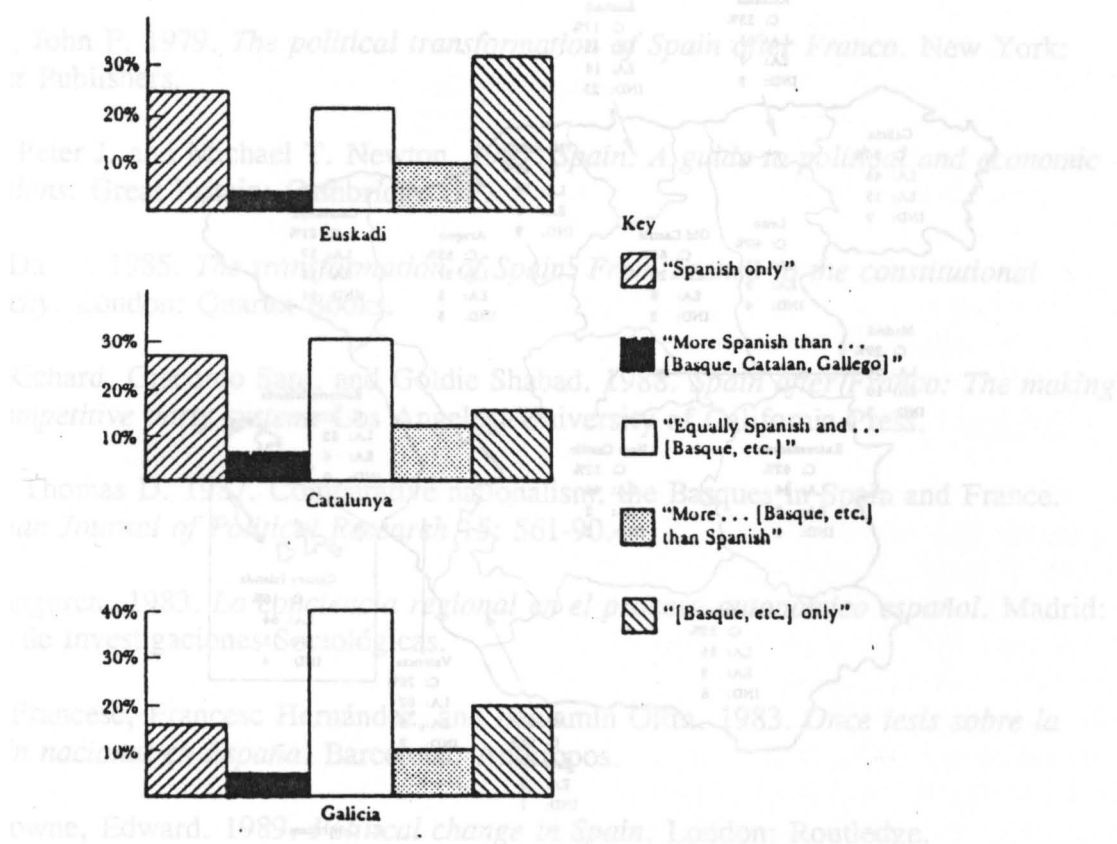
Key:

<i>Autonomous community</i>	<i>Executive body</i>	<i>Capital</i>	<i>Date statute approved</i>
1 País Vasco (Euskadi)	Gobierno Vasco	Vitoria	18.12.79
2 Cataluña (Catalunya)	Generalidad de Cataluña (Generalitat de Catalunya)	Barcelona	18.12.79
3 Galicia	Junta de Galicia (Xunta de Galicia)	Santiago de Compostela	6.4.81
4 Andalucía	Junta de Andalucía	Sevilla	30.12.81
5 Principado de Asturias	Consejo de Gobierno	Oviedo	30.12.81
6 Cantabria	Diputación Regional de Cantabria	Santander	30.12.81
7 La Rioja	Consejo de Gobierno	Logroño	9.6.82
8 Murcia	Consejo de Gobierno	Murcia	9.6.82
9 Comunidad Valenciana	Gobierno Valenciano	Valencia	1.7.82
10 Aragón	Diputación General de Aragón	Zaragoza	10.8.82
11 Castilla-La Mancha	Junta de Comunidades de Castilla-La Mancha	Toledo	10.8.82
12 Canarias	Gobierno de Canarias	Las Palmas	10.8.82
13 Navarra	Diputación Foral de Navarra	Pamplona	10.8.82
14 Extremadura	Junta de Extremadura	Mérida	25.2.83
15 Islas Baleares	Gobierno de la Comunidad de las Islas Baleares	Palma de Mallorca	25.2.83
16 Comunidad de Madrid	Consejo de Gobierno	Madrid	25.2.83
17 Castilla y León	Junta de Castilla y León	Valladolid	25.2.83

APPENDIX TWO

National Self-Identification in Euskadi, Catalunya, and Galicia

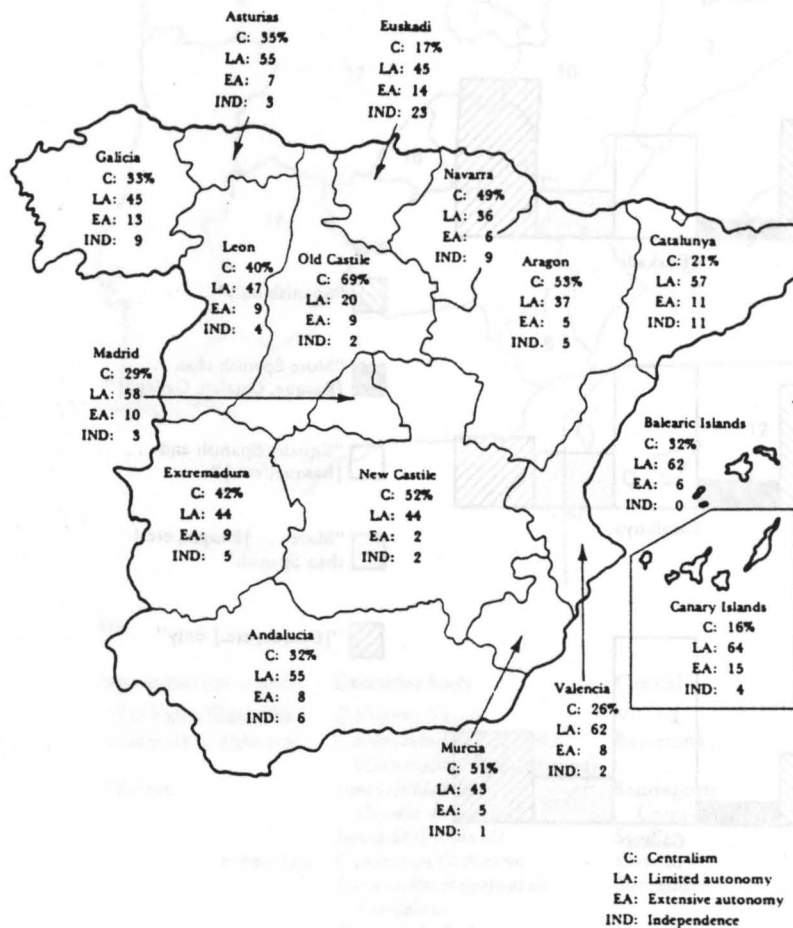
Gunther, Sani, Shabad pg. 244



APPENDIX THREE

Proportions of Regional Populations Favoring Varying Degrees of Autonomy

Gunther, Sani, and Shabad pg. 248



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Early Childhood Education: A Viable Defense Against Poverty

by

Kristin Sandberg

Introduction

In 1988, 13 percent of the United States population fell below the official poverty line (U.S. Department of Commerce 1990, 458). Twenty percent of the children in this nation grow up in poverty conditions (460), frequently without adequate food and shelter. These figures are actually higher than those during the 1970s, which suggests that we are losing the "war on poverty."

Most federal poverty programs provide income maintenance. Unemployment insurance, Aid to Families with Dependent Children, and Social Security grant a monthly stipend to those whose incomes place them below the official poverty line. These programs do not, however, address the causes of poverty; they only sustain the individual marginally above an arbitrary "poverty line." We have not been able

terminate poverty because we do not fully understand its causes.

Brian Jones, doctor of sociology at Villanova University, asserts that we will never have an effective poverty policy until we determine a logical theory for the causes of poverty. We cannot solve a problem we do not understand. Jones observes that "since we have no verified theory of why particular people are poor, it follows . . . that policy 'cures' will be poorly informed" (1984, 247). He also interprets the general lack of support for anti-poverty programs: "contemporary public perceptions of the 'welfare mess' reflect a hodgepodge of programs lacking a coherent rationale, and thus lacking any compelling reason for funding" (247). While we quibble about funding and theories, 31,878,000 Americans suffer the effects of poverty (U.S. Department of Commerce 1990, 460).

What actually causes poverty? Many Americans believe that poverty results from

individual characteristics, such as laziness, and that the individual is solely to blame (Smith and Stone 1989, 101). This is not necessarily true. Family composition, race, and education are three of the greatest determinants of poverty. Families with single parents are three times more likely to be poor than families where both parents are present. Blacks are twice as likely to be poor than whites (Patterson, Kupersmidt, and Vaden 1990, 488). Over 60 percent of those who did not graduate from high school are poor (U.S. Department of Commerce 1990, 461).

Family composition and race are variables which neither the individual nor the government can control. It is also true that in some cases the poor cannot control the amount of education they receive. However, when it comes to education, the federal government can and should intervene. The United States government should sponsor large-scale early education programs for low-income children because it will significantly increase academic ability, educational attainment, and economic well-being among the poor.

Links Between Education and Poverty

Educational Attainment

In many cases, the poor are poor because they have little education, and without education they cannot find jobs that pay well. A recent study showed that, except for race, education was the greatest determinant of poverty (Taylor and Chatters 1988, 439). Statistics from the U.S. Bureau of the Census confirm this finding, as shown in Table 1. In 1988, the unemployment rate was 9.6 percent for high school drop-outs, 5.4 percent for high school graduates, 3.7 percent

for college dropouts, and 1.7 percent for college graduates (U.S. Department of Commerce 1990, 397). The mean annual income for high school drop-outs was \$16,727, \$25,910 for high school graduates, \$31,865 for college dropouts, and \$43,952 for college graduates (445). Clearly, more education equals less unemployment and higher income.

Christopher Jencks and his colleagues at the Harvard Center for Educational Research concur with the Commerce Department's findings. Their research revealed that graduating from high school raises income 40 percent while graduating from college raises income 49 percent (1979, 182). However, the poor, those who would benefit most from additional education, do not receive it. Over 60 percent of the poor in the United States did not graduate from high school (U.S. Department of Commerce 1990, 461).

Perhaps the federal government should simply require college graduation for all citizens as a way to significantly reduce poverty. But, further analysis demonstrates that this approach could never work. In many instances, the poor do not pursue more education because they face significant sociological and economic barriers. We cannot simply require that they pursue more years of schooling. We must first understand and address these educational barriers so that the poor will be able to attain more education. These barriers originate in the family and begin hindering the poor in their early childhood.

Family Background

Being raised in an impoverished family often reduces educational achievement due to several sociological factors. The poor lack

Table 1

RELATIONSHIP BETWEEN UNEMPLOYMENT, INCOME AND EDUCATION
(1988)

	UNEMPLOYMENT RATE	MEAN ANNUAL INCOME
HIGH SCHOOL DROPOUTS	9.6%	\$16,727
HIGH SCHOOL GRADUATES	5.4%	\$25,910
COLLEGE DROPOUTS	3.7%	\$31,865
COLLEGE GRADUATES	1.7%	\$43,952

Source: U.S. Department of Commerce, Bureau of the Census. Statistical Abstract of the United States. Washington, D.C.: U.S. Department of Commerce, Bureau of the Census, 1990.

basic necessities such as clothing, food, and shelter which results in a high stress level for parents. A parent preoccupied with survival does not have as much time, energy, or attention to focus on the upbringing or education of children. Patterson, Kuper-smidt, and Vaden observe that children raised in such stressful environments often suffer from short attention spans and emotional difficulties (1990, 491). These children frequently begin public school with emotional and educational handicaps.

Christopher Ruhm, an economist from Boston University, explains the economic reasons why poor children attain less education. He hypothesizes that the cost of education rises as personal income falls. Thus, education is actually cheaper for the non-poor than for the poor. First, poor parents contribute less money to their children's

educations. Second, they spend less time training their children at home. Third, they have fewer educational resources at home, such as books, encyclopedias, and computers. Fourth, poor parents do not exhibit certain marketable skills which other parents exhibit and pass on to their children (Ruhm 1988, 157). It is more difficult and more costly for poor children to become educated than for other children.

Christopher Jencks and his colleagues agree that family background influences income level and educational attainment. They discovered that "being white, having a mother or father with a lot of schooling, having a father with a high-status occupation, having parents with high incomes, and coming from a small family all enhance a son's economic prospects" (1979, 60). In

the study, families with these characteristics were defined as "advantaged families." Jencks elaborates:

We concluded that family background as a whole explained about 48 percent of the variance in occupational status and 15-35 percent of the variance in earnings among men in the early 1970s. These estimates imply that those who do well economically owe almost half of their occupational advantage and 55-85 percent of their earnings advantage to family background (81).

These studies show that, to some extent, wealth and poverty are passed from generation to generation.

Children from advantaged families tend to have higher incomes because they are more educated than poor children. In fact, increased education accounts for 40-50 percent of the effect of family background on earnings and 60-70 percent of its effect on occupational status (Jencks and others 1979, 78). Children from advantaged families not only receive more education, but they also seem to have higher levels of cognitive and non-cognitive abilities, such as inter-personal skills, as well as higher career aspirations than poor children. However, even when researchers controlled for differences in ability, education, and occupation, Jencks still found that people from advantaged families have higher incomes than those from poor families (70-71).

Academic Ability

Another reason that low-income children attain less education than middle-income children is that they perform at lower levels in school. Charlotte Patterson, Janis Kuper-smidt, and Nancy Vaden conducted a study of elementary school children and established that those from low income families tended to have lower academic achievement

as well as more behavior and peer relationship problems (1990, 490). Most researchers recognize that low-income children both perform more poorly in school and receive less education than wealthier peers.

Christopher Jencks analyzed eleven studies of American men and determined that those who perform at lower achievement levels in school have lower levels of economic success as adults. High school students who scored lower on standardized achievement tests received lower status jobs with lower incomes than those that scored higher (1979, 85). A fifteen point difference on standardized tests corresponded to a 30 percent decrease in income (220). The fact that low scorers pursue fewer years of schooling accounts for 60 to 80 percent of this income difference (112).

Students who score well on tests receive more encouragement to attain additional education and have higher ambitions. They "have more discussions with teachers, more parental encouragement, and higher aspirations among their peers than low-scoring individuals" (Jencks and others 1979, 108). These students are more likely to have friends that are going to college, parents that want them to go to college, and thus, ambitions to go to college. In short, students who perform well on tests receive more income largely because these students pursue more years of schooling than their low-scoring peers (104).

From early childhood, poor children are handicapped by sociological, economic, and academic barriers which limit their opportunity to receive an education. Due to this educational disadvantage, poor children will grow up to be poor adults. Their children will also grow up in poverty and suffer the same educational disadvantage. As a result of this intergenerational cycle, the poor,

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those who most need an education, are least able to get it.

One study theorizes that education is twice as valuable from an economic standpoint to the poor than to the non-poor (Cohen and Tyree 1986, 812). Yet, children of the poor are only half as likely as children of the non-poor to go on to college (808). The poor need help. Unaided, it is nearly impossible for them to escape from this intergenerational cycle of educational disadvantage.

Benefits of Preschool Education

Numerous studies over the last thirty years have revealed that early childhood education for poor children can compensate for the socialization and education that they do not receive at home and thereby reduce "inequality for disadvantaged families" (Ruhm 1988, 162). Poor children enrolled in preschool learn cognitive and non-cognitive skills such as "attentiveness to teachers, ability to follow instructions, and task perseverance." They are better prepared to compete with their wealthier peers in the classroom and have a more positive attitude toward school generally. This positive attitude perpetuates itself, causing the students to have a much more successful "public school experience" (Lazar and Darlington 1982, 64). They then pursue more education, which results in higher income. The federal government must provide this education because the poor cannot afford it themselves.

Significant Studies

Several studies of preschool programs have been conducted in order to establish their advantage to poor children. One of the

most significant studies is the Perry Preschool Project which was conducted by the High/Scope Educational Research Foundation. In 1962 a large sample of poor, black, 3-year-olds began a two year preschool program. The preschool continued for five years, and new children were enrolled as the older ones graduated to kindergarten. The children were tested both during and after the preschool experience and compared on a number of tests to children in the control group who did not go to preschool. Although the children received no further experimental education after age five, the researchers followed them through their educational careers and tested their abilities compared to those in the control group. The most recent results were published in 1984 when the children were 19 years old (see Table 2). The original subjects are now 25 years old, and data is currently being gathered for the next publication which is expected within the year (Berrueta-Clement and others 1984).

Another significant analysis was performed by Irving Lazar and Richard Darlington of the Consortium for Longitudinal Studies. They organized a collaboration of twelve separate researchers who performed independent preschool studies in the 1960s. In 1976 they pooled their original data and did a follow-up analysis of the children in all twelve studies, including the Perry project (1982). Both the Perry project and the Lazar-Darlington investigation established the benefits of preschool for the poor.

Family Background

Preschool not only changed the lives of the students, but also the lives of their parents. Lazar and Darlington found that the mothers of preschool students reported feeling much

more satisfied with their children's school success than non-preschool moms, even in those cases where the children actually did not perform better. The preschool moms also had much higher aspirations for their children's futures. "This suggests that early education may have affected the familial context with respect to achievement orientation" explain Lazar and Darlington (1982, 54). Preschool children are more likely to be encouraged by their parents and, therefore, more likely to do better in school.

Academic Ability

The educational literature concurs that a well-run preschool will raise the IQ of disadvantaged children during the course of the program (Lazar and Darlington 1982, 44). The IQ gains of the experimental group over the control group are consistently significant three to five years after preschool ends. Most studies show that IQ differences level off by age ten to seventeen; however, these studies all relied on IQ testing performed by the schools, which often yields biased results. The Perry study administered IQ testing in a standardized, laboratory setting, and it demonstrated that IQ gains continued throughout high school. Lazar and Darlington contend that the Perry project, which was conducted by David Weikart, is the most reliable study (1982, 43).

Low-income preschool students enter kindergarten not only with significantly higher IQ levels than those who received no early education, but also with markedly increased learning and adapting skills. They are already acquainted with a classroom situation and have a more positive attitude towards school. Studies reveal that they enter school at nearly the same competence

level as their middle-income peers, while poor children in the control group begin with a significant disadvantage. Preschool gives these disadvantaged children the head-start they desperately need. Even if the initial IQ gains disappear, the long term effects of positive attitude and personal achievement have already determined a course of success that the children will follow.

Educational Attainment

Low-income children placed in preschool are less likely to have failure experiences at school. Lazar and Darlington found that while 28.6 percent of low-income students are placed in special education programs, only 13.8 percent of poor children who went to preschool were placed in special education. Preschool children were also significantly less likely to be held back a grade (1982, 55). Lazar and Darlington affirm that "early education significantly improved the ability of low-income children to meet their schools' requirements for adequate performance, as reflected in reduced rates of assignment to special educational and retention in grade" (55). Even when the researchers controlled for the before-preschool IQ level and the family background of the children, preschool children still had an "improved competence rate of 16 percent." As Lazar and Darlington proclaim, "Any effort that positively affects the lives of 16 percent of participants would appear to be educationally worthwhile" (57).

Students who must repeat a grade or who are enrolled in special education are much more likely to drop out of high school (Lazar and Darlington 1982, 58). When placed in special education or held back, they are frequently labeled "emotionally

Table 2

EDUCATIONAL ATTAINMENT OF CHILDREN IN THE PERRY PROJECT
(1984)

	NO PRESCHOOL	PRESCHOOL
GRADUATED FROM HIGH SCHOOL	49%	67%
PURSUED ACADEMIC POSTSECONDARY EDUCATION	13%	19%
PURSUED VOCATIONAL POST-SECONDARY EDUCATION	10%	19%

Source: Berrueta-Clement, John R., Lawrence J. Scheinhart, W. Steven Barnett, Ann S. Epstein, and David P. Weikart. *Changed Lives: The Effects of the Perry Preschool Program on Youths Through Age 19*. Ypsilant, Michigan: High/Scope Educational Research Foundation, 1984. p. 31.

disturbed" or "mentally retarded" and suffer from feelings of low self-worth. Also, Lazar and Darlington note that their low performance levels place them on slower learning tracks, which limits their educational opportunities. As we have seen, through preschool attendance, low-income children can avoid these scenarios and have a much greater chance of success. Children who succeed in high school are much more likely to go on to college.

As illustrated in Table 2, the Perry project researchers found that 67 percent of preschool students graduated from high school compared to only 49 percent of non-preschoolers. Nationally, only 60 percent of black youth graduate from high school; thus,

preschool raised the percentage for disadvantaged blacks above the national level (Berrueta-Clement and others 1984, 30-31). Nineteen percent of preschool children pursued academic post-secondary education compared to 13 percent in the control group. Another 19 percent of preschoolers pursued vocational post-secondary training, compared to only 10 percent of non-preschoolers (31). "Preschool helped study participants overcome some of the disadvantages of coming from lower-income families and of being more educationally vulnerable than the national black population" (30).

Table 3

AVERAGE UNEMPLOYMENT, INCOME, AND FINANCIAL STANDING OF PERRY
PROJECT CHILDREN AT AGE 19
(1984)

	NO PRESCHOOL	PRESCHOOL
EMPLOYED	32 %	50 %
MONTHS OF UNEMPLOYMENT SINCE GRADUATION	10.3	4.9
ANNUAL INCOME	\$1100	\$2800
HAD SOME SAVINGS	48 %	62 %
FINANCIALLY INDEPENDENT	25 %	45 %
RECEIVING WELFARE	32 %	18 %

Source: Berrueta-Clement, John R., Lawrence J. Scheinhart, W. Steven Barnett, Ann S. Epstein, and David P. Weikart. *Changed Lives: The Effects of the Perry Preschool Program on Youths Through Age 19*. Ypsilant, Michigan: High/Scope Educational Research Foundation, 1984. p. 49.

Economic Gains

As we would expect, this educational advantage leads to a direct economic advantage: less poverty. Since low-income children who receive early education perform better in school and receive more education, they have more success in the job market and earn higher incomes. At age nineteen, 50 percent of the Perry Preschool children were employed, while only 32 percent of their non-preschool peers were employed (see Table 3). On the average, those with early education had been unemployed for 4.9

months since high school graduation compared to 10.3 months of unemployment for the control group. These employment figures translate into an annual income of \$2800 for the study group and \$1100 for the control group (Berrueta-Clement and others 1984, 46).

Preschool not only contributed to financial success, but it also contributed to financial independence. Sixty-two percent of the preschool children had saved some money by age nineteen. Only 48 percent of their counterparts had saved any money (Berrueta-Clement and others 1984, 51). Nearly

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half of these children were financially independent at age nineteen, compared to one-fourth of the others (50).

Perhaps most astonishing is the fact that, at age nineteen, 32 percent of the low-income children who received no preschool had received some form of public assistance, averaging \$1509 per person (excluding unemployment insurance and social security). However, just 18 percent of the children who had preschool education had received welfare payments, averaging only \$633 per person (Berrueta-Clement and others 1984, 50). In welfare payments alone, two years of early education saved society nearly \$1000 per person. The Perry researchers assure, "the weight of evidence and the trends over time suggest that the effect will increase in succeeding years" (54).

When the gross economic benefits are totaled (including increased lifetime savings, school district savings due to less special education, and the release time of parents while their children were in preschool), the Perry Preschool Project grossed a 248 percent return on its investment (Lazar and Darlington 1982, 58). This does not include the value of decreased human suffering from poverty and increased human satisfaction from personal achievement.

Conclusion

In order to combat poverty in an effective, efficient manner, the federal government must establish early education programs for

low-income children on a massive scale. Early education for low-income children will improve academic ability, increase educational attainment, raise income, and help to break the intergenerational cycle of poverty. Lazar and Darlington observe how preschool, with "relatively few inputs, a few hours a day for one to two years," without significant post study follow-through, can have statistically significant educational and economic impacts (1982, 58). The overall improvement was so great because several interrelated variables, such as IQ, academic ability, non-cognitive skills, and attitude, were influenced (59).

When implementing this program on the national level, we must remember that the laboratory preschools were academically oriented and had low student-teacher ratios. A successful federal preschool should incorporate these same variables. However, the lab preschools were flexible and will allow some variation. Another consideration is that

these were voluntary programs in which the parents desired to participate (Lazar and Darlington 1982, 59). Perhaps a mandatory system would accrue slightly different results.

Certainly more research and careful planning are needed in order to insure that the most effective federal preschools are established. However, the evidence clearly demands that early education be provided for low-income children now. Early education will not eradicate poverty, but it will undoubtedly curtail the suffering of the poor.

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Founding a Republic of Laws:

The Rule of Law Ideal in Early American Constitutional Theory

by

Robert Moya

Introduction

Although there is a wealth of scholarship available on the political and constitutional theories of the American Founders, many commentaries overlook or misunderstand one of the most important elements in the Framers' thought: their desire to implement the rule of law ideal into the new national government. Much of this confusion may be attributed to contemporary disagreement about what the rule of law actually implies, and the remainder to a mistaken belief of what the term meant for the Founders. In current parlance, the term suggests only a minimal equality--that no person should be "above the law"--but the concept meant a great deal more to the Founders.

During the nation's formative years, American statesmen had a clear conception of what the term "the rule of law" meant to classical thinkers, as well as the ideal's

contemporary implications. Their constitutional experiment attempted, among other things, to minimize the tendency toward arbitrary government by incorporating the rule of law ideal in their governing institutions and procedures. While most scholars recognize the great care with which the Founders refashioned the nation's authoritative institutions, they often ignore important procedural aspects of constitutional theory; some even exacerbate this mistake by dismissing certain of the Constitutions' procedural innovations as unsophisticated.

Fortunately, some scholars avoid such errors. Noting the enormous difference between rule by established legal procedures and rule by an unpredictable human will, George and Scarlett Graham observe that:

Underlying each principle, institution, and practice explored by the Founders was one basic presupposition that was unchallenged by any theory of

experience brought to their deliberations: the government to be founded must be a government of law rather than of men. (1977, xiii)

In this paper, I will attempt to show that the American Founders' constitutional theories were influenced by their perceptions of the rule of law ideal and its procedural implications. I do not argue that the Founders were uninspired by other sources (i.e. classical economics, protestant religion, civic virtue, or their faith in "enlightened" reason), but rather that this type of explanation offers, at best, only an incomplete picture of the Founder's intentions. A truer picture of the Framers' motivations must also include their commitment to the rule of law ideal and its traditional emphasis on legal procedures.

To liberal statesmen living before and during the Founding era, there seemed to be a fairly obvious, necessary connection between the rule of law and the legitimacy of a government. Although they rarely employed the phrase "rule of law," they made frequent references to the ideal and its implications in a myriad of documented discussions on the subject. The Founders and their intellectual predecessors envisioned the legal processes of any legitimate political system as limited by certain procedural norms implied by the rule of law ideal: these included *nulla poena sin lege* (Usually translated as "no punishment in the absence of a crime"), due process, just compensation, trial by jury, the general and prospective nature of legal statutes, and the prohibition against *ex post facto* laws and bills of attainder.

Given the Founders' commitment to individual liberty, the line separating their legal conventions from liberal political theory often becomes tenuous, or even indiscernible. From the perspective of the Framers, the legal process itself reflected an

informed political judgement on the value of procedure. In fact, the rule of law has been described as a political ideal which defines the nature of law itself and imposes limitations on government (Hayek 1960, 206). Some modern commentators dispute this claim; but, for the Founders, the notion of the rule of law was a legal ideal which informed the time-honored procedures ordering a free society.

The Origins and Development of an Ideal

The philosophers of ancient Greece and Rome were among the first to formulate the concrete implications of what later came to be called "the rule of law." In his 1960 work *The Constitution of Liberty*, Austrian economist F. A. Hayek challenged the prevailing assumption that ancient political philosophy rejected an individualistic conception of personal liberty. He insisted that, for many Greeks, government by legal procedures (which he calls *isonomia*), as distinguished from human will or caprice, entailed certain conditions. Those standards, as described by the lawgiver Solon, were that 1) all citizens, regardless of class, would share the same laws, and 2) that the government would abide by known and certain rules (Hayek 1960, 165). Hayek further argued that many Greeks even preferred government by *isonomia* over *demokratia*, or equal participation, because established legal procedures protected their freedom (165). For the Greeks then, a free government was a government of law, since legal procedures, by definition, placed limitations on the exercise of power in any government that claimed legal sanction.

Spurred by the ancient Greeks, most liberal thinkers recognized that a law, as opposed to a command or some other direc-

tive, implied a certain generality of purpose and prospectivity of scope (Wormuth 1949, 10). The equal, general, public, and prospective nature of human law suggested that legal procedures, by definition, could serve as an effective curb on sovereign caprice. Equally important, while ill-suited to advance certain policy goals, the municipal law could function as a facilitator for the actions of an individual. In governments which claimed to serve the people, the rule of law ideal encouraged the rulers to restrain their actions and protect the liberty of their subjects. Even Plato, whom many commentators paint as a totalitarian, intimated that "a primary function of government was to protect and maintain the law of [and for] the people" (Reynolds 1987, 83).

The influence of the classical rule of law ideal was not wholly a Greek phenomena. In ancient Rome, Cicero noted that freedom should never be confused with lawlessness; liberty actually hinged on the certainty supplied by general rules. Such rules, or *leges legum*, served as both a guide for the citizen and a restraint on the state (Hayek 1960, 167). Such a notion of liberty implied a relationship, analogous to a contract, between the people and their rulers (Reynolds 1987, 84). Indeed, the law functioned as an equally accessible protector of the people's prerogatives (Hayek 1960, 166). Although this ideal did not reflect later Imperial practices, the "recognized ultimate basis" for all laws in ancient Rome was professedly the will or consent of the people themselves (Reynolds 1987, 84).

The ancient rule of law ideal received a warm reception in sixteenth-century England. The terminology gradually changed from the anglicized "isonomy" to "equality before the law," or "a government of laws," and finally to "the rule of law," but the concept of *isonomia* remained the same

(Hayek 1960, 164). In fact, legal equality implied more in the traditional, British context than an individual's formal standing before a court. Hayek notes that the struggle between Parliament and the monarchy further defined the rule of law to include a prohibition on the exercise of arbitrary power: not simply power exercised by an unauthorized source, but rather a usage in violation of general, fundamental rules (169). The rule of law principle of generality implied equality under the law, and prospectivity required that legal judgments be based on the results of individual choices, not on human caprice (Wormuth 1949, 212).

Francis D. Wormuth has observed that in classic constitutional theory, the doctrine of separation of powers is a vehicle for safeguarding the generality of rules: keeping the legislature from enforcing its own laws, and the executive from judging its own case (1949, 8). During the English Civil Wars, John Lilburne, a leader of the radical Leveler party, advocated separating power among the distinct arms of the British government organization as a way of confining the legislature to enacting only "general and prospective rules" (Hickman 1983, 369). Although Parliament could not be persuaded, nearly every American thinker of the Founding era eventually accepted Montesquieu's separation of powers as an essential part of constitutional theory (369).

During the English Civil Wars this "Enlightenment" conception of political institutions managed to win the near-universal acceptance of ideas like common consent, the separation of powers, an independent judiciary, and written constitutions. Significantly, each of these ideas is based on the notion of the rule of law. Although in Great Britain, especially just prior to the Colonial rebellion, the classical concepts were often subordinated to policy goals,

they have remained an integral part of modern conceptions about legitimate government.

The Rule of Law in America

To a large degree, the American statesman inherited their conceptions of the rule of law ideal from their English forebears. However, they made important contributions of their own, especially in relation to the importance of established legal procedures. One commentator, in fact, has observed that many substantive rights enjoyed under Anglo-American legal systems depended on traditional, procedural guarantees (Reid 1988, 69). Historical documents yield an abundant supply of subtle references to the rule of law and its procedural implications, but I discuss here only a few of the more interesting.

First, in his 1765 *Commentaries*, William Blackstone made reference to certain fundamental legal principles of any legitimate government. When discussing the sanctity of private property, he remarked that

[T]he great charter has declared that no freeman shall be disseised, or divested of his freehold, or of his liberties, or free customs, but by the judgement of his peers, or by the law of the land (Kurland and Lerner 1987, 586)

Though he was a firm believer in the Lockean version of natural law, Blackstone defined concepts like due process and the trial by jury as legal stipulations, not immutable principles. The example cited above illustrates that, for him, the Magna Carta was an agreement on legal procedures between sovereign and subjects, not simply a power-sharing arrangement between nobility and monarchy.

Blackstone further remarks that the legal relationship between individual property rights and the governing authority is, and should be, controlled by traditional practices and procedures, such as that of "full indemnification" for seized property (586). The seizure of property was not absolutely prohibited; rather, it was constrained by social conventions which reduced the prospects of its use. This idea later found its way into the U.S. Constitution in the requirement of "just compensation" for the exercise of the government's eminent domain (see Amendment V.).

Second, in a 1771 speech, preparatory to a Boston election, Protestant minister John Tucker touched on many aspects of the nature and purposes of government. His remarks, interwoven with familiar religious rhetoric, imply not only that his audience needed no lengthy justifications or explanations of his political assertions, but also that his listeners shared with him a commitment to certain fundamental principles. One of his observations was that "all laws and rules of government [must] be as plain as possible" (Hyneman and Lutz 1983, 164).

For Tucker, this seemed like a basic requirement in any society that expected its laws to be obeyed. Citing John Locke, he mentions that readily understandable laws preclude the exercise of tyrannical authority in the guise of complicated legal procedures; indeed, the very definition of tyranny is the exercise of the state's coercive power without the sanction of legality (164). While Tucker was not the first, or the last, of the Founding era to define the boundaries of political legitimacy in this way, his arguments in an ostensibly religious discourse suggests that the principles of the rule of law had already become widely accepted in colonial America. Significantly, those

principles were also universally accepted by the American Founders.

Third, many of the Founders understood the limitations that the use of the law, as such, placed on a legislature's methods. The rule of law demanded that, in addition to binding a government to obey its own rules (see *Federalist* #33), any particular law should be a known and stable rule (*Federalist* #62). James Wilson observed that "law is called a rule, in order to distinguish it from a sudden, a transient, or a particular order: uniformity, permanency, stability, characterize a law" (West 1987, 153). In colonial America, this concept served to distinguish tyranny from political legitimacy; a government rules by dispassionate laws and a tyrant rules by pointed, prejudicial commands and the force of his will.

Fourth, by 1776 most American thinkers had accepted the postulate that all authority wishing the sanction of legality must conform to the principles stipulated by the people themselves, and additionally, must adhere to certain time-honored principles of conventional legal procedure. When George Mason of Virginia wrote the Virginia Declaration of Rights, one of the models for the Bill of Rights, he included a number of traditional, procedural guarantees, especially in the area of criminal law. Among them are prohibitions against excessive bail, cruel and unusual punishments, self-incrimination, and guarantees of search by warrant, trial by jury, criminal convictions by unanimous vote, the right to confront one's accuser, and the ability to call witnesses in one's behalf (Kurland and Lerner 1987, 6). Although many today see these provisions as a burden on society, to the Founders they represented a nearly insurmountable procedural barrier to those who would exercise arbitrary or tyrannical power.

Fifth, when the colonists made their break with Great Britain, the Declaration of Independence contained the straightforward charge that Parliament and the Crown had disregarded the legal methods incumbent upon any government. The document's arguments are based primarily on a violation of traditional legal practices, not on moral or philosophical considerations. Thomas Jefferson, the principal author, carefully defended the colonists' separation with England on legal grounds, and the eloquence of the preamble should not obscure the conscious attempt to do so (Reynolds 1987, 89).

Note the substance of a few of the colonists' complaints against the Crown: subordinating an independent judiciary; abolishing charters and laws; convening the legislatures in inconvenient locations; obstructing naturalization laws; depriving citizens of the right to trial by a jury; and in general, "abolishing the free system of English laws." In short, although the Founders did believe in natural laws and principles, they sought conventional, legal justifications for their actions. For the colonists, the demands of natural law and traditional legal procedure were coextensive (Wood 1969, 10).

Gordon Wood concludes that the Founding Fathers "revolted not against the English constitution but on behalf of it" (1969, 10). Though they selectively borrowed ideas from radical writers most favorable to the American experience, they truly believed that they were protecting their rights as Englishmen (13). The American statesmen were astonished that the British government, previously regarded as a defender of liberty, could disregard its own traditions and claim that Parliament superseded the law (Reid 1988, 57). For them, the violation of established procedures, with no expectation of

redress or change, justified a revolution. Their defense was that the English Crown had threatened their liberty by abandoning the universally accepted principles of the rule of law, and they expected to be vindicated in the eyes of all who took legitimate government seriously.

Sixth and finally, John Adams recognized that the basis for any government that espoused republican principles would be the rule of law ideal. He used a variation of the modern term in his 1776 *Thoughts on Government*, claiming that a republican form of government was "an *empire of laws*, not of men" (Kurland and Lerner 1987, 108). In his 1787 *Defence of the Government of the United States*, he further insisted that free governments must depend on the laws for their legitimacy, and that legal processes for addressing grievances must be available to every citizen.

Every citizen must look up to the laws, as his master, his guardian, and his friend; and whenever any of his fellow-citizens, whether magistrates or subjects, attempt to deprive him of his right, he must appeal to the laws... (346)

Although I have cited only a few out of innumerable possible examples, they reveal that by 1787, the concept and terminology of the rule of law ideal had permeated almost every level of American political discourse. As in the classical civilizations, the rule of law, instead of human capriciousness, was seen as the protector of individual freedom. The Founding of the United States of America entailed an ambitious attempt to implement the rule of law ideal into the constitution of the nation's new government. Though it does not exhaust the concept's definition or implications, constitutionalism is based upon the rule of law ideal.

The Rule of Law and the Constitution

F. A. Hayek has noted that, for the Founders, a constitution signified a commitment to the rule of law, as well as a safeguard against the exercise of arbitrary power--by the legislature and by the people themselves (1960, 178). Since conventional legal procedures were not to be sacrificed to short-term policy goals, constitutionalism also entailed a commitment to abide by long-term principles instead of short-term interests (179). Though a written constitution could not preclude or ultimately frustrate the will of the people, it could limit the means by which a temporary majority can pursue its objectives (180).

In short, constitutional arrangements were *agreements* to abide by fundamental procedural norms. Lawrence Friedman believes that:

American statesmen tended to look upon a written constitution as a kind of social compact--a basic agreement among citizens, and between citizens and state, setting out mutual rights and duties, in a permanent form (1983, 115).

Among Americans, a constitution embodied a society-wide agreement. The state and federal constitutions actually created certain rights and duties additional to those the people naturally enjoyed. They also grounded the authority and the formal limitations on government in the express or implied consent of the people (115).

The whole point behind constitutionalism, and indeed behind the rule of law, was to protect liberty. Prior to the Revolution, Americans commonly believed that the antithesis of liberty was arbitrary authority (Reid 1988, 59). Traditionally, Americans believed that the law's whole purpose and reason for existence was to restrain or thwart the exercise of such arbitrary power

(63). For some liberty-minded Americans, "there was no accusation against an official more serious than that he sought to impose arbitrary rule" (55). Eighteenth-century Britons believed that the king was most likely to exercise arbitrary power and the colonists saw the danger stemming from Parliament; but both agreed that liberty became vulnerable when the state began to govern by subjective prerogative (79).

John Phillip Reid believes that the colonists thought their liberty depended on two things: 1) that the laws of a society must be based on the consent of the governed; and 2) that all laws must be subject to the traditional requirements of legal due process, not administered by discretionary authority (80). Echoing Cicero, he observes that law was the "central pillar" of the Americans' traditional liberty; it owed its existence to legally defined boundaries and without them could not exist (60). According to eighteenth-century thinkers, the law essentially balanced the natural inequalities of individuals (62), creating the security necessary to enjoy private property rights. The fictional "exchange" of a portion of one's personal liberty for protection was widely endorsed as a useful idea (68-71). Therefore the rules and conventions of a well-established legal process protected the people in the enjoyment of their property (and other) rights.

Although nearly all the Founders believed that substantive rights emerged from nature, they recognized that one could only enjoy such rights as a member of a civil society. In his most interesting argument, Reid contends that the rights the Americans enjoyed were actually simple legal stipulations; in certain cases, rights well-founded in tradition received the appellation of "natural" as well (64). In other words, many basic rights were *legal* instead of natural. Procedures like due process, compensation

for seizure of property, jury trials, and the need for a warrant authorizing a search, all helped reduce the likelihood that the state could use coercion arbitrarily. Such conventions tended to preserve the ability to freely pursue one's individual initiatives within the boundaries prescribed by law. *Ex post facto* laws and bills of attainder are specifically prohibited by the American constitution (and others) because they frustrate efforts to use the law as a guide for individual initiative.

In this context, liberty for the American Founders meant living under a constitutional government and, in its eighteenth-century formulation, constitutionalism was the notion of rule by law in a civil society (74). Significantly, the procedural safeguards which served as a protection against the tendency towards arbitrary government formed the crux of the Americans' constitutional liberties (77). The notion of freedom that later came to be associated with America's most democratic principles was wholly a new idea (77). "American Whigs," Reid notes, "continued to associate 'true liberty' with 'legitimate government,' and to define liberty as government under the rule of law" (84). For the Americans, the rule of law was, in fact, constituted by customary legal procedures (85).

The Difficulties in Modern Discourse

While many critics have explored the Framers' emphasis on the rule of law, most modern commentators tend to disregard the procedural aspect of constitutionalism and attempt to explain the phenomena in other terms. Few have recognized any underlying significance for the Founders' constitutional theories. Charles Hyneman, for example, cogently observes that since the Founders

established the new national government by legal enactment, the actions of the government were to be limited by laws (1977, 7). Yet he then denies that the Founders hoped to cement the rule of law ideal into a preferred position in the federal system. In his modern view, the stability guaranteed by legal procedures is necessarily subordinate to public policies designed to advance the people's collective well-being (11). Echoing Hyneman's sentiments, Donald Lutz presents the rule of law as only one of several competing political theories among the Founders, and not as one with any particular significance (1977, 62).

Hyneman and Lutz, at least, try to account for the rule of law's procedural aspect. Many commentators oversimplify the rule of law ideal and its implications, concentrating instead on other assumptions or facets of constitutionalism. Many careful thinkers even dismiss the rule of law ideal as simplistic. The most facile, yet frequently heard, objection to the idea of the rule of law is that any government framed and administered by fallible men cannot really be a government of law, since it must ultimately rest on subjective political judgments.

Of course that statement begs the question by ignoring the enormous difference between an essentially arbitrary system based on human will and bounded by caprice, and one that is constituted, albeit imperfectly, by traditional, procedural conventions. Most of the more fruitful, contemporary discussions on the Founders' constitutional theories attempt to draw out normative implications from the rule of law ideal, yet even these often ignore the efficacy of established procedures as a constitutional curb on arbitrariness.

George and Scarlett Graham, for example, note that the Founders simply assumed

that 1) the government would be bound by the same rules as the citizens, and 2) that there would be certain permanent restraints on government powers; otherwise their efforts to write and ratify a constitution become "nonsense" (1977, xiii). They even conclude that the Constitution was based upon the rule of law (xiii). Yet they miss a prime opportunity to explore the reasons why the Framers would prefer the rule of law over any of their other possibilities.

In yet another case, although he recognizes that the Founders were profoundly influenced by the classical notions of the rule of law, Francis D. Wormuth criticizes their views as naive. He asserts that, regardless of the generality or prospectivity of a given rule, its content makes the real difference; immoral laws can be administered impartially to everyone's detriment (1949, 214). While this is, of course, true, the point that Wormuth misses is that such a risk is present in *any* legal system. Yet a commitment to an impartial administration of the laws, which purports to bind the rulers as well as the citizens, does have the tendency to minimize the likelihood that any government will enact oppressive laws. For the Founders, the impartial administration of any rules was preferable to an existence wholly dependent on a government's whim and pleasure.

More recently, Thomas G. West has offered a considered account of constitutionalism by attempting to ground its assumptions in classical teleology. Taking his arguments from the *Federalist*, he indicates that for the Founders all governments shared the divine charge to advance the welfare of their subjects (1987, 150). With this in mind, he locates the *Federalist's* treatment of the rule of law ideal in an interesting combination of end-oriented human reason and popular consent. He

mentions the concept's classical definition by observing that laws, as such, should apply to large classes of people, not to individuals, and that they should be public and reasonably stable (153).

A written constitution, he continues, should by definition bind the officials who administer the government; it is alterable only by the people, and not by legislative enactment (156). For West

The rule of law, in sum, is a governmental practice designed to make as likely as possible the coincidence of the two requirements of just government: that it be by the consent of the people, and that it secure the safety and happiness of society. The law aims to embody the public's reason by requiring...reasoned discussion and a rule of universal application (153-54).

In at least one sense, West hints at the argument offered in this paper. Requiring the public's reasoned discussion on a given decision seems analogous to my emphasis on procedural norms; and his Kantian rules of "universal application" do suggest the kinds of general, prospective, and equal standards discussed earlier. However, West hopes that the rule of law can secure not only the "safety" of stability and order, but the happiness of the people as well--which may or may not admit the kind of restrictions to which they would readily consent. Balancing the two demands, consent and human felicity, may actually make unreasonable demands on fallible human reason. His argument has Aristotelian overtones in that it considers that the proper place of law is to serve as the embodiment of human reason, instead of an admittedly imperfect substitute. In this sense, then, West seems to be more optimistic about human nature and passions than were the authors of the *Federalist*, who were clearly influenced by the philosophy of David Hume (White 1987, 198). In his

hopes that legal methods can successfully direct society towards virtuous aims, West runs into the precise problems of human nature addressed by the Founders.

The Framers were aware of the inner contradiction of popular government: though the people are sovereign they are often inclined to choose badly, at least in the short run. If a people lost their capacity for virtue they would become incapable of self-government. West points out that the Founders were sure that a virtueless society could not long remain free (see *Federalist* #63 and #55); but the Founders realized that virtue could only be encouraged by judiciously arranged institutions, not orchestrated by constitutional fiat. West seems to hold out the hope that unaided human reason can protect liberty. Sadly, it cannot.

Another approach used to justify the rule of law ideal implicit in the Constitution stems from the assumptions of the Enlightenment: that a society arranged around certain models tends to control the worst excesses of human nature. This is probably the most popular explanation offered by contemporary commentators. David F. Epstein defends this approach, taking as his starting point James Madison's contention in *Federalist* #57 that the object of any state's constitution should be to recruit the wisest and most virtuous men as the rulers, and then to structure the government institutions in a way that will encourage the exercise of their virtue while they hold temporary office. Citing the example of the U.S. Senate, he observes that the "constitution thus not only grants powers, but also arranges offices so as to encourage those powers to be used well" (1990, 93).

He avoids the difficulties lurking in a teleological scheme by contending that the Founders were primarily concerned with avoiding the evils of society, not with en-

couraging the rational pursuit of aims adjudged socially worthy. Since rulers are fallible mortals, they are likely to err, or disagree, in their conceptions of the good. Therefore the Founders believed that future rulers only needed to know how to avoid the dangers of arbitrary government (Epstein 1990, 94). Frequent elections, which would rotate the people's representatives in and out of office, would guarantee that the rulers' efforts always reflected the aspirations of the people, and not their own personal ambitions (97). Thus "the Founders," he claims, "looked not to a self-abnegating virtue to guarantee public-spirited intentions but to a self-aggrandizing spirit that would provoke public-benefiting actions" (97).

Epstein correctly asserts that constitutionalism, as a way of structuring government, places both written and unwritten restrictions on the ruling institutions (1990, 107). A written constitution cannot forbid everything that the state might illegitimately attempt, nor can it define every right enjoyed by the people or the degrees to which power may be abused; the people reserve certain unwritten limitations on the government's powers (107). These unwritten norms or standards are contained in, and part of, the rule of law ideal. Epstein defines the rule of law as that which compels the governors to control the exercise of their own power. Finally, he notes that, concretely, the rule of law requires prospective laws and a separation of powers.

However, Epstein believes that the rule of law ideal is an incomplete constitutional foundation for the following three reasons. First, not all government activities are part of the legal process; for example, the president has nearly unfettered power to conduct war. Secondly, enforcing rules that are themselves unvirtuous does not promote virtue among the populace. And third, even

carefully separated powers can be usurped and taken over by an ambitious branch or individual (1990, 108). He sees the Founders' solution to these weaknesses in the establishment of checks and balances which distribute powers among different branches, making each branches less dependent on the good will of the others. The presidential veto, a bicameral Congress, and the process of judicial review tend to compensate politically for any defect in the legal process (110).

Epstein's description of the failures of the rule of law falls into several common errors. Initially, he doesn't see that the delegation of all constitutional powers, including the president's war-making power, is itself subject to the legal process and is actually constrained (albeit loosely) by legal and procedural barriers. His criticisms of the ideal seems to be based on the mistaken notion that incorporating the rule of law into a system will lead to the best result in each situation. No system can guarantee that. The rule of law only *tends* to protect the freedom of individuals because its procedural requirements discourage the abuse of power. Finally, there is nothing in the system of checks and balances that mends the defects of the legal process, unless he limits his definition of that process to Congressional legislation. But that was not the Founders' approach. Since it is a foundation, the rule of law is compatible with the political conventions which shape our system.

A final way of fitting the rule of law into American constitutionalism involves the moral requirements of a just society. Ellis Sandoz takes this approach and for him the rule of law is synonymous with a free government (1990, 117). A government dedicated to preserving liberty and pursuing the good of its citizens (instead of the good of

its rulers), is one that is built upon a moral framework adequate to the task (117-18). He further notes that in Revolutionary speeches, the call for justice is used interchangeably with the call for the rule of (or by) law (201). Interestingly, he recognizes that for those of the Founding era laws universally entailed the people's common consent, publicity, and equality under the law (118-19). He then grounds the requirements of the rule of law in the dictates of morality, not in tradition or conventional procedures (120).

He views the Founders' efforts as "skillfully calculated" to encourage the rule of divine reason in the affairs of men. Since the Founders were aware that the occasional ugliness of human nature could destroy even the best social arrangements, the separation of powers and a system of checks and balances neutralizes the problem of human ambition (41-42).

The 'government of laws and not of men'... is precisely an insistence that the tyranny of the passions (including those of the majority as well as those of the single tyrant) be averted by having 'God and reason alone rule' (39).

Sandoz sees the political theories of the Founders as profoundly influenced by their religious convictions. Indeed they were. But his idea of a cultural consensus--a subtle blend of classical political theory and protestant theology--misses the mark. The Founders firmly believed in traditional religious values, but they did not all share the convictions of John Adams--which Sandoz often equates with those of the entire group. The Founders' constitutional achievement was an ambitious attempt to reduce arbitrariness by establishing *procedural norms* that would guarantee the stability, predictability, and responsibility of the new government.

The moral reasoning Sandoz emphasizes is certainly not incompatible with the Framers' procedural standards, such reasoning is actually an effective support for the rule of law. But constitutional conventions, as such, do not depend upon morality for their strength nor are they grounded in moral demands. Moral reasoning would be hard-pressed to justify the necessity of such entities as due process, the jury trial, the writ of *habeas corpus*, and the separation of powers.

Additionally, although constitutionalism's assumptions about individual liberty are supported by traditional moral and religious values, the fact that the U.S. Constitution (unlike the Declaration of Independence) contains no outward manifestation of religious faith should indicate something. At the very least, it suggests that the Founders did not wish to stipulate truths about government along partisan lines of argument. At most, it implies that embodying traditional or religious values in the very structures and functions of government is not quite what the Founders had in mind.

The Limits of the Rule of Law

Although the rule of law ideal formed the basis for many of their conceptions about political legitimacy and constitutional government, the colonists recognized that the rule of law ideal couldn't guarantee their freedom (Reid 1988, 81). An ideal is not self-enforcing. The Founders were convinced that if a people lacked the necessary respect for the laws or for their fellow citizens, then shielding individual freedom through a legal process amounts to a hollow, theoretical barrier (Wood 1969, 42). If, however, a nation shares certain fundamental beliefs about the purposes behind the

limitation of governmental authority, constitutionalism does tend to protect individual liberty because it places limits on the state's use of law and coercion, (Hayek 1960, 183; Hickman 1983, 379). Many of the Founders, echoing Montesquieu, even linked the freedom of a society to the moral fiber of its people (Wood 1969, 35; Vetterli and Bryner 1987, 73). "A real community of shared virtue is, by the Founding Fathers' analysis, ultimately essential if free government is to be supportable" (42).

The Founders' views presupposed the existence of certain morals, traditions, and practices, in both individuals and groups, that would act as a restraint on any free association. If any society proved itself unable to exercise simple self-discipline, its citizens were obviously incapable of self-government and ripe for authoritarian domination. Laws, and even the rule of law, would reflect the character of a people. While the Framers believed that rights were in the abstract real, they also recognized that rights had no protection outside of a society's norms and conventions. This fact led James Madison to the conclusion that "public opinion [ultimately] sets the bounds to every government, and is the real sovereign

in every free one" (Kurland and Lerner 1987, 73).

Conclusions

As heirs of a rich heritage of political philosophy, the American Founders clearly understood the concepts which formed the basis for the rule of law ideal. Even before the Constitutional Convention, they were sure that the ancient concept should form the basis of their structural and procedural efforts. Although the Framers recognized the limitations of the rule of law, they attempted to institutionalize the notion in the U.S. Constitution. Because they understood that the rule of law entailed more than mere obedience to formal, procedural norms, they were convinced that it would serve as the most useful form of protection against the abuse of power by arbitrary government. While the rule of law could not itself guarantee society the benefits of individual liberty, they understood that certain procedural standards, implied by the rule of law ideal, could promote the conditions that made liberty possible.

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The American Medical Association and Congress: Disproportionate Power?

by

Clifford Roy Strachen

Introduction

Probably none of the founders of the American Medical Association in 1847 could have imagined the size and strength the organization would have over a hundred years later (Ippolito and Walker 1980). Over the past fifty years the AMA has become a major influence in health politics in America. From the defeat of President Truman's comprehensive national health insurance initiatives in the 1940s (Feldstein 1988), to the airline smoking bans in our day (AMA 1989), the AMA has exercised enormous political power in Washington.

Considering that the medical profession can only boast of a few of their associates in Congress (two physicians, a dentist and a public health educator in the 101st Congress) (Duncan 1989), and that physicians themselves are only a small percentage of the total U.S. population, the AMA wields

disproportionate influence relating to "the development and implementation of [health] policies" (Ippolito and Walker 1980, 295). I will examine the relationship between the American Medical Association and the Congress of the United States to seek an understanding behind the power of the organization.

In doing so, I will discuss the history of the AMA regarding its efforts to defeat the many national health insurance policies which have been proffered by their proponents. Then I will delve into the American Medical Political Action Committee (AMPAC) to show the enormity of the AMA's power in electoral politics and its influence on the policy process in Congress. Finally, I will discuss the AMA's efforts in the 101st Congress and the specific issues being addressed therein.

The AMA as an Interest Group

Professional associations are frequently quite successful in interest group politics. Their influence is important because the professions control some of the most important services available to the American public. How government regulates such activities as the delivery of health care and the distribution of justice has a great impact on the standard of life enjoyed by American citizens. The political activity of such groups, then, has a direct effect on the daily lives of Americans. The professional societies have been relatively effective in pressure group politics for a number of reasons. First, most such groups represent a large segment of the profession, and therefore speak with considerable authority. Second, the professions represent areas of knowledge not readily or completely understood by nonprofessionals. Therefore, government officials are likely to defer to the expertise of the professional association on matters relating to the practice of that profession. Third, the professional societies are comprised generally of high status, well-educated, economically privileged persons. This endows the societies with a very favorable image as well as a reservoir of high quality talent from which to draw. And fourth, the professional societies normally have access to substantial economic resources which may be used to promote the goals of the group. The real key to the success of such groups, however, is the maintenance of high membership rates. For such a group to be consistently effective, it must be able to speak as the representative of the profession, and only earning the allegiance of the members of the profession permits such an advantage. In order to achieve this goal, the professional associations must provide an attractive array of incentives, normally consisting of both material and solidary benefits (Ippolito and Walker 1980, 296-97).

The above quotation outlines some very important features of professional associations like the American Medical Association. First, the AMA represents more than half the physicians in America, as it has since 1912. (Ippolito and Walker 1980). At its peak in the 1960s it claimed as its membership nearly three-quarters of all practicing physicians.

Second, the medical profession is a field which most do not understand or know well. Congress and the Health and Human Services Agency (formerly Health, Education and Welfare) readily allow the AMA to testify before hearings and to offer suggestions on health policy.

Third, even though Dr. Joseph Hatch, prominent in Utah's state delegation to the AMA, claims that the term "rich doctor" no longer applies in America, medical practitioners still earn higher incomes than most other professionals or laborers. The public still holds the AMA in high regard according to a 1976 Gallup poll which showed the AMA and the American Dental Association holding higher public confidence than the National Rifle Association, the American Bar Association, the news media, labor unions, federal agencies and business corporations (Campion 1984).

Finally, the AMA and the American Medical Political Action Committee (AMPAC) have been able to raise tremendous amounts of money to pursue their agenda. Dr. Hatch (1990) figures that their success lies in collecting dues and donations from only twenty percent of its members.

There is a common perception that "Congress has been afraid to take on runaway physician costs [or many health related issues] because of the immense political clout of the American Medical Association" (Rovner 1989, 387). The AMA led the defeat of Truman's proposal in the 1940s, Carter's 1979 bill on hospital cost containment (Feldstein 1988), and a host of other proposals in the past fifty years. The AMA, opposed to government interference and regulation in health care, is responsible for the stigma of "socialized medicine," a label it often used in congressional hearings, and in their media and grassroots campaigns

against Truman and others (Congressional Quarterly 1968).

The AMA "doggedly fought every major proposal which would lead to a change in the relatively independent status of the individual medical practitioner" (Ippolito and Walker 1980, 294) and continues to look after the "common economic interests of all physicians [and] the maintenance of fee-for-service practice without government influence" (Feldstein 1988, 42). Dr. Hatch (1990) refutes the charge that the AMA "is just out to increase [its] pocket books" by noting AMA efforts at banning smoking on all airline flights, its push for alcohol warning labels, and its pressure for universalizing childhood immunizations.

Yet, while the AMA has been somewhat successful in these policy areas, it has been relatively ineffective, Greely (1989) argues, in promoting its own self-interests. Perhaps the AMA's greatest triumphs came in its ability to rally others around specific causes, especially "social medicine" in the 1940s.

National Health Insurance and the AMA

Any discussion on the AMA's influence in Congress must include, at the very least, a cursory summation of efforts towards National Health Insurance (NHI) in this country (see Appendix). Stunned by Truman's victory in the 1948 presidential race, in which he campaigned for "a package of social benefits that included a program of compulsory national health insurance" (153), the AMA quickly moved "to oppose the enslavement of the medical profession" (154). The AMA has been, and continues to be, the staunchest foe of "socialized medicine."

The key issue in government-provided health care, from its early roots in

Roosevelt's Social Security package of 1935 until this day, has been aptly enunciated by Feldstein:

Should the federal role be limited to assisting the indigent, by means of federal grants to the states under the public assistance (charity) programs? Or should the federal government assume a broader responsibility and undertake to pay for the medical and hospital costs of the entire population, or at least specified age groups, without regard to the financial status or ability to pay of the aid recipient" (1988, 77)?

The NHI issue has evolved considerably since 1935. From Truman to Kennedy the debate continued but nothing significant occurred. Bills introduced in Congress usually died in Committee. The battle lines were effectively drawn. Proponents of NHI, including such groups as the AFL-CIO, independent labor unions, and senior citizens groups saw the need to extend health care to the many senior citizens, and poor who could not afford adequate health care. Main opponents of NHI included the AMA, the U.S. Chamber of Commerce, state manufacturing associations, drug companies, and insurance groups (Congressional Quarterly 1968).

Realizing that it was losing ground to NHI momentum, the AMA continued its grassroots letter writing campaign and work on ways to improve health care for the aged. This resulted in the AMA's "Eldercare" proposals--a voluntary method of health insurance for the elderly (Congressional Quarterly 1968). Throughout the period, the AMA and its allies encouraged voluntary private health insurance and did not oppose federal aid to destitute and low-income persons who would qualify under state welfare programs. In 1950, Congress authorized federal grants to states for medical care for those under public assistance (Congressional Quarterly 1968).

Lobbying efforts in the period 1957-1965 were intense and directed at both Congress (to sway votes) and "at the public to educate and create consciousness" (Ripley and Franklin 1980, 165). At a 1961 hearing the "Secretary of Health, Education, and Welfare, Abraham A. Ribicoff, accused the AMA of using 'a bogeyman of socialized medicine' to frighten people into opposing the administration plan for health care of the aged". President Kennedy countered "the bogeyman" by insisting an "absolute freedom of choice . . . was guaranteed" (Worsnop 1961, 582).

As the 1960s progressed, it became evident that some form of government health program was to become a reality. Still, the AMA fought on, spending \$1.2 million in its Washington lobbying efforts and in two nationwide publicity campaigns (Congressional Quarterly 1968). These included (as major efforts do today) letter writing campaigns, media blitzes, visits of association members to their Congressmen, and inducing state and local governments to make statements favorable to the AMA position. The AMA spent \$829,484 for exposure in one hundred daily newspapers, radio, and television during the first quarter of 1965 when the Medicare bill was being considered.

Ripley and Franklin quote Theodore Marmor on the Medicare debate:

[The] debate [was] cast in terms of class conflict. . . . The leading adversaries . . . brought into the opposing camps a large number of groups whose interests were not directly affected by the Medicare outcome. . . . Ideological charges and counter-charges dominated public discussion, and each side seemed to regard compromise as unacceptable. In the end, the electoral changes of 1965 reallocated power in such a way that the opponents were overruled. Compromise was involved in the detailed features of the Medicare program, but the

enactment itself did not constitute a compromise outcome for the adversaries (1980, 164-65).

In any case, Medicare, and Medicaid soon came into being. With them, health expenditures as a percentage of GNP have risen dramatically in 25 years. Regulation, it seems, has tended to hide symptoms (just as the AMA feared) while exacerbating the real problems, creating a "cartel" for the regulated sectors in the industry (Enthoven 1977). Instead, the AMA argues, we need to be more concerned with types of national health insurance since it now exists in varying degrees and forms for different groups.

The AMA/AMPAC Relationship

As the AMA has grown, its interests, activities, and membership have become diverse. In 1965 the organization created the American Medical Political Action Committee to separate the different aspects of the AMA into cohesive units of operation in the power game. The AMA continues to concentrate on its Washington lobby activities--trying to persuade people through its grassroots movement and by direct pressure on Congressmen. The AMA remains "a distributor of valuable information regarding the status of the nation's health and the diagnosis and treatment of disease" (Ippolito and Walker 1980, 294). Indeed, the AMA recognizes "the political, as well as the societal, advantages for supporting medical research" (Feldstein 1988, 156). The AMA remains the nation's premiere professional association due to its large size, the skill of its organization, and its financial clout. AMA activities continue to include national publicity campaigns in the media, educational and research programs, and especially, its Washington Lobby. AMPAC has become an

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effective arm of the AMA. Since AMPAC's domain is electoral politics it has become expert in the tactics of campaigning, raising and spending money, and much more.

As a money raiser, AMPAC has done very well. In 1981-82, \$2.5 million was raised; \$1.7 million of that was contributed to Congressional elections. These totals were second (in both categories) only to the National Realtors PAC (Sabato 1984, 20-21). In 1983-84, AMPAC raised \$4,032,365 of which 46 percent was directly contributed to candidates and another 11 percent was used in independent expenditures (Stanley and Niemi 1988, 147). 1985-86 was an even better year for AMPAC: it raised \$5.4 million and contributed \$2.1 million to federal candidates (148). AMPAC consistently ranks in the top ten (often in the top five) campaign spenders just as the AMA did before AMPAC. From 1946-1966, the AMA ranked among the top lobby spenders, topping the list four times (Congressional Quarterly 1968). Since its inception in 1965, AMPAC has continued the tradition of strength. Interestingly enough, Dr. Hatch contends that these numbers are being reached from the donations of only 20 percent of the total membership. Per capita (in the AMA), these numbers represent a thirty-six to thirty-eight dollar contribution. AMPAC is raising some \$2.5 million dollars per two year election cycle.

Close relationships are important to the AMA and AMPAC since it is these ties that help when the pressure is on for specific legislative measures. Dr. Hatch pointed out that AMA/AMPAC have close ties to many in Congress (some of whom are spouses or children of physicians). One reason ophthalmologists are so involved, he suggested, has been the budget cuts specifically affect-

ing their specialty. In recent years, Congress has reduced Medicare funding for cataract surgery six times because that line on the budget was much larger than prostate surgery, which affects a larger portion of the population (Hatch 1990).

Dr. Hatch and AMPAC feel fortunate for their close relations with all of Utah's Congressmen. Especially impressive was Hatch's intimation that First District Representative Jim Hansen and Leon Sorensen, an executive vice-president of UMPAC (Utah's Medical PAC), "signed each other's temple recommends," since Bishop Sorenson (in the LDS Church) and Stake President Hansen lived in the same ward. "It is just possible that when those two talk on the phone they understand each other" (Hatch 1990). Moreover, Hatch maintains, the Utah delegation of the AMA has close, personal ties with all of Utah's Congressmen. Incidentally, UMPAC actively supported Dean Bristow, a physician who ran for Howard Nielson's vacated Third District seat. Sometimes, however,

the AMA faces a problem when a doctor runs for Congress and the group's staff prefers his opponent. "We can be under a lot of pressure from our membership to give to the physician," said an AMA official (Congressional Quarterly 1982, 46).

In any case, AMPAC supports favorable Congressional candidates. This is part of "a friendly incumbent policy. We always stick with the incumbent if we agree with both candidates" insists Peter Lauer, executive director of AMPAC (Sabato 1984, 72). However, as Ornstein and Elder point out, "the AMA is especially aggressive" (1978, 62) in pursuing negative endorsements (denying campaign support) in favor of an incumbent's rival. In 1980, AMPAC funds were used to defeat Representative Andrew

MacGuire (D-NJ), because he had proved difficult to work with (Sabato 1984).

On the other hand, AMPAC has rewarded others, who in 1982, voted favorably, or cosponsored a bill exempting professional organizations from Federal Trade Commission regulations: the AMA and the American Dental Association gave more than \$1.5 million during the 1982 election (Sabato 1984). In 1964, as an earlier example, AMA funds were used on House Ways and Means Committee members who had opposed Medicare's predecessors in the past. The AMA and AMPAC are notably bipartisan, says Hatch. Ornstein and Elder support this notion "noting that the California Medical Political Action Committee gave money in 1974 to both extremely liberal Democrats (like Ron Dellums) and extremely conservative Republican's (like Barry Goldwater, Jr.)" (1978, 72-73).

AMPAC's Political Activities

AMPAC's activities are probably wider than most people suspect. Dr. Hatch pointed out that there are more activities under the Department of Political Education than under the Department of Political Action. However, one should not lose sight of the obvious imbalance in expenses on the latter side. I have already discussed direct contributions above and must now address independent expenditures and in-kind services.

"In-kind" contributions are those which are tangibles--a service, or activity--rather than monetary. One of the more common examples of this are the "meet and greet" receptions AMPAC hosts (AMPAC 1990) where physicians and politicians meet together in order to discuss politics or medicine, always with the intention of promoting a specific candidate or candidates while

encouraging individual contributions. AMPAC places much emphasis on personal relationships with the candidates it backs.

Another effective in-kind contribution AMPAC favors is the "benchmark survey." This is where "AMPAC contracts with nationally recognized consultants to conduct polling on behalf of a Congressional candidate, then presents the results to the campaign" (AMPAC 1990). The law allows a "sixty-one day rule" which "permits a PAC to depreciate the cost of a poll by 50 percent if it waits sixteen days . . . to deliver it, and by a massive 95 percent if delivery is postponed more than sixty days" (Sabato 1984, 94). AMPAC conducted surveys for thirty-six candidates in 1982 at a cost of \$380,000 but reported only \$89,000 by following these guidelines.

I have mentioned in passing the use of independent expenditures in campaigning. AMPAC's use of independent expenditures began in 1978, and have been very effective for them in a number of campaigns. AMPAC has undertaken, according to the AMPAC pamphlet, "only those expenditures which can be viewed in a positive and informative light" (1990). Independent expenditures are exactly that: independent of the candidates for whom benefit is intended. The AMPAC has made extensive use of television and radio spots, magazines, newspapers, billboards, and mass mailings in campaigns around the country. "In 1982, it spent \$212,000 on television and radio spots and targeted direct mail for thirteen House candidates. In previous elections, AMPAC paid for buttons and magazine advertising independently" (Sabato 1984, 107).

Under its political education program, AMPAC seeks to educate the public to the realities of health care and politics and to improve candidates' responsiveness to constituent issues after the election. Of course,

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the premise behind these activities is that when the AMA needs to exert its influence, it will have a Congressman who will respond.

AMPAC utilized 50 percent of its budget on political education in 1984. Regional seminars stress voter registration, get-out-to-vote-drives, and telephone contacting. Through activities such as Participation '92, AMPAC encourages physicians and their spouses to obtain delegate status to national party nominating conventions (Hatch 1990).

Dr. Hatch promotes AMPAC's candidate and campaign management schools. He argues that what they do is to give some prime motivation and expertise in running for Congress. Candidate Dean Bristow, whom I mentioned previously, made his decision to run for Congress after attending these programs. Representative John Bryant of Texas commented:

Anytime someone, whether a person or a PAC, gives you a large sum of money, you can't help but feel the need to give them extra attention, whether it is access to your time or, subconsciously, the obligation to vote with them. Sabato 1984, 126).

While the idea of a "subconscious obligation" may indeed be a factor, AMPAC President Peter Lauer denies any connection between AMPAC money and legislative issues. Common Cause, however, purports that a significant relationship exists between AMPAC donations and votes in Congress. Sabato writes:

Common Cause cited the defeat of President Carter's Hospital Cost Containment Act of 1977 as an example of AMPAC's influence. Of the 234 House members who voted for a crippling amendment to the act, 202 had been given \$1.65 million in contributions during their 1976 and 1978 campaigns, with an average receipt of over \$8,100 per member (1984, 132).

Sabato, however, is quick to point out that "correlation does not prove causation" (132).

AMPAC has what Sabato calls, "the most elaborate national-state PAC arrangements" and notes that "several of AMPAC's forty-eight state associates (including those in California, Texas, and Illinois) are among the largest state PACs in the country" (119). AMPAC works with its state counterparts like the Utah Medical Political Action Committee to raise funds jointly. According to their guidelines, however, the two must keep their monies separate and for the purposes intended. The Utah chapter of AMPAC may donate to Utah Congressmen or others in Congress but UMPAC, alone, can donate to campaigns for the Utah legislature. AMPAC looks to its state associates for its grassroots strengths and for information on congressional races (Hatch 1990).

The relationship between the AMA and AMPAC is interesting. According to the campaign reform laws of 1971 and 1976, funding for the two must be kept separate. Each has its specific jurisdiction--the AMA is a lobby and public educator, and AMPAC is a political arm created to influence electoral politics. To this end, AMPAC contributes over \$1 million per year (Ippolito and Walker 1980). The technically separate relationship between the two leads to contradicting behavior since the AMA may decide it needs to lobby a specific Senator while AMPAC may find it in its interests to effectively ignore the same Senator. I think, however, that such conflicting behavior is rare.

AMPAC is concerned about campaign finance reform, says Dr. Hatch (1990). He does not like the \$5,000 limits on campaign contributions, but recognizes their value in preventing wholesale purchases of elections.

The AMA and the 101st Congress

Health care today, as good as it is for those who have it, is still unavailable to an estimated 33 million Americans who lack the means to qualify for or purchase health insurance programs (Associated Press 1990). Congress, in its efforts to close this gap, has introduced a bill requiring employers to provide basic health insurance to all full-time employees (Fuchs 1990). Fuchs contends that over 80 percent of the uninsured are employed or live in families of employed workers. This problem could be alleviated by the above mentioned bill.

Surprisingly, this bill in many ways parallels the AMA's latest proposal "Health Access America" which Dr. Hatch discussed in our interview. According to the Associated Press (1990), the AMA plan includes the expansion of Medicaid to all who live below the poverty level; requires employers to provide health coverage and proposes tax deductions to help with costs; provides risk pools for the uninsurable and tax incentives for long term care insurance programs; and changes the malpractice laws. In all, the AMA proposal has sixteen points which, if implemented, would cost an estimated \$60 billion. The AMA declined to discuss the financing of the proposal except to say it "would require some increased taxes" (Associated Press 1990).

Perhaps the main difference between the AMA's proposal and Congress' is cost containment. Congress has discussed implementing a system based on the Canadian model of a "fee schedule." The AMA, of course, is opposed to most forms of cost containment and would fight hard against it. Many Americans prefer a system like Canada's but the AMA is quick to point out Canadian weaknesses. James H. Sammons

(AMA executive vice-president) notes: "The presumption that an awful lot of people seem to be making is that somehow Canada has solved all of their problems. That is erroneous. . . . It is not all peaches and cream up there" (Rovner 1989a, 391). The AMA particularly dislikes provincial "expenditure targets" which control volume by percentage reductions. Sammons labels them "Russian roulette." Apparently, the AMA has endorsed the Medicare fee schedule, but opposes balance-billing limits and expenditure targets, claiming such methods "lead to rationing of health care, which would have grave impact on the health and welfare of our nation's elderly" (Rovner 1989b, 588).

The AMA is concerned that Medicare and Medicaid are taking more than their share of budget cuts. It is "a mistaken impression that physicians have been relatively untouched by past budget cutting actions" (U.S. Congress 1989, 140). Since Medicare reimbursements and fees were frozen in varying degrees between 1983 and 1988, physicians have borne the brunt of some of these cuts. The AMA is determined not to be hurt by more. Therefore, it supports a review of physician reimbursement and a revised payment system which would dissipate inequities in the system (U.S. Congress 1989).

Small businesses and other opponents balk at the employer-provided health care proposal since under the proposed guidelines full-time workers (at minimum wage) would be required to spend 19 percent of their wages and half-timers 39 percent for basic health insurance (Gajda 1987). Employers contend that the higher operating costs associated with the proposed insurance programs would put many out of business. At this writing, the program still has not passed and probably will not.

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The AMA has been heavily involved in current health care proposals. Major agenda items include pressing for a quality review agency within the Public Health Service, alcohol warning labels, airline smoking bans, new legislation to further reduce tobacco product advertising, more lenient children's disability coverage, and tax incentives for health care providers and self-insurers. The AMA has already secured some victories with regulatory relief from bureaucratic and congressional encroachment. To be sure, the AMA will continue efforts at securing legislation favorable to the improvement of health care in America while resisting government advances into their domain.

Conclusion

From the first time the American Medical Association labeled government provided health care proposals "socialized medicine," the AMA has held a strong hand in American politics. The AMA and AMPAC have

been effective in the political process. The AMA with its Washington lobby has done much in the way of public health education in Congress and toward the public.

The AMA has and will likely maintain its status as a major mover for some time. Together with AMPAC, the AMA is one of the largest financial contributors to the election process and the effects of that influence have been, and will continue to be felt for many years.

Having lost the Medicare battle, the AMA has changed its tune in the last twenty years--especially in the last ten. Today, the AMA is concerned with improving the quality of health care for all and easing the financial burden of medical care on the middle and upper middle class. The AMA recognizes that public sentiment leans more and more to NHI alternatives and now seeks the next best alternatives where costs will neither be prohibitive nor government interference rampant.

AMPAC is concerned, too, because more stringent campaigning finance reform laws would obviously weaken their influence and position in the political establishment.

APPENDIX

Chronology on national medical insurance

1935

Roosevelt administration explores compulsory national health insurance as part of the Social Security Act, but no legislation is recommended to Congress.

1943

Three Democratic Senators cosponsor a bill to broaden the Social Security Act to include compulsory national health insurance to be financed with a payroll tax. No legislative action.

1945

President Truman, in his health message, proposes a medical insurance plan for persons of all ages, to be financed through a Social Security tax.

1949

The Truman proposal is considered and hotly contested in congressional hearings; no legislative action results.

1954

President Eisenhower opposes the concept of national health insurance as "socialized medicine." He proposes the alternative of reimbursing private insurance companies for heavy losses on private health insurance claims. No action taken on this proposal.

1957

Representative Forand introduces the "Forand bill," to provide hospital care for needy old age Social Security beneficiaries to be financed through increased Social Security taxes. No action taken by Congress, but heavy AFL-CIO lobbying generates public interest.

1960

The Forand bill was defeated by the House Ways and Means Committee on a decisive vote (17-8). Chairman Mills opposed the bill.

1960

As a substitute for the Forand bill, Congress enacts the Kerr-Mills bill, designed to encourage the states to help older, medically needy persons (those not poor enough to qualify for Old Age Assistance, but too poor to pay their medical bills).

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1960

Health care is an issue in the presidential campaign; Kennedy vows support.

1961-1964

President Kennedy's version of the Forand bill is submitted annually in the House and Senate, but the House Ways and Means Committee defeats it.

1962

Senate defeats an amendment to a public welfare bill embodying the Kennedy proposal (52-48).

1964

The Senate passes (49-44) a Medicare plan similar to the administration proposal as an amendment to the Social Security Act. The plan died when the House conferees (from the Ways and Means Committee) refused to allow its inclusion.

Jan. 1965

The 1964 elections brought many new Democrats to Congress, and the composition of the Ways and Means Committee is finally changed to have a majority of Medicare supporters.

Jan. 1965

President Johnson makes medical care his number one legislative priority.

July 1965

Medicare bill signed into law after passage in both houses by generous margins.

Compiled by Ripley and Franklin (1980, 163). Originally adapted from material in Congressional Quarterly Almanac, 1965: 236-247.

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