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CONTENTS

- 2 Letter from the Editors
- 3 The Internal Contradictions of *Leviathan*: Justice and the Sovereign  
Tobias T. Gibson, Monmouth College
- 10 Explaining State Variation in Emergency Medical Service Provision  
John Altman, York College of Pennsylvania  
Stan Buchanan, Indiana State University
- 25 The “Moral Hazard Problem” in Humanitarian Intervention  
Vincent A. Auger, Western Illinois University
- 42 The Piqueteros: Looking for the Causes of Their Emergence  
Carla M. D’Anna Gorriti, Northeastern University
- 56 Developing Animal Rights Legislation: A Political Strategy for a Social Movement  
Joe Gaziano, Lewis University  
Laurette Liesen, Lewis University  
Jacquie Lewis, Saybrook Graduate School and Research Center
- 74 NCMS: Public Health Reform and Administration Mechanism in Rural China  
Yongmao Fan, Northern Illinois University
- 86 Information on the IPSA and Journal Submission

From the Editors:

It is with great pleasure that we release this Spring 2008 volume of the Illinois Political Science Review. We would like to thank Mariano Magalhaes from Augustana College for his work on the Spring 2007 volume. He also deserves some thanks for this version, not only for the transition to us, but handing over two quality articles that are present here.

The fine authors that are present in this volume know that this journal was delayed for reasons that have nothing to do with the articles presented for consideration. We are grateful for the many submissions and have the enviable editorial remorse that we could not publish all the scholars that submitted academically strong work. We certainly look forward to another high quality issue in 2009 and hope that some of the changes that have been “invisibly” implemented behind the scenes prove valuable to the future editors of this fine journal (and for us for at least one more year). For future submissions guidelines please refer to the closing page of this journal.

In this journal we have a wonderful collection from international relations, American politics, and political theory. It is our goal as editors to continue to provide a mix of political science fields for our readers. We also hope to provide the important Illinois taste either in article topic or authors. The state of Illinois is well represented in this issue and we are certain that the annual Illinois Political Science Association Conference will continue to provide high quality scholarship for publication. Information about the upcoming conference may be obtained from any of the officers listed in the closing pages.

We hope to see you all at the 2008 conference hosted by Eastern Illinois University. Enjoy.

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## The Internal Contradictions of *Leviathan*: Justice and the Sovereign

Tobias T. Gibson, Monmouth College

Citizens of a nation often call for the government to act justly. Many people depend on their governments to provide them with justice that would otherwise be out of reach. However, Thomas Hobbes explicitly claims that the sovereign he conceives in *Leviathan* can act neither justly nor unjustly. More specifically, within *Leviathan*, how could the sovereign's act be just (or unjust) given that justice only comes into existence with civil society? I argue that working through a series of related definitions in *Leviathan* will lead us to an answer such that the sovereign (or at least the monarchy, Hobbes' preferred form of sovereignty) must act justly.

Hobbes' conception of justice is narrow and specifically tailored for his argument in *Leviathan*. Early in chapter fourteen, he defines a law of nature as

... a precept, or generall rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved.... **LAW** determineth, and bindeth to one of them. (91)

Said more directly, a law of nature does not allow an individual to act in such a manner that will lead to bodily harm or death. Moreover, the right to a means of protection can never be released. It is important to understand the definition and conception of the law of nature because Hobbes describes "justice" as being the third law of nature.<sup>1</sup> Therefore, Hobbes believes that justice must be followed because it is in the person's best interest to act justly. It is in the fifteenth chapter that Hobbes states that justice is the third law of nature. Justice must be a law of nature because of the definition that Hobbes applies<sup>2</sup>. Injustice, according to Hobbes is "no other than *the not Performance of Covenant*. And whatsoever is not Unjust, is *Just*" (100). Why then is justice given such an important status as a law of nature? It is imperative "*That men performe their Covenants made*: without which, Covenants are in vain, and but Empty words; and the Right of all men to all things remaining, wee are still in the condition of warre" (ibid.). The reversion to the state of war from Civil Society is important for two reasons. The first is that justice has no place in the state of war, because there can be no expectation of covenants kept. Secondly, and perhaps most importantly, under no circumstances will a person want to revert back to the dread state of nature.<sup>3</sup>

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<sup>1</sup> That is to say, Hobbes feels that understanding his conception of justice is important enough for him to describe it as the third law of nature (and therefore required to be followed upon "penalty" of potential death). It seems reasonable to say that Hobbes' notion of justice is a key for much of his argument in *Leviathan*. As an example, Hobbes conceives of the lack of binding of the sovereign in a covenant as alleviating a potential weakness of the sovereign (144-45).

<sup>2</sup> In Chapter XIII, Hobbes claims that justice is simply following the law of the sovereign. This definition becomes a bit more general in Chapter XV, when keeping of the covenant becomes the definition of justice. Either way, however, once a civil society has been entered (and therefore a sovereign exists who has the right and force to enforce covenants, it is in the best interest of the individual to adhere to the conditions of the covenant. And, as Hobbes' definition of a law nature shows, laws of nature, if followed, are intended to prevent harm from coming to the individual.

<sup>3</sup> The state of nature is to be avoided at all costs. Hobbes is explicit with this. He describes life in the state of nature as "solitary, poore, nasty, brutish, and short" (89). In chapter twenty, Hobbes also claims that even the most tyrannical sovereign will be preferred to the return to the state of nature (145-146).

How, then, are covenants to be enforced? More specifically, what should be the intentions of the enforcement and what means of compulsion are legitimate to reach these intentions? Here it is necessary to wade through a number of definitions and arguments made by Hobbes. First, why must covenants be enforced? According to Hobbes, covenants must be kept, because, in the end, they are the sources of equity, or that which is due to each person. Hobbes further states “if he performe his Trust, he is said to distribute to every man his own” (105). When Hobbes first begins to allude to justice and the sovereign he states:

And Distributive Justice, the Justice of an Arbitrator; that is to say, the act of defining what is Just. Wherein, (being trusted by them that make him Arbitrator,) if he performe his Trust he is said to distribute to every man his own: and this is indeed Just Distribution, and may be called (though improperly) Distributive Justice; but more properly Equity... (105).

If distributive justice is better defined as equity, it is necessary to better define equity to understand fully the role of the arbitrator of covenants. Hobbes claims that if a man is to be trusted to judge the claims of two other men, then according to the law of nature, he must deal equally with both of them. A partial judgement, which unfairly favors a party in the covenant, will lead to war. Thus, “equall distribution to each man, of that which in reason belongeth to him, is called **Equity**” (108). Secondly, the covenant needs to be enforced so that there exists a reasonable expectation that neither party will break the covenant.<sup>4</sup> To what powers is the covenant subject? Hobbes answers that “... Covenants, without the sword, are but Words” (117).

Therefore, it should be clear that force is justifiable in enforcing a covenant. However, whose “sword” is to be used? Rather than both parties wielding their own weaponry, they depend instead on an outside arbitrator to enforce the covenant. This is due to Hobbes notion of man compared to other men in the state of nature. In this conception (chapter 13), Hobbes perceives man as equal. So equal are men, in both physical and mental capacities, that Hobbes argues that “...it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called **Warre**; and such a warre, as is of every man, against every man” (88). Without an outside arbitrator, the equality of the parties would lead to a (armed) standoff at best. While seemingly peaceful, Hobbes dismisses such a notion. Instead, Hobbes claims that “War, consisteth not in actuall fighting, but in the known disposition thereto, during all the time there is no assurance to the contrary” (88-89). The arbitrator, then, is required to “assure the contrary,” and put an end to the state of war.

This leads to the question, who or what provides the legitimacy of the arbitrator? That is, who or what is to act as the “common Power” that Hobbes claims is necessary to prevent the condition of war? The answer to these questions is the same: the sovereign. This is evident in Hobbes’ claim that “It belongeth therefore to him that hath the Sovereign Power, to be Judge, or constitute all Judges of Opinions and Doctrines, as a necessary to Peace; thereby to prevent Discord and Civil War” (125). In other words, the sovereign is to act as judge in disputes (for example, over a covenant) or to “constitute,” or establish, such a judge. Hobbes specifically claims that the judge established by the sovereign is to act equitably.<sup>5</sup>

However, Hobbes goes on to argue that there may be instances where sovereigns or judges may make inequitable decisions. However, as equity is a law of nature, it is imperative that these decisions be corrected. Indeed, as Hobbes argues, “...there is no place in the world, which this can be an interpretation of a Law of Nature, or be made a Law by the Sentences of

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<sup>4</sup> “...the Validity of Covenants begins not but with the Constitution of a Civill Power, sufficient to compell men to keep them” (101).

<sup>5</sup> “The Judge is to take notice, that his Sentence ought to be according to the reason of his Sovereign, which being alwaies understood to be Equity, he is bound by the Law of Nature.”

precedent Judges that had done the same. For he that judged it first, judged unjustly; and no Injustice can be a pattern of Judgement to succeeding Judges" (192). While Hobbes allows the immediate correction of an inequitable decision, he has now acknowledged that the sovereign, albeit briefly, can be inequitable. This will be a key to the future argument. More specifically, one must recall that (distributive) justice was better defined as equity. Extrapolating a bit, Hobbes has (slightly) introduced the idea that the sovereign, by laying down an inequitable decision, can also act unjustly.<sup>6</sup>

The next step that I must make in the quest successfully to argue that the sovereign can act (un)justly is to link justice and equity. We have seen that equity is dependent upon the sovereign. A logical question, given the topic of this paper, is if justice is also dependent upon the sovereign. The answer is an unequivocal "yes." Let us see why this is the case. In explaining the State of Nature, Hobbes argues that "The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law; where no Law, no Injustice" (90). If no law exists, injustice also may not exist. Who, then, can create the laws that can make injustice a reality? Hobbes states clearly that the sovereign acts as the legislator (184). It is but a simple deduction then to realize that injustice, and therefore also justice, is dependent upon the definition of the sovereign.

Moreover, Hobbes claims that if a covenant is made in the state of nature, it is void because the condition of war pits every man against every man, and therefore there is reasonable suspicion to believe that the conditions of the covenant would not be met by either party. However, Hobbes claims that upon the presence of an outside power with the "right and force sufficient to compell performance; it is not Voyd" (96). What can provide the right and force but the sovereign? Therefore, the establishment and completion of covenants is dependent upon the selection of a sovereign.

Allow me to review what has been accomplished thus far. I have offered the claim that despite Hobbes' claim to the contrary, the sovereign can act (un)justly. I began the process to show this internal inconsistency by offering a few necessary definitions to lead us down the necessary path. I then showed that equity was dependent upon the sovereign and then proceeded to link equity and justice. This was followed by the argument that the completion of the covenant also required the presence of a sovereign. This most recent step is necessary because justice is defined as keeping a made covenant. It should now be clear how justice depends upon the sovereign. Hobbes' simple definition of justice, the completion of a covenant, is dependant upon the sovereign simply because without the existence of a sovereign, there is no *expectation* that a covenant will be completed (because we are still in the state of war, and completion of the covenant would not be in "my" best interest). All of the proceeding was necessary to begin the task of showing that the sovereign is *bound* by the covenant, and hence can act justly. It is to the completion of this goal, and the final few necessary steps, to which I now turn.

To complete this course, I must continue toward my stated goal of proving that the sovereign can act justly. As noted, "... the definition of INJUSTICE, is no other than *the not Performance of Covenant*. And whatsoever is not Unjust, is *Just*" (100). However, the sovereign cannot be a party to a covenant, and therefore cannot act justly or unjustly. Hobbes argues that logistically, it is impossible for the sovereign to undertake a covenant:

Because the Right of bearing the Person of them  
all, is given to him they make Sovereaigne, by  
Covenant onely of one to another, and not of him  
to any of them; there can happen no breach of

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<sup>6</sup> Perhaps the best way to visualize this is as a chain. Thus, the first link came when Hobbes defined distributive justice as "equity." The second link is the claim that the sovereign, or someone of its choosing acting in its stead, must act a judge in disputes. The third link came in Hobbes' claim that sometimes, even if quickly fixed, the sovereign (or its representative judge) makes decisions which are inequitable. As distributive justice is better defined as "equity," then an inequitable decision must also be unjust.

Covenant on the part of the Sovereign.... That he which is made Sovereigne maketh no Covenant with his subjects before-hand, is manifest; because either he must make it with the whole multitude, as one party to the Coveant; or he must make a severall Covenant with every man. With the whole, as one party, it is impossible; because they are not yet one person.<sup>7</sup> (122)

However, as explicitly as he states this claim, as has been seen in the above discussion, Hobbes moves away from the claim of the inability of the sovereign to act (un)justly throughout *Leviathan*. Hobbes claims that the arbitrator can act with (distributive) justice (105), though he quickly sidesteps this claim by redefining distributive justice as equity (ibid.). He also claims that the sovereign, or a judge constituted by the sovereign, must act as arbitrator. Therefore, although at this point admittedly ill-defined, as has been noted above, Hobbes *has* allowed that the sovereign (as arbitrator) must act justly (equitably).

It is my claim, however, that within Civil Society, the sovereign will be able to act justly. In fact, I strengthen my claim to say that the monarch, which is Hobbes' preferred sovereign, *must* act justly at least once. To support this claim, I will first discuss the means through which the Civil Society is formed, Hobbes' notion of the natural versus the artificial person, and the reasons that Hobbes prefers monarchy to any other type of sovereignty.

Before Civil Society is formed, only the State of Nature exists. There is only one possible means for the formation of Civil Society. According to Hobbes, the process is as follows

... and every one to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgement. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man... (120).

So, for Civil Society to come into being, every man must make a *covenant* with every other man. If *any* man has not covenanted with the individual men who comprise the Civil Society, than the man without Covenant may not join or become a member of society.

Yet, this is not as straightforward as it may seem. Hobbes has an interesting idea of what types of people enter covenants. He recognizes that people may act on their own or may designate a representative. Because of Hobbes' perception of dual "personhood," I now discuss Hobbes' ideas of what constitutes a "person." Hobbes defines a person as "...he whose words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction" (111). However, Hobbes explicitly separates what he calls "artificial" and "natural" persons. What is the difference? "When they [words and actions] are considered as his owne, then he is called a *Naturall Person*: And when they are considered as representing the words and actions of an other, then is he a *Feigned or Artificiall person*" (ibid.).

There is a further implication of the differences between the natural and artificial persons. Hobbes takes these definitions and then applies them to his conception of the

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<sup>7</sup> While Hobbes does not explicitly mention justice here, he does clearly preclude the possibility that the sovereign may act justly. That is to say, because justice dependant upon the "performance of covenant" the inability of the sovereign to enter a covenant must, according to Hobbes, prevent to sovereign from acting justly.

sovereign within the Civil Society or the Commonwealth. That is, the *office* of the sovereign is an artificial person. However, this office is filled by an individual or group of natural persons. As an example, there is a difference between the “artificial person” of the presidency and the “natural person,” George W. Bush, who currently fills the office.

Hobbes' argument is that the commonwealth or Civil Society is formed in the above mentioned Covenant among the masses. Also from this Covenant comes the need to “conferre all their power and strength upon one Man, or an assembly of Men” (120). That is, this one man, or assembly of men, is to be the sovereign. How does the sovereign attain his power? Hobbes argues that this can be done in two ways. One way is by natural force, which Hobbes describes as when a man makes his children submit themselves and their children, to the sovereign who is able to destroy them if they refuse. This is also possible through war. The sovereign in this case must subdue his enemy, and then allow his new subjects to live based on them following his will.

The conditions of forced obedience provides further evidence that Hobbes' sovereign acts justly. According to Martinich (1997), Hobbes' “treatment of sovereignty by acquisition is confused. Sometimes he seems to say that the covenant that results from it is between conquered people and the conquering power, even though the sovereign is not supposed to be a party to the covenant” (50). Within *Leviathan*, chapter XX, there are three passages that lend confusion to what seemed to be simple fact. Hobbes refers to “men singly” as authorizing the actions of the conqueror. Because it appears that the conqueror is the only individual available for authorization, the party must be a party to the covenant (138). Later, Hobbes discusses the servant making a covenant (141). According to Hobbes, “And after such Covenant made, the Vanquished is a servant, and not before....” Again, as it appears that there is no other than the master to be a party to the covenant, the sovereign (master) must act justly. Finally, Hobbes states that a servant “holdeth his life of his Master, by the covenant of obedience”, leading again to the conclusion that both the conquered and the conqueror must enter into a mutual covenant. Yet, it is the second manner of attaining power that is the one in which we are most interested. In this case, the sovereign attains power “when men agree amongst themselves, to submit to some Man, or Assembly of men, voluntarily, on confidence to be protected by him against all others” (121). It is natural to ask, Where does this Man come from? Hobbes seems to argue that a natural person is elevated to fill the position of Sovereign, which is an artificial person.<sup>8</sup> This is especially true of the monarchy, in which Hobbes argues “... whosoever beareth the Person of the people... beareth also his own natural person” (131). Moreover, Hobbes prefers monarchy over democracy or aristocracy because “where the publique and private interest are most closely united, there is the publique most advanced. Now in Monarchy, the private interest is the same with the publique” (ibid.). It is in this statement where I argue that you can find that the sovereign *must* be able to act justly.

Allow me to recreate a chain of events already discussed. For the creation of Civil Society, all men must agree, or rather covenant, with all other men that are to be in the Civil Society. Then, a natural person is elevated from society to fill the place that is the artificial person of sovereign. And, in a monarchy, which, as a reminder, is Hobbes' preferred form of sovereignty, the public and private interests not only overlap, but are the same. Therefore, my argument is the following: The natural man who happens to fill the artificial man role of sovereign *must have* entered the covenant to enter and create society. Moreover, this should be particularly true in a monarchy, where the natural and artificial persons who comprise the sovereign are so closely related, even the same. Therefore, despite Hobbes' claims to the contrary, the sovereign not only can, but must, act justly. This is because, according to Hobbes, the definition of justice is keeping one's covenant(s), and the natural person who fills the role of (and is the same body) the artificial person, or sovereign, must have entered into the social covenant when society was formed.

It could be argued that Hobbes would simply retort that the sovereign monarch is the artificial entity that (currently) inhabits this natural person's body. That is to say, a possible

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<sup>8</sup> The sovereign is an artificial person because it represents the actions or words of another (121).

retort is that the role of the artificial person is finite, while the natural person literally lasts a lifetime. The life-span of the artificial person is but a subset of the natural person's existence, and therefore covenants made by the natural person before (or after) the artificial person fills this body are not subject to compliance by the artificial person.

However, this is an erroneous argument. Whether the artificial person fills the natural person, or the natural person the artificial, what remains the same is the *body*. Hobbes himself noted that the error of this argument. It is clear that Hobbes felt that natural person occupying the artificial must be accounted for, and would act in his best interest.<sup>9</sup> And, what must be in the natural person's best interest would be the fulfillment of his previously made covenants. Therefore, the sovereign must act justly. Moreover, as Hobbes himself argues, at least in the monarchy, the interests of the public (comprised of natural bodies including the one filling the "throne" of the sovereign) and the sovereign are the same.

Another potential criticism may be that I have equated social and distributive justice. Said differently, because earlier it was noted that Hobbes argues that distributive justice is better defined as equity, and that even Hobbes notes that the sovereign (or judge) can make inequitable, or (distributively) unjust, decisions. However, by the culmination of my argument, I have stated that the sovereign must also participate in social justice, or joining and adhering to the covenant necessary to bring the civil society into being. Thus, while using the notion of equity to introduce the possibility that the sovereign can act (un)justly, it is a separate conception of justice that is required of the sovereign in the end.

While addressing potential pitfalls is important, perhaps the most important discussion regarding my argument that the sovereign in *Leviathan* must act justly deals with the potential ramifications of Hobbes' overall argument and the subsequent interpretations. Traditionally, it has been argued that Hobbes required, or desired, a sovereign whose powers were unlimited (Raphael, 166-170; Hampton). The sources of this claim are easily identified. Because this understanding is so well known, I provide but one example, in which Hobbes states "So that it appeareth plainly, to my understanding, both from Reason, and Scripture, that Sovereign Power... is as great, as possibly men can be imagined to make it. And though of so unlimited a Power, men may fancy many evill consequences, yet the consequences of the want of it, which is perpetuall warre of every man... are much worse" (144-145). That is to say, no matter how powerful, and even despotical a government, a return to the state of nature would still be worse. It is based on this notion that Hobbes conceives of the need for a sovereign with no limits to its power.<sup>10</sup>

However, there has been dissent from this interpretation. Some have claimed that Hobbes intended to temper, or limit, the powers that the sovereign could legitimately exercise (Hampton, 190-197). While this interpretation flies in the face of the traditional views of Hobbes' vision of the sovereign power, it, too, has clearly identified source from *Leviathan*... Chapter XXX. Despite the characterization that Hobbes provides the sovereign's power throughout the remainder of *Leviathan*, Hobbes seems to allow limitations to that power in Chapter XXX. For example, Hobbes requires that sovereign act in the best interest of its people: "The office of the sovereign... consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of the *safety of the people*. ... But by Safety here, is not meant a bare preservation, but also all other Contentments of life" (231). In this passage it appears that Hobbes, rather than simply thinking that the sovereign's job is to prevent the return to the state of nature, says that the sovereign should provide well beyond the base requirements

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<sup>9</sup> Hobbes argues "...whosoever beareth the Person of the people... beareth also his own naturall Person" (131).

<sup>10</sup> This is the reason for Hobbes' description of life in the State of Nature (or War) as "solitary, nasty brutish and short" (89). Because life is so abysmal in this state of war, people much prefer peace over war. It is through the formation of civil society, or rather the "great LEVIATHAN" (120) that peace is acquired. However, for this peace to continue, the Leviathan must have "the use of so much Power and Strength conferred on him, that by terror thereof, he is enabled to conforme the wills of them all, to Peace at home, and mutuall ayd against their enemies abroad (ibid.).

of life. Moreover, even if the subjects break the law “The safety of the People requireth further, from him, or them that have the Sovereign Power, that Justice be equally administered to all degrees of People; that is, that as well as the rich, and mighty, as poor and obscure persons, may be righted of the injuries done them; so as the great, may have no greater hope of impunity, when they doe violence, dishonour, or any Injury to the meaner sort” (237). That is to say, each person should be equal in the eyes of the law, rather than having the sovereign act arbitrarily toward those in better social positions. Again, this seems to limit the sovereign’s decision-making, and therefore is a limit to the exercise of power from the sovereign.

It could be argued that these limits are prudential rather than normative, but on closer review, this claim should be dismissed. The argument would be that the sovereign must impose self-restraint so that its subjects remain happy within society. However, Hobbes himself notes that the state of nature is much more brutal on man than even the worst sovereign. Therefore, it is unlikely that man, or more specifically, the subjects of a tyrannical ruler would rebel. After all, if this rebellion would be successful in deposing the sovereign, then the fate that awaits the “success” would be but a return to the state of nature. It is unlikely that any one person or society would wish to return to such a horrible state. It seems more likely that a subjugated society would simply “grin and bear it.”

In short, I believe that my work provides further support for the literature that conceives limits placed on the sovereign. Because the sovereign *has* entered into a covenant, she must conform to the conditions of the covenant that formed the civil society. In this work I argue that despite Hobbes’ claim to the contrary, not only can the sovereign act justly, but she *must* act so at least once. What is more, based on the reasons for following the laws of nature, it is in the sovereign’s best interest to adhere to covenants made. Hobbes defines justice as keeping the covenant, and argues that the sovereign does not enter into covenants, and therefore is unable to act justly or unjustly. However, because Hobbes sees the monarchy as his preferred form of sovereignty based on the closeness of the natural and artificial persons that fill this position, I offered some potential arguments against the validity of this claim and undermined them. Finally, I offered some insight to how the conception of the sovereign as just may relate to, and change, interpretations of *Leviathan*. It is in the interpretations where I believe future work should focus, as it is contrary to centuries of popular views on Hobbes’ work.

In conclusion, this paper has widespread importance for the understanding of Hobbes for two reasons. First, I argue that there exists a limitation on the powers of the sovereign that stems from Hobbes’ ideas of the civil state, but that he does not recognize and take into account. The idea that the sovereign can make, and must adhere, to covenants has many potential ramifications and limitations on the sovereign that future work should address. Second, I suggest, along with Chapter XXX of *Leviathan*, that even the most powerful governments that can be conceived must also act beyond securing the peace. Instead, the sovereign must also act for “the safety of the people” (231) and justly.

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## **Explaining State Variation in Emergency Medical Service Provision**

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Stan Buchanan, Indiana State University

We test in this study two theories of state policy variation. We seek to explain the variation of provision of emergency medical services systems (EMSS) among forty states during the decade or so after the federal government rescinded its fiscal commitment for building EMS systems throughout the nation.

Emergency medical services (EMS) in the United States are most often administered locally or regionally, but are regulated by the states. After 1966, state EMS planning and administration, and local EMS provision, was supported by a combination of local, state, and federal money. Since the early 1980s, however, federal support has decreased dramatically. By the early 1990s, virtually all EMSS funds were derived from state and local resources. EMS systems offer two levels of service: basic life support (BLS) and advanced life support (ALS). All EMS systems contain a BLS component; and most ALS systems are actually support both BLS and ALS units.

BLS is provided by emergency medical technicians (EMTs). EMTs are trained in sophisticated but noninvasive life support techniques such as cardio-pulmonary resuscitation, the control of bleeding, the care of wounds, the splinting of skeletal injuries, and the treatment of shock. ALS is more complex and costly than BLS. ALS is only provided by paramedics (EMT-Ps) who are trained both to offer BLS, and to perform invasive life-saving techniques that could otherwise be performed only in hospital. Paramedics, acting under the standing orders of, or through direct radio control by, physicians may for example insert breathing tubes, administer intravenous drugs, and deliver electric defibrillation for cardiac arrest to patients in extremis.

### **Background of EMSS Development in the US**

The federal government became actively involved in the design and development of EMS systems throughout the United States in 1966, with the passage of the National Highway Safety Act. The Department of Transportation (DOT) was the first federal agency responsible for the development of comprehensive highway safety programs. DOT's Highway Safety Program Standards addressed a wide range of highway safety issues such as motor vehicle inspection and registration, driver education and licensing, traffic codes and laws, and emergency medical services.

DOT's EMS standards became the most important federal policies related to the transportation of trauma victims, and provide a mandate as well for the states to provide emergency medical care (Chapman and Talmadge 1970). DOT's standards focused primarily on traffic related accidents, but they also covered medical emergencies unrelated to trauma. One of DOT's major provisions was to require each state to have an EMS coordinator responsible for supervising, coordinating, and providing leadership for the improvement of statewide emergency services (Dodson 1974). This mandate was tied to federal highway funds and so captured the attention of state authorities. States that failed to comply with DOT EMS standards by not developing a state plan for emergency services would most likely have faced reductions in highway funds.

Coordination of federal EMS policy was shifted from DOT to the Department of Health, Education, and Welfare (HEW) in 1973 with the passage of the Emergency Medical Services Systems Act (EMSS). EMSS created the Division of Emergency Medical Services (DEMS) within HEW and provided considerable funding for state and local governments (Post 1992). Moreover, by 1976, DOT had strengthened the EMS standards by issuing the first set of national standards and guidelines for paramedic training (Caroline 1991).

The federal government's efforts throughout the 1970s to make and enforce national standards for EMS systems in the states were brought to a halt in 1981. In that year Congress agreed to dissolve DEMS and to divert federal funding for EMS to the Health and Human Services Block Grant program in the form of the Preventative Health

Services Block Grant. Although the states gained more control over funding for health related services, including EMS, the number of dollars the grant contained for was drastically reduced. As a result, state governments assumed more responsibility for advancing the development of EMS systems. Since 1982, characteristic differences in EMS systems from state to state have become more the consequence of state efforts toward the provision of EMS and less the result of federal direction. DOT's National Highway Traffic Safety Administration does continue to offer guidelines and assistance to state administrators and legislators in the development of comprehensive trauma system legislation and the coordination of local and regional EMS systems within statewide trauma networks. States are still eligible and do receive funding for EMS through the Preventative Health and Human Services Block Grant.

### **State Policy and EMS**

The question we seek to answer is, given the lack of federal funds for the support of uniform EMS systems provision throughout the states, what are the likely explanations for differences in EMS systems throughout the states.

The traditional public policy literature offers a variety of explanations for policy differences among the states. A number of political, administrative, and socioeconomic factors have been used to explain state policy variation. Though there are a variety of current studies addressing a wide range of health care issues, there appears to be a lack of studies addressing state EMS systems policy. In light of the continuing debate over national health care, further research into the area of EMS seems warranted in order to fill the information void concerning policy approaches to pre-hospital care and to address current concerns about the role of existing EMS systems within statewide trauma networks.

The long-standing debate over national health care has evoked a series of explanations about what variables exert influence over health policy outputs by state. Contending explanations can be classed as either socioeconomic or as political/administrative.

The earliest comparative state studies of policy variation presented findings that ran contrary to the received wisdom of the day. Until the 1960s, the dominant explanation was that in representative democracies, government policy resulted from citizens' preferences being articulated by political elites through government institutions. Competition among political parties, so the argument went, resulted in attempts to attract the votes of the economically disadvantaged. Political competition was responsible for the development of broad government programs (Key 1949; Downs 1957).

Others countered that socioeconomic factors were better predictors of state policy outputs than were institutional variables. This was especially so for welfare, education, and unemployment policies (Dawson and Robinson 1963; Dye 1966; Hofferbert 1966). Walker (1969) and Gray (1974) found that socioeconomic factors were much better at explaining state policy innovation, although institutional factors did have some marginal impact. Thomas Dye, in his now-classic study of the effects of state economic development (1966), found that not only could economic development account for public policy, but it could also explain the nature of political institutions.

Still, political and administrative explanations have received considerable attention. Political variables have been found to be significant factors in explaining state policy variation, especially for issues related to welfare policy (Sharkansky and

Hofferbert 1969; Fry and Winters 1970; Jennings 1979; Plotnick and Winters 1985). Public opinion has also been used to establish a connection between politics and state policy, and it is argued that economic explanations become insignificant when controlling for state public opinion (Wright, Erikson, and McIver 1987). Moreover, political culture, a historical phenomenon, has been found to be a useful determinant of policy outcomes (Karnig and Sigelman 1975; Fitzpatrick and Hero 1988; Opheim 1991; Elazar 1966). Political culture has been found to be useful for predicting differences in regulatory policy decisions at the state level (Sigelman and Smith 1980; Gormley 1983; Opheim 1991).

Actions of the federal government also influence state policy. Schneider (1988) found that, though Medicaid expenditures were certainly influenced by previous year's spending, the relaxation of controls over Medicaid by the Reagan administration in 1981 led to increased state level discretion over program management and increased levels of spending. The dynamics of national politics produce change in federal level administration, which alters the national level focus and eventually works through state and local governments to impact public policy (Schneider 1988). "National, state, and local level factors all have important influences on Medicaid program developments. No single level of government fully dominates the process" (Schneider 1988:761).

As it did for Medicaid, the federal government devolved authority for EMS services downward during the early 1980s. State and local administrators have had to wrestle with the resulting fiscal stress and the problems of how to organize a reliable level of service within their jurisdictions. In most states, training and certification for EMTs and paramedics, and the administration of EMS systems, is regulated by state law, but administered on a local, county or regional basis. State EMS offices may be responsible for coordinating and administering such activities.

Much of the research that focuses on EMS looks at how various services are provided. Alternative methods of service delivery have been a way for state and local administrators to maintain adequate levels of service while dealing with fiscal and organizational pressures. Contracts, franchises and concessions, subsidies, vouchers, volunteers, self-help, and regulatory and tax incentives are all methods of alternative service delivery at the hands of state and local administrators (Morley 1989).

After 1982, the percentage of city and county governments actually taking the responsibility for providing EMS decreased (Morley 1989). In most cases, private hospitals and ambulance services filled in the gaps, but people in EMS service areas also had to rely on volunteers in the service of a local system. The percentage of local governments using volunteers to provide EMS began to increase about 1982 (Morley 1989). The majority of volunteer EMS provider organizations tend to be manned more often by EMTs, rather than EMT-Ps, and do not have easy access to EMS professionals skilled in providing advanced care. Therefore, state and local governments that have had to rely largely on volunteers to meet their emergency medical needs may not have been able to widen the pool of qualified paramedics within their jurisdictions. This may have overbalanced the sheer number of services within local jurisdictions toward providing basic life support, thus affecting the quality of overall pre-hospital emergency medical treatment nationwide.

Rural areas tend to have the highest concentration of volunteer EMS providers. There are many states (e.g., Alaska, Iowa, New Jersey, and Pennsylvania) in which the concentration of volunteer EMS providers is much higher than it is in the rest of the country (Norris et al. 1993). Volunteer EMS providers have been experiencing some difficulty in meeting the demand for their services because volunteerism is on the decline (Brudney 1990), and because there is increasing demand for ALS services, which

are provided only by paramedics. But because of longer response times in rural areas, the preferred approach even there is to dispatch ALS whenever possible (Norris et al. 1993).

Few studies have examined factors that actually influence EMS provision. Kinne (1986) identified elements leading to differing levels of EMS provision in Washington. She found that different types of EMS provision could be determined by looking at resources for local fiscal resources, the existence of alternatives to ALS, and organizational characteristics affecting the ease of service provision (Kinne 1986).

The literature we review here, although helpful, is brief, dated, and does not develop, we feel, an adequate explanation for the provision of EMS services. Attempting to build such an explanation, we turn to an analysis of the political/administrative and socioeconomic factors that may influence the numbers of paramedics and EMTs per capita in each state.

### **Theory and Methods**

We obtained the number of emergency medical technicians (EMTs) and paramedics for forty-two states from a survey of state EMS offices (*Emergency Medical Services* 1993). We could find no information on the eight remaining states. We standardized that measure by calculating the number of paramedics and EMTs per capita in each state using population figures from the 1990 census. We chose to use paramedics per capita and EMTs per capita as our dependent variables in two separate but comparative analyses, and began to search for political/administrative and socioeconomic factors that could influence the numbers of paramedics and EMTs per capita in each state.

First, we consider independent socioeconomic and political variables that could influence the number of paramedics per capita per state. We hypothesize that four socioeconomic factors influence the number of paramedics per capita. Three of these factors are death rates per hundred thousand state population by diseases of the heart; by trauma caused by motor vehicle accidents; and by homicide. We use death rates by these three causes for 1987, published by the U.S. Census Bureau in the *State and Metropolitan Area Data Book, 1991*. We hypothesize that as each rate increases, the number of paramedics per capita also increases. We also hypothesize that as median family income in a state increases, the number of paramedics per capita increases. We use median family income for 1990, published by the U.S. Census Bureau.

Heart disease remains the leading cause of death for Americans. In 1987, about 312 Americans died of heart disease per 100,000 population. High death rates by heart disease marks the presence of populations that are at high risk heart attack, and therefore in more need of paramedical intervention than populations at low risk of heart attack. For example, Alaska's death rate by heart disease in 1987 was 91.6 per 100,000 population, far below the national average. Based on its death rate by heart disease, Alaska requires fewer paramedics per capita than states with high death rates, such as Pennsylvania, with 398.3 deaths per 100,000 in 1987.

Much of the high regard with which paramedicine is viewed by the public is due to the ability of paramedics to successfully intervene in traumas caused by motor vehicle accidents. Successful intervention stabilizes the accident victim, and decreases the probability of shock and death, which might otherwise occur before in-hospital medical treatment can begin. By the 1960s the medical community and the federal government acknowledged that the number of deaths on US highways could be lowered and that the

severity of injuries by trauma caused by motor vehicle collisions could be lessened through the provision of ALS. This awareness was derived, in part, from the experience of paramedical treatment and stabilization of battlefield wounds in Korea and Vietnam. Since the 1960s, the national implementation of DOT EMS system standards has placed paramedics quickly at the scene of motor vehicle accidents in many regions of the country. Stabilization and care of severe and life-threatening injuries may now begin within minutes of their occurrence.

States vary in the rate of death by motor vehicle accidents, as they do in death by heart disease, though motor vehicle trauma causes fewer deaths than heart disease. Higher motor vehicle death rates occur in those states where the likelihood of motor vehicle accidents is higher, making the provision of ALS more important. Therefore, we hypothesize that as the rate of deaths by motor vehicle trauma increases, the number of paramedics per capita increases.

A third socioeconomic factor that we hypothesize to positively affect paramedics per capita, in addition to heart disease and motor vehicle traumas, is the death rate by homicide. States with higher homicide rates are more likely to require ALS intervention on behalf of persons who have been victimized in homicides and attempted homicides, rapes, beatings, and various assaults. We use the homicide rate to represent the likelihood of such conditions. We do not think that the overall state crime rate is a useful predictor of paramedics per capita because many of the crimes included in the crime rate are either victimless crimes or non-violent crimes, which do not require EMS at the scene.

Finally, states with more affluent populations, having a greater ability to pay for EMS systems, are more likely to support greater numbers of paramedics per capita than poorer populations. We use median family income, published by the U.S. Census Bureau for 1990, as an indicator of affluence, and hypothesize that as median family income increases, the number of paramedics per capita increases as well. For example, we expect Maryland, with a 1990 median family income of \$23,112, to maintain more paramedics per capita than Mississippi, with a 1990 median family income of \$14,591.

We now consider four political variables that we believe cause change in paramedics per capita, in addition to the socioeconomic variables we discussed above. Wealthy populations with high rates of death due to heart disease, motor vehicle trauma, and homicide cannot spontaneously develop ALS systems. ALS must acquire institutional support to sprout and flourish. ALS was pioneered by state and local government in many regions of the US through the use of federal EMSS and DOT dollars during the 1970s. But as federal support for EMS systems decreased during the 1980s, the burden for seeding new systems and creating regional emergency medical networks fell almost entirely to the subnational governments.

For example, in 1980, most of the twenty-four regional planning councils in Texas were funded through EMSS. A typical EMS grant enabled the councils to maintain an EMS administrative staff; to fund the training of ALS personnel for EMS systems in their areas; to help purchase ambulances, defibrillators, and other necessary equipment for local ALS providers; and to fund other activities mandated by the EMSS Act. By 1988, the stream of federal EMS support to regional councils in Texas, and elsewhere in the country, had been reduced to almost nothing. The burden of planning and financing both new and established EMS systems with ALS capabilities rebounded upon the Texas Department of Health and upon local governments.

To capture the effect of subnational governments' efforts to increase the number of paramedics per capita, we include four political variables. We hypothesize that three of the four are positively related to the number of paramedics per capita. The

fourth political variable we hypothesize to be negatively related to the number of paramedics per capita. The political variables we consider are the percentage of government-provided EMS services within a state; the percentage of each state budget allocated to health and hospital services; the political culture of the state; and miles of urban roads and highways within the state.

First, we hypothesize that as the percentage of government provided EMS increases, the number of paramedics per capita also increases. Data on EMS service provision come from the survey of state EMS offices published in *Emergency Medical Services* (1993). There are three types of ALS service provision: local government service, private service, and volunteer service. Local government services are those that use full-time paid EMS providers within municipal, county, and regional EMS services. Government EMS may be provided in combination with other tax-supported emergency services such as fire departments, as it is in Dallas, Texas. It may also be provided by local governments through stand-alone EMS services, or by special EMS districts as it is in Austin, Texas.

Most large cities provide tax-supported ALS service, instead of private or volunteer ALS service. Examples are Dallas, Los Angeles, and Houston. Private ALS services are typically found in smaller cities, such as Waco, Texas and Knoxville, Tennessee. Kinne (1986) maintains that the smaller services are more efficient. But large municipal services are obliged to maintain ALS at least a level of minimum service, and generate a need for more paramedics. And local volunteer services rarely support ALS, although a few moonlighting, off-duty paramedics with full time jobs elsewhere occasionally serve as volunteers.

The number of local government EMS services in each state underrepresents the influence of local governments on paramedics per capita. Many local governments subsidize private services, and some provide help to volunteers. For example, the city of Waco, Texas, has subsidized a local private provider of ALS since about 1982. That service is listed among the private providers, even though the service's existence depends in part on a public subsidy. Many volunteer services depend on local governments to house their equipment, make provision in public buildings for meetings, and support volunteer efforts in other ways. Information to gauge the effect of government's subsidies for private services, and of other government help to volunteer services, is not available. Government subsidies to private ALS services, and other government support for volunteer ALS services, may account for variations in paramedics per capita, which cannot be measured using the data in this study.

The second political variable we consider captures state effort to provide ALS. We hypothesize that as the percentage of direct state expenditures for state health and hospital functions increases, the number of paramedics per capita increases as well. Data on state finance and expenditures for health functions is taken from the *State and Metropolitan Area Data Book, 1991* for fiscal year 1988. Although the data includes money dedicated to other state health responsibilities, it includes only state funds, not federal funds, and therefore isolates state fiscal commitment to EMS from other government support.

Some federal aid for EMS systems remains in much reduced form within the Preventative Health Services Block Grant. California received approximately \$1.5 million in Preventative Health Services Block Grant funds in 1992 (*Emergency Medical Services* 1993:190). But federal funds have been reduced from previous levels. Most of the responsibility for the maintenance of EMS, and especially ALS, training and

equipment standards now falls to state agencies, such as state health departments. States are left with DOT-mandated standards for ALS, but with fewer federal funds to maintain those standards. The implementation and enforcement of training standards is an onerous task now done almost entirely by the states. In the 1980s, for example, the Texas Department of Health staffed each of its twelve regional offices with one or two EMS personnel. These individuals were required to oversee, and often themselves perform, paramedical training for numerous services that served areas the size of small states and that included several metropolitan areas with hundreds of thousands in population. Thus, the more funds Texas and other states appropriate for such activities, the more rapidly the number of needed paramedics increases.

The third political variable we consider as an influence on paramedics per capita is state political culture, an explanation of state policy variation that began to find currency in the 1960s. States with moralistic political cultures value their professional bureaucracies, expect government intervention for the good of the community, and applaud new government programs done on behalf of the common good. Individualistic cultures are more reserved in their acceptance of bureaucracies, new government programs, and government intervention. Traditionalistic cultures, in the main, oppose the rise of bureaucracies, new government programs, and government intervention of most kinds. We expect that States with moralistic political cultures are more likely to encourage and support ALS systems. We would also expect them to continue to support ALS with state and local funds after federal support is withdrawn. Sharkansky (1969) developed an index for political culture ranging from moralistic states on the low to traditionalistic states on the high end with individualistic states in the middle in order to test hypotheses developed from Elazar's theory of state political cultures. Sharkansky finds several significant relationships between state political cultures on one hand; and political participation, size and prerequisites of state bureaucracies, and scope, magnitude, costs, and innovation within state government programs on the other. Sharkansky concludes that political culture is a significant independent variable that may effect the disposition of states toward bureaucracies, government intervention, and the implementation of new government programs. In the light of Sharkansky's findings, we hypothesize that there is a negative relationship between the number of paramedics per capita and political culture. States with moralistic political cultures will be more likely to have higher numbers of paramedics per capita (such states rank toward the bottom of Sharkansky's scale of political culture).

Finally, we include as a fourth political variable in our analysis the number of miles of roads and highways within urban areas as an independent variable that captures local institutional forces influencing the provision of ALS. We hypothesize that as the number of miles of roads within urban areas increases, the number of paramedics per capita increases as well. According the US Census Bureau, an urban area includes all incorporated and census designated places of more than 10,000 population. We again obtain our data from the *State and Metropolitan Data Book, 1991*.

The use of miles of urban roads and highways as a measure of the capacity of subnational governments to shoulder the expense of its efforts to improve the quality of life for its citizens is suggested by Sharkansky (1969) in his examination of the relationship between state political culture and the implementation of new state government programs. With this in mind, we think that those states with larger networks of urban roads and highways are more able to provide EMS to their citizens than states with relatively small urban road networks.

State and local governments whose road systems remain small may not have the fiscal strength to support non-traditional and expensive programs such as advanced

levels of EMS. On the other hand, states and local governments whose fiscal capacities are relatively strong contain within their jurisdictions large and growing numbers of roads. They serve populations who are large enough, and whose hospitals are remote enough from their populations to generate the need for ALS.

In short, we think that more paramedics per capita are supported in states with several geographically large and relatively fiscally capable metropolitan governments, such as Dallas/Fort Worth, Houston, Austin, and San Antonio, than in thinly populated state such as New Mexico, or in states with highly concentrated populations and troubled urban governments, such several states on the east coast.

We now turn to a discussion of the independent variables influencing the number of EMTs per capita. In order to compare socioeconomic and political influences on both paramedics per capita and EMTs per capita, we employ seven of the eight variables used in our previous discussion of ALS to explain state variation in EMTs per capita. Directed by theoretical considerations, however, we substitute the percentage of volunteer services in each state for government-provided EMS services.

First, we will consider the influences on EMTs per capita of five socioeconomic variables. We hypothesize that death rates by motor vehicle trauma and by heart disease, and median family income are positively related to the number of EMTs per capita. These three factors should be related to higher levels of BLS provision for the same reasons as ALS, already discussed. Relatively wealthy populations with high rates of motor vehicle deaths and deaths by heart disease require and demand quick emergency medical intervention, at least at the basic life support level. If government supported ALS services are not at hand in some communities, volunteer BLS services usually stop the gap.

On the other hand, we hypothesize that the homicide rate is not significantly related to EMTs per capita. Homicides are more likely to occur in cities that support ALS systems, than in the smaller jurisdictions that are likely to support BLS systems. And since most BLS services are located in small towns or rural areas, there is no reason to believe that the number of urban miles of roads should alter the number of EMTs per capita.

The fifth socioeconomic variable we include in the analysis of EMTs per capita is the percentage of volunteer EMS services among all services in each state. Data on percentages of volunteer services is taken from the survey in *Emergency Medical Services* (1993) that provides us information on percentages of local government EMS services in each state. We hypothesize that the percentage of volunteer EMS services in states positively influences the number of EMTs per capita. As Morley (1989), Brudney (1990), and Norris et al. (1993) point out, volunteers play a major role in providing basic life support in those areas which do not support ALS services. Few for-profit BLS providers exist because, as Brudney (1990) suggests, there is an increasing demand for ALS services. Older profit-seeking EMS providers quickly moved from BLS to ALS to meet this demand, and newer for-profit services begin as ALS providers. EMTs may be hired by private or government ALS providers. But they often serve there in less important capacities, such as ambulance drivers, until they attain paramedic certification. Note that we consider the percentage of volunteer services to be a socioeconomic variable; its counterpart in the analysis of paramedics per capita, the percentage of local government EMS services in states, is a political variable. Theory suggests that the number of local government EMS services has little influence on the number of EMTs per capita. This substitution is the only difference among the independent variables we

use to analyze paramedics per capita, and the independent variables we use to analyze EMTs per capita.

Finally, we consider the three political variables that remain from our analysis of paramedics per capita, and discuss their possible influences on the number of EMTs per capita. First, we hypothesize that the percentage of state funds dedicated to health and hospitals is not related to EMTs per capita. EMTs require many fewer hours of training than their paramedic counterparts. In Texas, for example the most basic level of emergency medical technician, the emergency care attendant, requires but a few hours of practical training, and the passage of a few simple tests, for individual certification. On the other hand, a Texas paramedic must undergo an extensive theoretical and practical education, and must pass a battery of rigorous written and practical tests for certification. BLS equipment requirements are also much less onerous. Therefore, states with more EMTs are more likely to dedicate less money to the provision of BLS systems because less sophisticated systems require less support, maintenance, and supervision.

Second, since we hypothesize that number of EMTs per capita is likely to be positively associated with the number of volunteer EMS organizations in a state, we must address the issue of volunteerism within the context of political culture. Our first thought is that large numbers of EMTs as volunteers would most likely occur in individualistic or traditionalist cultures that are more or less averse to new programs. However, upon closer inspection, volunteerism appears to be more nearly associated with the moralistic impulse to use one's talents and one's abilities selflessly on behalf of one's community. Volunteerism, seen in this light, complements that side of the moralistic political culture which welcomes and supports collective and communal activity, whether it is driven by government or by volunteer action. We therefore hypothesize that the number of EMTs per capita is negatively related to Sharkansky's measure of political culture. Again, the lower scores on Sharkansky's scale indicate political cultures that are more likely to exhibit moralistic traits.

Third, we hypothesize that the number of miles of urban roads and highways in a state is not related to EMTs per capita. If the provision of BLS depends in large part on volunteer efforts, as we hypothesize, then the capacity of subnational governments to create, build, and maintain EMS systems is probably not an influence on the rise in the numbers of EMTs per capita.

In summary, we hypothesize that the numbers of EMTs per capita is increased significantly by the percentage of volunteer EMS organizations in a state; by higher median family incomes; and by the rates of death by heart disease and by motor vehicle trauma. We also hypothesize that numbers of EMTs increase significantly in moralistic political cultures. We do not believe that there is a relationship between the number of EMTs per capita in a state and three variables that we believe influence the number of paramedics per capita: miles of urban roads, the death rate per 100,000 by homicide, and the percentage of state budgets allotted to health and hospital functions.

## **Findings**

Ordinary least squares regression analysis was used to determine the relationships posited above. The results of the analysis of variables affecting paramedics per capita is presented in Table 1. The results of the variables affecting EMTs per capita is shown in Table 2. As it turns out, the model presented in Table 1 is statistically significant and explains sixty percent of the variation in the number of paramedics per capita in each state. However, one of the variables was found to have an insignificant

influence on the dependent variable, and another variable's relationship was not in the hypothesized direction.

Three of the four political/administrative variables offer statistically significant explanations to the variation of per capita paramedics per state. The percentage of EMS services run by local governments is both positive and significant. The percentage of states' general revenue contributed to the support their health and hospital policies is also significant, and has a stronger influence on the number of paramedics per capita. The number of miles of roads within urban also has a significant and positive influence on the number of paramedics per capita, although its influence is small. However, although political culture does appear to associate negatively with the dependent variable as hypothesized, the association is not statistically significant.

Two surprises crop up in the results among the remaining variables in the model. First, the heart disease death rate per 100,000 population has an insignificant, though positive, impact on the dependent variable. Second, the homicide rate per 100,000 population is significant, but it is inversely related to the number of paramedics per capita, which is not in the hypothesized direction. The third socioeconomic variable, rates of death per 100,000 due to motor vehicle trauma, performs as expected. It is significant and positively related to the number of paramedics per capita. Median family income is also significant and positively related to the dependent variable, although its influence, like that of miles of roads, is small.

The model presented in Table 2 reveals the effects of the independent variables on the number of EMTs per capita. This model is also statistically significant, although it explains only about forty-one percent of the variation in the dependent variable. The results indicate that only one of the independent variables performs as expected.

The percentage of volunteer EMS services in a state is the sole positive, significant factor in our model of influences on EMTs per capita. None of the other socioeconomic factors we thought would positively influence the number of EMTs per capita are statistically significant. The death rates by motor vehicle trauma and by heart disease, and median family income were insignificant. However, we did hypothesize that death rates by homicide would not be related to EMTs per capita. This hypothesis turned out to be correct.

Although the dependent variable is related to moralistic state political culture in the direction we hypothesized, the effect of political culture on EMTs per capita is insignificant. On the other hand, we correctly hypothesized that the percentage of state budgets spent on health and hospital functions, and the miles of urban roads in a state, do not influence EMTs per capita.

## **Conclusions**

Our findings support the assertion that both socioeconomic and governmental factors affect the number of paramedics per capita in each state, although the heart disease death rate had an insignificant impact on the number of paramedics per capita and the homicide rate was inversely related to the dependent variable, which was not the hypothesized outcome. We were also surprised that the provision of ALS was not stronger in moralistic cultures. Nevertheless, the remaining hypothesized relationships hold fairly well, and these relationships are useful for explaining why the states differ in the extent to which their statewide EMS includes ALS service. Thus, states with higher

percentages of local-government-provided EMS, larger portions of the state budget allocated for health and hospital functions, higher rates of death due to motor vehicle trauma, more miles of road in urban areas, lower homicide rates, and higher median family incomes tend to have more paramedics per capita.

The incidence of death by heart disease, the leading cause of death in the US during the time studied, is the only socioeconomic variable in our analysis not related to the number of paramedics per capita in the states. This finding calls for further investigation. It may be that heart disease is such a trenchant destroyer of life, that the ability of any medical delivery system to modify the effects of heart disease is trivial. It may be that ALS systems, as they are constituted today, are not effective in dealing with the catastrophic onset of the effects of heart disease. It may also be that those populations with individuals more likely to be cut down by diseases of the heart may simply be out of reach of quick, effective paramedical intervention. Our analysis seems to point to the conclusion that these people live in states with extensive rural or inner city populations.

The significant relationship between ALS and the death rate by motor vehicle trauma may be one result of pre-1981 efforts by the federal government to seed and help maintain effective local and regional systems in the states. However, the major governmental actors for the period studied were states. This relationship is underlined by the strong positive relationship between the number of paramedics per capita and the health and hospital funding variable. Health and hospital funding is considered to represent state effort, while the local government EMS variable and the urban miles variable represent effort at the local level.

Consequently, the number of paramedics per capita in each state, which is connected to each state's ability to provide advanced life support, is not merely a function of socioeconomic factors. It is also a function of administrative and political forces. Government institutions and policies do play a part in EMS provision. The dependent variable "EMTs per capita" was not significantly affected by differences in state political cultures; by the percentage of state budgets allotted for health and hospitals; or by the miles of urban roads and highways. And only one of the socioeconomic variables we hypothesize to positively affect the number of EMTs per capita actually does so. Death rates by homicide, and by motor vehicle trauma, and median family income, all of which significantly influence paramedics per capita either positively or negatively, have no significant influence on EMTs per capita. Death rates by heart disease do not change EMTs per capita, just as they have no affect on paramedics per capita. The only factor with significant and positive influence on the provision of BLS, measured in this analysis by EMTs per capita, is the percentage of volunteer EMS services by state.

Combined with the results of our inquiry into the factors influencing the provision of paramedics per capita, the analysis of EMTs per capita leads us to two conclusions. First, where state and local governments are unwilling or unable to make provisions for EMS systems, there is nevertheless a perceived need for emergency medical care. This need is met by volunteer systems. Second, when state and local governments do step in to meet the perceived need for EMS, they are obliged to provide ALS systems, the preferred but more expensive alternative to basic life support.

We believe this study will add some understanding to why EMS systems vary from state to state. We hope also that state and local administrators find the results of this study useful for making decisions concerning the EMS needs of their state and local governments.

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**Table 1. OLS Estimates for Per Capita Paramedics**

| Parameter Variable            | Standardized Estimate | Standard Estimate | Error  |
|-------------------------------|-----------------------|-------------------|--------|
| Intercept                     | -60.739               |                   | 33.412 |
| Local government EMS          | .226**                | .336              | .081   |
| Health and hospital funding   | 2.336*                | .274              | 1.023  |
| Heart disease death rate      | .049                  | .229              | .030   |
| Homicide rate                 | -2.008*               | -.284             | .971   |
| Motor vehicle trauma          | 1.887***              | .753              | .489   |
| Miles of roads in urban areas | .0005***              | .509              | .0001  |
| Median family income          | .002*                 | .398              | .0009  |
| Political culture             | -.623                 | -.119             | .805   |

Number of cases = 42  
F = 6.187 (significant at .0001)  
R<sup>2</sup> = .60

\*  $p$  .05, two-tailed test.  
\*\*  $p$  .01, two-tailed test.  
\*\*\*  $p$  .001, two-tailed test.

**Table 2. OLS Estimates for Per Capita EMTs**

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| Parameter Variable            | Standardized Estimate | Standard Estimate | Error   |
|-------------------------------|-----------------------|-------------------|---------|
| Intercept                     | 252.036               |                   | 361.963 |
| Volunteer EMS                 | 1.785*                | .386              | .756    |
| Health and hospital funding   | -14.335               | -.179             | 11.469  |
| Heart disease death rate      | .083                  | .042              | .338    |
| Homicide rate                 | -8.627                | -.130             | 11.379  |
| Motor vehicle trauma          | 4.231                 | .179              | 5.390   |
| Miles of roads in urban areas | -.002                 | -.214             | .001    |
| Median family income          | .007                  | .155              | .010    |
| Political culture             | -13.454               | -.277             | 9.278   |

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Number of cases = 42  
F = 3.003 (significant at .01)  
R<sup>2</sup> = .41

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\**p* .05, two-tailed test.  
\*\**p* .01, two-tailed test.  
\*\*\**p* .001, two-tailed test.

## **The “Moral Hazard Problem” in Humanitarian Intervention**

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For the past decade, scholars and policy makers have grappled with the issues surrounding the use of military intervention for humanitarian purposes. By the end of the 1990s, this had resulted in sustained calls from scholars, from officials such as UN Secretary-General Kofi Annan, and from non-governmental organizations such as the International Commission on Intervention and State Sovereignty to redefine the norm of sovereignty and to provide enhanced legitimacy to intervention. However, the emergence of a new norm regarding humanitarian intervention may be subject to manipulation by groups that wish to provoke third-party intervention in their civil conflict as a way to achieve their political goals. This may cause groups to deliberately escalate conflicts that they know they cannot win, in the expectation that their resulting plight will induce the international community to rescue them. This paper adapts the concept of “moral hazard” from the political economy literature to construct a theoretical explanation of how the new norm of intervention may encourage such behavior and to examine the choices facing potential interveners. The paper then uses this framework to analyze two recent cases (Kosovo and Macedonia) where the international community faced difficult choices concerning intervention. The paper concludes by suggesting theoretical insights and policy implications that flow from the “moral hazard problem” in cases of humanitarian intervention.

### **I. The Development of The Responsibility to Protect**

Since the end of the Cold War, scholars and policy makers have devoted considerable attention to the issue of humanitarian intervention, defined as “military intervention with the goal of protecting the lives and welfare of foreign citizens” (Finnemore 1996, 154 fn. 2). Early interventions in Somalia (1992-95) and Bosnia (1992-1995) were widely decried as misguided and feckless; some commentators criticized the international community for doing too much in those cases, while others lambasted the United Nations and its members for standing aside in the face of catastrophe. This latter criticism emerged especially strongly when the world did nothing to stop the unfolding genocide in Rwanda in 1994.

In the aftermath of these experiences, an increasing number of voices called for rethinking the fundamental rules of the international system, which privileged state sovereignty over the security and well-being of people within the state. Scholars argued that new norms should be developed that would permit or even demand humanitarian intervention (see for example: Farer 1993; Smith 1994; Hoffmann 1995-96; Finnemore 1996 and 1998; Chopra and Weiss 1998; Cronin 1998; Wheeler 2001). The debate about redefining sovereignty and the right of intervention was advanced significantly through the efforts of the two most recent Secretaries-General of the United Nations (Auger 2003). Boutros Boutros-Ghali began the discussion of how the rights of sovereignty should be redefined (1992-93; 1996), but it has been Kofi Annan who has explicitly and insistently argued that sovereignty of states must be secondary to the sovereignty of individual persons. Annan also argued that the international community needed to develop a more coherent, legitimate and consistent approach to violent conflict within

states (see the series of speeches given in the late 1990s, collected in Annan 1999; also see Annan 2000, 48).

Inspired by Annan, and with his support, in September 2000 the government of Canada formed “The International Commission on Intervention and State Sovereignty” (ICISS) for the purpose of finding “some new common ground” concerning when the international community should intervene in a state (International Commission 2001, vii). The commission’s report, issued a year later, argued that there exists a “responsibility to protect” the people within a state. This responsibility resides primarily with the government of the state. Assuming that the government is discharging this responsibility, the traditional respect for state sovereignty and for the international norm of non-intervention in the internal affairs of a state would take precedence over any international involvement. However, the commission continued,

Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect (2001, xi).

The commission suggested criteria to determine when intervention is necessary and permitted. These include a just cause, defined as “situations where large scale loss of civilian life or ethnic cleansing is *threatened* or taking place” (International Commission 2001, 34; emphasis added); precautionary principles, such as the use of military force should be a last resort and proportionate to the limited goal of saving lives; and the exercise of right authority, normally meaning a mandate from the United Nations Security Council (International Commission 2001, 35-37 and 47-55).

While the Commission’s report received some attention when it was issued at the end of September 2001, the debate on humanitarian intervention was overshadowed at that time by the attacks of September 11 and the need to respond to the threat posed by al Qaeda and related terrorist organizations. However, the issue did not disappear from public debate or the international agenda. The co-chairs of the Commission authored an article in *Foreign Affairs* a year after the original report’s release in which they again drew attention to the problem and to the Commission’s recommendations (Evans and Sahnoun 2002). In the waning months of 2004, the issue returned to the United Nations’ agenda once more, in the form of the report of the High-Level Panel on Threats, Challenges and Change, a body formed by Annan to study how the U.N. might be reformed to manage emerging threats to international security. The report explicitly referred to the “emerging norm that there is a collective international responsibility to protect” those whom states could not or would not (United Nations 2004, 66; also see 17-18 and 65-67). The secretary-general revisited the issue as part of his report to the Security Council, *In Larger Freedom* (Annan 2005, 68-69), and U.N. member state support for the norm was formalized in the 2005 *World Summit Outcome* document (United Nations General Assembly Resolution 60/1, 2005, especially paragraphs 138-140).

It is important to remember that the purpose of this activity has not been to justify a particular intervention, but to *reshape the systemic context* in which specific crises would be considered. After the experiences of Somalia, Bosnia, Rwanda and Kosovo, Kofi Annan and others argued that an international consensus and new

institutional mechanisms were necessary to provide a more effective and consistent response to humanitarian crises and perhaps even to deter leaders of states that might be tempted to provoke such crises (Annan 1999, 37-44; Tharoor and Daws 2001). As such, this new consensus would provide a standing set of incentives and imperatives designed to alter the behavior of states within the international system.

It is difficult to fault the motives of those who are seeking to develop a more coherent and effective international approach to human tragedies such as Bosnia, Somalia and Rwanda. But before adopting a new norm of this type, it is important to consider potential negative consequences that may result from creating such an international standard regarding intervention. Indeed, the proposal for a new approach to the question of sovereignty and intervention has been subject to criticism on several grounds. Some analysts point to studies that demonstrate the great difficulties that the United Nations has had in organizing and implementing such interventions in the past (see, for example, U.S. GAO 1997). Others worry that a doctrine of humanitarian intervention will leave military forces from many states bogged down in internal conflicts around the world, at significant cost to those who deploy the intervention forces. David Rieff suggests that implementing such a norm will lead to endless warfare and actually undermine humanitarianism (Rieff 2002, 2001). Edward Luttwak argues that disinterested humanitarian intervention will prevent internal conflicts from running “their natural course,” thereby preventing the establishment of a true, stable peace (Luttwak 1999).

These critiques each offer some telling points against the implications of establishing a new norm based on a responsibility to protect. However, there has been little consideration in the literature of a different difficulty that the establishment of a new norm might create: the problem of **moral hazard**, the idea that the incentives instituted by the new norm may inadvertently exacerbate some of the very crises it is designed to address. The existence of the norm concerning the international community’s “responsibility to protect” may tempt parties involved in internal conflicts to manipulate it to their advantage (for one of the few discussions of this problem, see Kuperman 2004). This could lead to more intense violence in individual cases of conflict, as well as to a proliferation of that type of conflict.

The next section of the paper will define the concept of moral hazard and present the theoretical basis for applying the concept to humanitarian intervention, including a discussion of evidentiary benchmarks that can help us to identify the presence and effects of moral hazard. These arguments are then tested using the cases of Kosovo (1998-1999) and Macedonia (2001). The paper will conclude with observations about the extent of the moral hazard problem and suggestions for limiting the scope of moral hazard associated with humanitarian interventions.

## **II. The Concept of Moral Hazard**

“Moral hazard” refers to a situation that unintentionally encourages unwanted behavior because those undertaking that behavior are largely protected from the consequences of their actions. In a more formal definition, moral hazard “is a disposition on the part of individuals or organizations to engage in riskier behavior, than they otherwise would, because of a tacit assumption that someone else will bear part or all of the costs and consequences if the incurred risk turns out badly” (Wolf 1999, 60; also see Prescott 1999). A commonly used example is automobile insurance; the fact that a large

percentage of the costs of careless driving or of having to replace a stolen vehicle will be covered by insurance may make drivers less careful about driving or locking their cars.

The concept of moral hazard has long been used in the study and practice of insurance and in the regulation of banking institutions. More recently, it has been used by economists and political scientists to analyze and critique the role of the International Monetary Fund in managing global financial crises. The knowledge that the IMF has provided (and is likely to continue to provide) emergency funds to “bail out” states that have experienced currency crises provoked by unsustainable levels of foreign debt may encourage international lenders to continue offer very risky loans (with high interest rates) and for leaders of states to accept those loans. If no crisis ensues, the lenders and the state leaders benefit; if a crisis does occur, IMF emergency assistance will shift the costs to others - often the citizens of the afflicted state (Rogoff 2003; Wolf 1999; Meltzer 1998; Calomiris 1998). This set of payoffs only “encourages behavior that will lead to a repeat of the same problem in the future” (Calomiris 1998, 281).

There are ways in which the temptations of moral hazard can be mitigated, if not completely eliminated. Most focus on increasing the likelihood that those who engage in risky or unwanted behaviors will bear most of the costs of those decisions. This may involve creating more restrictive conditions for the activation of the insurance or guarantee; by directly imposing costs on those who demonstrably are engaging in risky behaviors (e.g., higher premiums for poor drivers); or through more pervasive and consistent monitoring of the behavior and motives of those who may have an incentive to engage in the undesirable behavior. Even with these precautions, though, the issue of moral hazard will remain:

Disentangling the effects of factors under the agent's control and factors not under his control is the essence of the moral hazard problem because it leads to a trade-off between insurance and incentives. The contract should insure the [agent] against events beyond his control, but it should also provide him with an incentive to do what he is supposed to. Often, these are conflicting goals (Prescott 1999, 90).

How might the concept of moral hazard apply to the problem of intervention in the context of an international consensus based on a “responsibility to protect?” A close reading of the arguments in favor of the “responsibility to protect” indicates an underlying assumption that it is governments that most frequently instigate the use of massive violence, and that it is this official violence that must be deterred or defeated. To a great extent, therefore, “responsibility to protect” is insurance to the populations of states against large-scale violence that might be directed against them by their own government. There are also an implicit assumption that most groups within a society under stress are either unwilling or too weak to resort to violence to threaten the government and overturn the political status quo.

What might happen if this last assumption is incorrect, however? If dissatisfied groups within the state know that the international community might intervene if violence within the state intensifies, might such groups instigate or escalate violence? The incentive to escalate violence might be particularly tempting for groups

that are weak and would have little chance of achieving their goals without international intervention.

Even if provoking international intervention was not the original intent of a dissatisfied group, the possibility of invoking the “responsibility to protect” *if the situation deteriorated sufficiently* might encourage the leaders of the group to pursue a strategy that would intensify the bloodshed. This is because the “insurance” (in the form of military intervention) is only available as a last resort, when other means of conflict management have failed and when extreme violence looms. Here, the incentives might become particularly perverse: the leaders of groups that cannot win an armed struggle against the government might deliberately provoke government violence against those in whose name they fight, in order to make the conflict horrific enough to satisfy the just-cause criterion of “large scale loss of civilian life or ethnic cleansing.” In this scenario, the costs of escalation would be borne by the civilian population, the government and/or the international community, rather than by the group leaders who opt for escalation. This would create a painful dilemma for international observers. Intervention that resulted in benefits for the instigators would reward their behavior, as well as communicate to groups in other states that they might also profit from similar actions. Alternatively, the international community could refuse to intervene and allow the instigators to lose, thus shifting some costs to the group’s leaders and perhaps dissuading other groups from pursuing a strategy of provocation. However, this would mean standing aside while heavy punishment was inflicted on an innocent civilian population, exactly the type of situation which provoked the development of the concept of an international responsibility to protect.

The ICISS report did take some notice of this set of issues, acknowledging that “when internal forces seeking to oppose a state believe that they can generate outside support by mounting campaigns of violence, the internal order of all states is potentially compromised” (International Commission 2001, 31). Yet this is followed by an argument that there is a consensus in the international community that violent acts that “shock the conscience of mankind...require(s) coercive military intervention.” The Commission also suggested that international intervention should not be used to advance secessionist agendas of minority groups, and that such issues should be solved through negotiation. However, their report declares that when negotiations “founder on the intransigence of *one or both parties*, and full-scale violence is *in prospect* or in occurrence” external intervention could be justified (International Commission, 36-37, emphasis added). This unwillingness to distinguish between parties who attempt to achieve a negotiated solution in good faith, and those that intend to prevent such talks from succeeding, may reinforce the moral hazard problem by refusing to apportion blame and costs for a failed negotiation. Given the fact that the primary reason for creating the Commission was the perception (supported by the historical record) that the greater problem was the difficulty of motivating the members of the international community to intervene, the possibility that intervention might be too easily provoked may have been seen as a minor issue.

The theoretical basis for believing that moral hazard could be a problem when establishing a new norm for humanitarian intervention is clear. However, theoretical plausibility must be checked against empirical evidence to learn if the incentives predicted by the theory of moral hazard have shaped the actual behavior of parties to a conflict. How do we know that moral hazard is present? For example, the mere fact of

escalating violence may not suffice as evidence that moral hazard exists in a given case of conflict; other forces and calculations might also lead to increased violence. Escalation may be inadvertent, an unintended result of the conflict dynamics between the parties. Escalation may also be deliberate, but based on the belief by one or more parties that the international community will *not* intervene, however severe the violence becomes. Therefore, we need to specify more clearly what types of evidence would indicate the presence of moral hazard calculations, and we need to examine in detail actual cases to see if such evidence is present.

The first type of evidence involves the **expectations and beliefs** of those who initiate or escalate violence. What were their goals? Did the leaders of the group believe that they could achieve those goals through their own political or military efforts? All else being equal, we would expect that more expansive goals (such as secession from a state) would be more difficult for a group to achieve through their own efforts than limited goals (regional autonomy within a state), and therefore the incentive to enlist international assistance would be greater. Similarly, the weaker the group, the greater would be the need for external assistance to achieve the group's goal. Therefore, we would expect the greatest incentives to seek international intervention will exist in cases where weak groups have expansive goals.

What were the expectations of group leaders concerning international intervention? On what were those expectations based? If leaders of a group believe that the international community is likely to intervene in a way that facilitates the achievement of their goals if violence begins or escalates, those leaders may have a strong incentive to induce such intervention. Did members of the international community indicate through specific statements or actions that they were likely to intervene if violence began or escalated? Did the leaders of a group contemplating violence draw "lessons" from previous cases of internal violence that led them to believe that humanitarian intervention would be likely in their case? The more explicitly the international community indicates the conditions under which it would intervene, the greater the incentive for groups to manipulate violence to trigger intervention. "Lessons" drawn from past interventions may prove powerful as motivations for leaders who were personally involved in those previous cases, but the inherent ambiguity of such lessons may not be as compelling to leaders who had no such personal experience.

The second type of evidence concerns **actions**, especially the way in which armed force was used. Was force used in a "functional" manner, designed to achieve the group's goals by defeating its rivals directly or through coercion? Or was the use of force primarily "symbolic/provocative" in nature, designed to create horrific images that might arouse the attention and sympathy of the international community while imposing militarily insignificant losses on their opponents? We would expect that weak groups trying to achieve their goals by manipulating international intervention would emphasize the latter, while more powerful groups that perceived an opportunity to achieve their goals through their own efforts would tend to use the former.

Kosovo and Macedonia provide heuristic cases for probing the explanatory power of this argument about the applicability of moral hazard analysis to the issue of humanitarian intervention. Both cases involve efforts by a dissatisfied minority (ethnic Albanians) to promote ethnic autonomy or independence by engaging in violence against government forces. Both cases resulted in international intervention. The discussion will first summarize the broad outlines and outcome of each case, and then focus on the key questions raised by the moral hazard argument: What were the goals of those who escalated the violence? Did an expectation of international intervention play a significant role in the initiation and escalation of violence? Did the violence used have

primarily a “functional” or a “symbolic/provocative” character? If international intervention did occur, did it reward those who had initiated the violence?

### **III. Kosovo: Moral Hazard Epitomized**

A. Case Summary: The ethnic Albanian population (Kosovars) of the Serbian province of Kosovo had long been restive under Serb rule, and most Kosovars preferred independence or autonomy to remaining part of Serbia. The Kosovo Liberation Army (KLA) was formed in the early 1990s by a small group of Albanians who wished to press for Kosovar independence in the context of the impending disintegration of the federal state of Yugoslavia. Initially, this group was marginalized by more moderate Albanian leaders such as Ibrahim Rugova, who advocated negotiations to restore the Kosovar autonomy that Serbian president Slobodan Milosevic had revoked in 1989. As the war in nearby Bosnia developed, escalated and then seemed to be resolved by the 1995 Dayton Peace Accords, however, the KLA gradually grew more vocal in its own demands.

The looting of armories that occurred when the government of Albania collapsed in early 1997 provided a new source of weapons for the KLA, and by spring of 1998 the organization began to organize frequent attacks against the repressive Serb police and paramilitary forces (see Crawford 2001-02, 505-506). The Serbian security forces retaliated with attacks against civilian populations, both as revenge for their own losses but also in an effort to get the KLA to stand and fight to protect Albanian villages (see the interview with KLA leader Hashim Thaci, “War in Europe” 2000). A notable example of this was the massacre at Prekaz in early March, where Serbs killed dozens of Albanians in reprisal for the killing of four police officers a week earlier. Fighting continued through the summer and into the fall, with the KLA increasingly hard-pressed by the Serb government forces. Taking note of the increasing violence, the U.N. Security Council passed Resolution 1199 in September in an effort to put pressure on the Serb government. With threats of NATO military intervention in his back pocket, U.S. diplomat Richard Holbrooke negotiated an agreement with Milosevic in October to scale back Serb military activity and to allow the deployment of international observers from the Organization for Security and Cooperation in Europe (OSCE)(Kegley and Raymond 2002, 226-227; Crawford 2001-02, 506-512). The KLA was not a party to the agreement, but they also sharply reduced their attacks while using the cease-fire to rearm and to recover from their setbacks during the summer (Crawford 2001-02, 513).

The tacit cease fire did not last; in January 1999, KLA attacks and Serb retaliation (especially in the town of Racak, where Serb forces killed 45 Albanian civilians) refocused international attention. A “Contact Group” (composed of the United States, Russia, the United Kingdom, France, Germany and Italy) demanded that the Serbs and Kosovars attend a peace conference in Rambouillet, France in early February. The talks initially failed when both combatants refused to sign the agreement proffered by the Contact Group; the Kosovars finally signed several weeks later, under tremendous pressure from the United States. Milosevic refused to sign, since acceptance would have led to autonomy for Kosovo, enforced by as many as 28,000 NATO troops (CNN 1999).

On March 24, NATO began an air campaign against Serbia, which ended 78 days later with Milosevic agreeing to remove all Serb forces from Kosovo, granting political self-rule, and allowing the deployment of more than 40,000 foreign troops (mostly from NATO members, although Russia and other non-NATO states also sent

personnel) and the establishment of a UN-led protectorate (Kegley and Raymond 2002, 228-233).

**B. Expectations and Beliefs:** The KLA had always pursued the goal of “a liberated, independent Kosovo.” (Thaci interview, “War in Europe” 2000). However, this goal of formal independence was not shared by the majority of Kosovars in the first half of the 1990s; the mainstream Kosovar leadership under Rugova pursued the more limited goal of political and cultural autonomy for the Albanian population of the province.

The intervention by the United States and NATO that led to the Dayton Accords in November 1995 played a crucial role in reshaping Kosovars’ views of the options available to them. By late summer 1995, the tide of battle had begun to shift against the Bosnian Serbs (who had initiated the fighting in Bosnia in 1992), and the effect of the intervention was to halt the successful offensive underway by a Croat-Muslim coalition, to stem the loss of territory by the Serbs and to create a Serb “republic” that comprised 49% of Bosnia. Chris Hedges reports that the “Kosovar Albanians, with understandable rage, did not grasp why the Bosnian Serbs, responsible for some of the worst acts of genocide since World War II, were handed nearly half of Bosnia at Dayton” (1999, 30). The fact that the Dayton Accords were completely silent about Serb repression in Kosovo was “viewed as a betrayal,” according to one spokesperson for the Kosovars (Kitfield 1999, 1588). As one KLA rebel stated, “We mounted a peaceful, civilized protest to fight the totalitarian rule of Milosevic...The result is that we were ignored... [Dayton] taught us a painful truth, [that] those that want freedom must fight for it.” (quoted in Hedges 1999, 29; also see interview with Daalder, “War in Europe,” 2000).

By the summer of 1998, even the moderate Rugova was arguing to U.S. officials that “we have the right to be a new independent state,” and he stated that NATO should deploy a military mission to create an “international protectorate” in Kosovo (Waller 1998). Leaders of the KLA were even more explicit: one commander warned in July 1998 that NATO should “intervene before it was too late,” while three months later a Kosovar political leader urged NATO to attack because the “Serbian war machine and its military and political structure must be destroyed” (Zimonjic 1998b; CNN 1998).

Did the Kosovars have reason to believe that the international community would actually intervene on their behalf? While Western officials occasionally denounced the KLA as terrorists or bandits (e.g., Crawford 2001-02, 506), most statements and actions from the international community were directed against Milosevic’s regime and, at a minimum, implied support for the Kosovars. Three weeks after the Prekaz massacre in March 1998, UN Security Council Resolution 1160 imposed economic sanctions and an arms sales ban on the Belgrade government. In May 1998, Rugova was flown to Washington to meet with President Clinton and other administration officials. Several weeks later, NATO aircraft staged a show of force along the Serb border that was designed to intimidate Milosevic and reassure the Kosovars (Daalder interview, “War in Europe” 2000). Finally, the agreement that Richard Holbrooke negotiated with Milosevic in October 1998 imposed conditions and restraints on the Serb forces, but none on the KLA (who were not even parties to the accord). Serb violations of the agreement would be punished with NATO intervention (in the form of air strikes), but there was no provision for responding to KLA attacks against Serb forces. While U.S. officials expressed “unhappiness” with KLA provocations, they clearly saw Milosevic as the main problem: “we have not lost perspective of who is the root cause of this,” said one Clinton administration official (Perlez 1999). This created a classic moral

hazard problem; the consequences were predictable, according to former National Security Council staffer Ivo Daalder:

The NATO air threat became [the KLA's] ally...at some point, they're going to provoke the Serbs into...doing things that violate the agreement....So the KLA has every incentive to provoke the Serbs into the kind of reactions that we see happening by December of 1998 (Daalder interview, "War in Europe," 2000).

Under these circumstances, both the statements and the actions of the international community had created a situation where the Kosovars had a high degree of confidence that they could induce a "humanitarian intervention" in a way that would serve their political and military goals. Western officials recognized where this policy was leading them; "the first NATO bomb would lead to the independence of Kosovo," complained one alliance diplomat (Reuters 1999).

C. Actions: It is clear that by 1998, the Kosovar community (and the KLA in particular) saw separation from Serbia as their only option. However, the KLA made no sustained attempt to win this freedom on the battlefield, especially after their reverses in the summer of 1998 demonstrated that they could not defeat the massed firepower of the Serb military. Instead, the Albanian rebels followed a policy of deliberate provocation through small-scale hit-and-run attacks against police and paramilitary forces, relying on the now-predictable overreaction and brutality of Serb forces to bring the international community to intervene eventually on their behalf. Over time, a pattern had been established: a KLA ambush would kill a small number of Serb police or paramilitaries; the Serbs would respond a few days later with a brutal assault on whatever Kosovar village happened to be in the vicinity of the initial attack (rarely did the KLA attempt to stand and defend the village against the superior numbers and firepower of the Serb forces); the media and OSCE observers would survey the scene of the Serb retaliation, which often included grisly video of murdered civilians. The KLA was quite conscious of how this would be portrayed. One Kosovar soldier told a reporter, "The thing you need to know, the thing the world needs to know, is that the Serbs are not destroying the UCK [the Albanian initials for the KLA], they are only killing civilians and destroying villages" (Zimonjic 1998a). This only increased demands in the West that "something be done" to stop the slaughter. At the same time, the KLA leadership consistently refused to accept a negotiated solution. During the negotiations at Rambouillet, one KLA spokesman rejected a ceasefire and disarmament proposal, stating that "The KLA is going to exist. The KLA is going to liberate Kosovo. Other possibilities are out of the question" ("Kosovo rebel commander..." 1999).

It is clear that the majority of the Kosovar leadership viewed international intervention as both necessary and desirable, and their reading of what happened in Bosnia led them to conclude (correctly) that Serb brutality would eventually override Western concerns about another deployment in the Balkans. In the end, this intervention allowed the Kosovars to achieve their primary goal: they have been freed from political

rule from Belgrade. While they have not yet attained their ultimate goal of formal independence, they are arguably closer to that outcome as a result of the 1999 intervention. But the disappointment of some Kosovars that their hopes for independence were not immediately achieved quickly contributed to turmoil in Kosovo's neighbor to the south, Macedonia.

#### **IV. Macedonia: Moral Hazard Contained?**

A. Case Summary: In late February 2001, a group calling itself the National Liberation Army (NLA) began to launch attacks against police and military forces in the former Yugoslav republic of Macedonia. Within two weeks, sustained fighting between the NLA and Macedonian government forces was occurring around the city of Tetevo in the northwest portion of the country, near the border with Kosovo and Albania (Testorides 2001). Fighting continued throughout the spring and summer, characterized by NLA raids, ambushes and seizures of towns followed by Macedonian government offensives to retaliate for their losses and to reclaim the lost territory. More than 50,000 Macedonians fled the country to avoid the fighting. The rebels were able to withstand attacks by the government police and paramilitary forces, and by June had cut off the water to Tetevo and Kumanovo and had forces on the outskirts of Skopje, the Macedonian capital ( Terzieff 2001; Smith 2001d). These military operations were often accompanied by riots, as ethnic mobs of Slavs or Albanians burned homes and businesses of the other group in several areas of the country (Barry 2001; "Calculated Killing..." 2001).

Despite declarations that this was an internal affair of Macedonia, international actors were soon attempting to broker an agreement. The European Union and NATO took the lead, with EU envoy Javier Solana and NATO Secretary-General George Robertson visiting the Balkans frequently between May and August. After considerable pressure from the EU, NATO and the United States, the Macedonian government and Albanian political parties signed an agreement in the city of Ohrid on August 13 that promised sweeping political reforms to placate the Albanian minority in return for a recognition by all parties of Macedonia's integrity (Finn 2001b). 3500 NATO troops were then deployed for a thirty-day period to collect whatever weapons that the NLA chose to surrender voluntarily; subsequently, a succession of smaller NATO and EU forces were deployed to monitor compliance with the Ohrid accords and to deter further hostilities (Wood 2001; Gall 2001b; Farnam 2003).

B. Expectations and Beliefs: The NLA was an ethnic Albanian organization formed in 1999 in Kosovo, several months after the end of hostilities there. The hope of the leaders (who included many Macedonian Albanians who had fought alongside the Kosovars) was to replicate in Macedonia the success that they had achieved in Kosovo (Smith 2001b). The NLA leadership clearly believed that they could follow the same playbook to win international sympathy and support. As one Albanian said in March 2001, "in 1998 when we were in the KLA, the Americans called us a terrorist organization at first. But then they came around to supporting us. It'll be the same this time with the NLA" (Loyd 2001). Western diplomats reported that Albanian leaders confidently expressed the belief that NATO would again intervene to assist their insurgency as the alliance had in Kosovo (Erlanger 2001).

The NLA officially claimed that they were only interested in establishing equality of treatment for the Albanian minority (Albanians comprise approximately 30%

of the population of Macedonia; the majority of the population is ethnically Slavic) and not an independent state. In a statement released in early March 2001, the NLA demanded changes to the Macedonian constitution that would give more recognition to the Albanian minority; a new census to be conducted by international organizations to establish accurately the size of the Albanian population; and “neutral international mediation” to resolve a variety of political differences between the two ethnic populations (“Macedonian Tanks...” 2001). One NLA leader suggested that the goal was “an internationally monitored reform of the Macedonian government” (Walker 2001).

However, other statements by NLA leaders hinted at broader goals. One leader, Menduh Thaci, declared that “Albanians are beginning an armed battle for the liberation of their territories in Macedonia” (quoted in Erlanger 2001; also see Gall 2001a). Another NLA commander, Sadri Ameti, stated that the goal was to regain control of areas where Albanians had “historically...owned territory” and to establish their own security forces in those regions (quoted in Smith 2001a). Some Albanian radicals suggested that “a federation, along the lines of Belgium,” was the ultimate goal (Hope 2001). Even the political moderate Arben Xhaferi, the leader of the Albanian DPA party that was a coalition partner in the Macedonian government, warned that “if the fighting continues and discrimination continues, Albanians will be pushed to think in terms other than staying in the Macedonian state” (Dempsey, et.al. 2001).

Initially, the international community took a much firmer line against the rebels in Macedonia than they had in Kosovo. Macedonia had a democratic government and had been under the protection of the international community since 1992; Albanian-inspired violence in Kosovo after the war had also soured many in the West on Albanian claims of victimhood. The international community quickly rallied behind the democratic coalition government of Macedonia (which included Albanian political parties), referring to the NLA as extremists and terrorists; NATO Secretary-General Robertson called the rebels “murderous thugs out to destroy a democratic state” (also see Bush 2001, 512; Terzieff et.al. 2001; Smith 2001c). The U.N. Security Council expressed strong support for the Macedonian government and demanded that the NLA cease their military operations. U. S. military forces stationed in Kosovo shared intelligence data concerning the rebel forces with their Macedonian counterparts (Smith 2001c). Western officials explicitly stated that neither NATO, the European Union nor the United Nations was prepared to send troops to enforce a separate Albanian enclave in Macedonia.

Even as Western governments stood by Macedonia, though, fears of a full-blown civil war in another Balkan state began to weaken this stance. NATO’s logistics lifeline for the Kosovo operation ran through Macedonia, and a conflict there could force NATO to retrench throughout the Balkans. One NATO ambassador expressed the growing concern that war in Macedonia could reignite the conflict over Kosovo and Bosnia: “It is too awful to contemplate how Serbia would react if Macedonia started breaking up” (Dempsey 2001). At a crucial NATO foreign ministers meeting on May 29, the alliance decided to shift its policy and to step up pressure on Macedonia’s government to reach a political accommodation with the NLA, including an amnesty for those NLA fighters that Western leaders had been calling terrorists only recently. As talks dragged on, European envoys warned the Macedonian government in June that it would not receive financial assistance from the European Union if a peace agreement was not reached; EU External Affairs Minister Chris Patten bluntly declared, “Obviously we’re disappointed that there hasn’t been a political settlement and equally obviously there’s little we can do in terms

of financial support until there's a political settlement" (Beeston 2001; also see Barry 2001). The Albanian rebels were aware of these public pressures and believed that the continued risk of escalation would work to their advantage in securing political gains at the negotiations. This was dramatically demonstrated in late June when a group of NLA fighters seized a position within mortar range of the Macedonian capital; to prevent a further escalation of the conflict, American troops arrived to provide an escort for the NLA fighters and their weapons back to rebel-held territory in the north (Beeston 2001; Glennly 2001b). This was perceived by the majority Slavs as a clear turn in Western policy in favor of the Albanians and provoked protests and riots. However, the NLA were also warned by Robertson that if escalation occurred, NATO would not necessarily save the rebels again from the consequences (Drozdiak 2001). At the same time, NATO began to step up efforts to reduce the supply of money and arms reaching the rebels, decreasing their ability to continue offensive operations.

C. Actions: Both sides were more restrained in their use of violence than had been the case in Kosovo; during six months of combat, between 150 and 250 people were killed (95 of whom were Macedonian police and military personnel), with three times that many wounded (Phillips 2004, 161). While the NLA used many of the ambush techniques that their Kosovar counterparts had employed, they also were able to take and hold large portions of the Macedonian countryside, due in part to the inexperience and poor tactics of the Macedonian security forces (Finn 2001b). This gave them some bargaining leverage and reduced their dependence on external intervention. The Macedonian government also tried to use some restraint in their military operations, having learned from the international community's revulsion over Serb excesses in Kosovo. One official stated that while they were determined to confront the NLA, "we want to avoid pictures of burning homes and dead bodies" (Smith 2001c). International mediators suggested that the limited nature of the fighting and the small death toll made it easier for the parties to accept a political compromise (Wagstyl 2001). Even with these limits, though, the fighting was gradually becoming more vicious by mid-August, as each side continued to maneuver for advantage after the Ohrid Accords were signed but before the NATO peacekeepers arrived. Larger and more effective ambushes by the rebels led to retaliatory executions of suspected rebel sympathizers by the Macedonian paramilitary forces (Phillips 2004, 137-144; Carassava and Kucera 2001). Only with the arrival of the NATO troops and the implementation of the Ohrid agreement did the killing finally decrease.

Moral hazard operated in a modified fashion in the Macedonian case, where the very prospect of large-scale bloodshed (both within Macedonia and more widely throughout the Balkans) eventually motivated the NATO, the European Union and the U.N. to insert themselves into the conflict. While full-scale military intervention by the international community (of the type seen in the Kosovo case) did not occur, the intervention that did occur helped the Albanian minority to achieve many of the goals they announced at the start of the insurgency. Ali Ahmeti, the leader of the NLA, declared that "this war has resulted in the end of all discrimination of all Albanians (sic) in all state institutions..." (Glenny 2001a). As John Phillips notes,

The arrival of NATO troops was also a remarkable success story for a rebel force that a few weeks previously was being derided in the West as a group of terrorists and thugs. The overriding aims of the NLA

had been to get foreign countries involved in its fight with the Skopje Government and to earn international respect (2004, 147; also see Fisher 2001).

Constitutional revisions gave added political representation to the Albanian community, Albanian language and cultural institutions were given enhanced status, and Albanian areas of the country would be patrolled by Albanian-majority units of the police and security forces. Successive NATO and EU peacekeeping forces were credited by the Albanian population with keeping them safe from government retaliation (Farnam 2003), while Slavic leaders claimed that the international community had "taken the guerillas' side...We have to accept the so-called freedom fighters as citizens again" (Wood 2001; also see Finn 2001a). The resort to violence by the Albanians had enlisted tacit international support for their goals, if only to help to speed the fighting to an end.

#### **V. Conclusion: Reducing the Dangers of Moral Hazard in Humanitarian Interventions**

The previous analysis indicates that the problem of moral hazard in cases of humanitarian intervention is real. In Kosovo, the dynamics of moral hazard contributed directly to the militarization of the KLA's strategy and to the persistence of the KLA's attacks against Serb forces, provoking retaliation by the Serbs that eventually led to NATO's intervention. In Macedonia, the NLA was not as successful as their Kosovo comrades in achieving their broader goals, but the example of international interventions in Bosnia and Kosovo (including the personal experiences of Macedonians who fought in Kosovo) - and the resulting moral hazard - certainly contributed to the outbreak of violence in 2001. And in the end, international diplomatic intervention spurred by the fear of escalating violence helped the rebels to achieve most of their political goals.

The case of Macedonia also indicates that while the problem of moral hazard can be managed more effectively than it was in Kosovo, it remained a powerful motive behind the resort to violence. The instigation of fighting by the Albanian rebels did eventually produce international intervention that helped them achieve their political goals in a matter of months. That intervention did place increased pressures on the NLA to end the fighting, to surrender many of their weapons and to accept a result short of the goals desired by some of the more extreme leaders of the insurgency. However, the Albanian perception that they could provoke NATO and the EU to intervene to prevent broader violence and political instability proved to be accurate, and they were able to do so even though the Macedonian government showed considerable restraint in its own use of force against the Albanian minority.

Unfortunately, the moral hazard factor is likely to remain a concern as the international community manages several current conflicts. For example, the Kurds in northern Iraq, determined to pursue nearly complete autonomy if not sovereign independence, might try to induce American intervention on their behalf if their plans meet strong resistance. In the Darfur region of Sudan, international intervention against the government and their militias has emboldened some rebels of the Sudan Liberation Army to escalate their demands for political power and "liberation" (England 2005).

The cases of Kosovo and Macedonia, as well as the possibility that other substate actors will follow their example, inevitably raise the question of whether the norm concerning the “responsibility to protect” is supportable as currently defined. The emphasis on restraining state behavior or compensating for state failure inevitably biases the norm in the direction of those who challenge the state, just as the norm of “absolute sovereignty” gave formidable political advantages to governments. In addition to the other difficulties that “responsibility to protect” faces in practice (resource limitations, consistency in application, and flagging political will among the most significant), the moral hazard problem poses a double difficulty: beyond providing incentives for actors to provoke the conduct that the norm seeks to prevent, the norm will exacerbate the other difficulties by requiring more frequent interventions.

However persuasive these concerns, though, the political consensus in favor of the new norm (while shallow) is likely to persist for the immediate future. If the international community still has a strong interest in promoting a “responsibility to protect” as a justification for intervention in cases of horrific violence, are there ways in which the moral hazard problem might be mitigated in a more proactive fashion? Several strategies should be explored. One might focus on a stricter definition of what might constitute a “just cause” for humanitarian intervention, as described in the ICISS report and subsequent iterations. For example, the international community could make clear, in much more unequivocal fashion than does the International Commission’s report, that any intervention taken in accordance with the “responsibility to protect” would not support sovereign independence for any group within that state.

A second strategy would require a much more careful analysis and monitoring of the goals of the parties in a crisis situation; by better understanding the actors and the sources of the emerging conflict, the international community might more accurately signal that it would not be manipulated into intervening to serve the parochial goals of one of the parties. Representatives of the international community would also have to show much more awareness of how their statements and actions will be interpreted by the parties, so that they don’t unintentionally encourage risk-taking escalations of violence. This strategy was followed with only limited success in the case of Macedonia.

A third approach would focus on reducing the gap between the incentives for risky behavior and the costs to those who initiate that behavior. By increasing the costs or reducing the benefits of violence, actors may be less tempted to escalate in the hopes of inducing intervention that serves their purposes. The international community might more consistently hold individual leaders responsible for initiating wars of aggression or for committing crimes against humanity, thereby putting them at personal risk of apprehension, trial and imprisonment through an institution such as the International Criminal Court. Lesser sanctions (such as being barred from holding political office, having financial assets frozen or seized for purposes of reparations, or travel bans) might also be targeted against individual group leaders in a way that reduce the temptation to use violence to manipulate the international community into intervening.

These measures would not eliminate tough choices concerning the use of humanitarian intervention, but they might at least reduce some of the unintended and perverse consequences of adopting such an approach. By doing so, they will more faithfully promote the goal of those who wish to avoid a repeat of international unresponsiveness in the face of humanitarian calamity.

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**The Piqueteros: Looking For the Causes of Their Emergence**  
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**INTRODUCTION**

During the 1990s, the implementation of neo-liberal economic policies in Latin America left, among other consequences, a high level of unemployed people. In democratic Argentina, these unemployed people started organizing in different interest groups to demand from the elected government social policies in order to improve their situation. This new social movement is called *piqueteros*. Who are the *piqueteros*, and why did they emerge?

*Piqueteros* is the name given to a new and powerful social movement that emerged in Argentina in the mid 1990s. In Argentina, the *piqueteros* are an organization of unemployed people based on neighborhood social organizations and with its own rules. These rules include creating a social support network for unemployed people and promoting a political resistance strategy.

The purpose of this paper is to analyze the emergence of the *piqueteros* from the perspective of social movements theories: resource mobilization theory and political opportunity theory; also it analyzed a theoretical synthesis made by Baldez (2002) when she studied women's movements in Chile.

The dependent variable is the emergence of the *piqueteros* as a social movement in the mid-1990s. My study analyzes the social effects of neo-liberal policies applied in Argentina during the 1990s, the resources of the unemployed, and the opportunity created by the political weakening of former president Menem's government during its second term (1995-1999) which was perceived by the *piqueteros* to create their collective identity, as potential independent variables.

The paper hypothesizes that the *piqueteros* perceived the right opportunity to emerge: unemployment and poverty rates were increasing and the elected Argentinean government was politically weak. Based on this situation, people started mobilizing to protest for better living conditions and demanded from the government more social programs. The number of unemployed people grew and the *piqueteros* started becoming an influential social movement and political interest group in democratic Argentina.

**RESEARCH REVIEW**

Tarrow (1998: 4) defines social movements as "collective challenges by people with common purposes and solidarity in sustained interaction with elites, opponents and authorities."

Yet rational choice theory emphasizes the difficulty of achieving collective action. Jenkins (1983: 536) cites Olson's theory of collective action (1968) to explain the cause of mobilization. According to Olson, rational individuals will mobilize only if they can be assured of what he calls "selective incentives". These "selective incentives" are not offered to everyone but just to those who become members of "privileged" groups (Olson 1968). Olson (1968) says that if the group is small, the benefits to individuals are greater. Jenkins (1983) considers that Olson's theory is important although it does not offer an "adequate solution". Vasi & Macy (2003) refer to the conflict between personal and collective interest which underlies rational choice theory. They affirm that the conflict has two origins: the "free-rider problem" and the "efficacy problem" (2003: 980). The "free-rider problem" emerges when an individual receives the benefits of someone else's efforts (Vasi & Macy 2003). The "efficacy problem" explains that from all the actions of an individual member of a group, just a small portion of benefits obtained goes to him (Vasi & Macy 2003). According to these scholars, "the logic of collective action" makes

every group member think that even though he makes a small effort or no effort at all, he “will enjoy the benefits of other’s efforts even if [he] fails to contribute” (2003: 980).

#### *POLITICAL OPPORTUNITY THEORY*

The political opportunities are not equal; in other words, sometimes they can affect a group more than another or they can be better in a specific area than in others (Tarrow 1998). Despite these differences, the conditions for mobilizing are politically extended. Political opportunities are not clearly obvious to all people at the same time: mobilization will generally be more easily spread among people facing oppression and needs than among those more satisfied and with fewer complaints (Tarrow 1998). In Tarrow’s theory he understands *political opportunities* as “a set of clues for when contentious politics will emerge, setting in motion a chain of causation that may ultimately lead to sustained interaction with authorities and then to social movements” (1998: 20). Thus, political opportunity does not always generate social movements but it creates the situation in which social conflict can potentially be translated into social movements.

In his elaboration of political opportunity theory, Tarrow identifies the key political conditions for social movements to emerge: “when institutional access opens, rifts appear within elites, allies become available, and state capacity for repression declines, challengers find opportunities to advance their claims” (1998: 71). These conditions are external to social movements which can use them to start their organization and mobilization. If *institutional access* is open, it is easier for people to face their oppressors (Tarrow 1998). Challengers must see a sign of weakness in the powerful classes to start making demands. Shifting alignments are related to political instability. In countries with more than two political parties, the coalitions created among the opposition to confront the government or the one created between the government and another political group, creates the appropriate environment for the emergence of new groups or social movements (Tarrow 1998).

A *divided elite* is another factor, mentioned by Tarrow, which might cause the rise of a group of demanders (1998). It is associated with political instability. Divisions within elites give opposition groups the incentives to act collectively. Having *influential allies* is also very important. Tarrow affirms that “challengers are encouraged to take collective actions when they have allies who can act as friends in court, as guarantors against repression, or as acceptable negotiators on their behalf” (1998: 79). Without influential allies it would be harder for movements to reach their goals.

According to Tarrow (1998), the *decline of state capacity for repression* also facilitates the rise of social movements. Tarrow uses Tilly’s definition for repression, “any action by another group which raises the contender’s cost of collective action” (1998: 80). In his analysis of the decline of state repression, Tarrow uses the comparison of Poland and Czechoslovakia. A weakening state in Poland saw the emergence of Solidarity, a very critical and powerful social movement, while in Czechoslovakia any social movement was repressed, and the country “was one of the last to rebel” (1998: 81). Strong authoritarian states are less likely to permit the growth of social movements while in weak or states with reduced capacity of repression, social movements see the appropriate moment to emerge.

#### *RESOURCE MOBILIZATION THEORY*

By the 1980s resource mobilization theory became very dominant among social movement scholars. It studies the support from society and the limitations of social movements, and analyzes the diversity of resources that must be mobilized, the relations among groups, their external support, and authorities’ strategies for movements to be successful to get control of movements (McCarthy and Zald 1977: 1213).

In their analysis of resource mobilization theory, Marx and McAdam assert that this approach “was conceived as a response to those who saw social movements as resulting from strain or discontent in society” (1994: 81). There is always enough dissatisfaction in society to motivate the rise of collective action. “What varies is not the motivation to organize but the organizational resources required to do so” (Marx and McAdam 1994: 81). They state, following McCarty and Zald that social movements emerge during good economic times.

McCarthy and Zald emphasize some crucial points to better understand this resource mobilization approach: the accumulation of resources – for instance, “money and labor” – is necessary for the analysis of the activity of a group; the movement must be organized to obtain the resources; the level of people’s participation is significant for the success or failure of a movement; and finally, “cost and rewards are centrally affected by the structure of society and the activities of authorities” (1216).

According to these authors, social movements are not always originated in the grievances of their members; they clarify affirming that sometimes “those who provide money, facilities and even labor may have no commitment to the values that underlie specific movements.” In this theory, the employed strategies by social movements are essentially the mobilization of their members-supporters and the change of elites into allies. Social movements take from society “communication media, levels of affluence, degree of access to institutional centers, preexisting networks and occupational structure and growth” (McCarthy and Zald 1977: 1216,1217).

In this theory, social movements clearly aim at social change. What mainly characterizes the resource mobilization approach is the importance of the access to resources and the chance to use them.

#### *BALDEZ’S SYNTHESIS*

Baldez (2002) analyzes women’s movements in Chile using three theoretical concepts: tipping, timing and framing. In the development of the *tipping* concept, her dependent variable, she explains women’s movement in terms of gender identification. Baldez adds that an individual participates in a protest depending on how many people will also participate. Baldez affirms, “... your decision to participate in an act of protest hinges on your beliefs about what others likely to do” (2002: 6). When explaining the emergence of women’s movements, Baldez cites the political opportunity approach: she understands that movements rise and fall as a reaction to political changes. Her independent variable *timing* focuses on the moment that political opportunities become available. In this specific case, it was the political party realignment that the Chilean elite was facing. Divisions among political elites resulted in the weakness of the political system (2002: 8). What Baldez calls *framing*, the third theoretical concept of her research, is the way in which movements members are perceived and perceive themselves. Chilean women needed to identify themselves in order to achieve their goals. The group’s self-identification is very important because it helps to distinguish the group’s needs. As Baldez cites, “Appeals to gender identity bridge women’s different and sometimes contradictory interests: exclusion from political power” (2002: 10-11). As part of their self-identification, Baldez mentions that in her research “gender functions as a source of collective identity” (2002: 11). Thus, Baldez’s synthesis combines elements of political opportunity theory, rational choice theory, and political framing theory.

## POST-AUTHORITARIAN POLITICS AND THE RISE OF NEOLIBERALISM IN ARGENTINA

Argentina was not an exception to the democratization wave that took place in Latin America during the 1980s. Raul Alfonsín, a popularly elected candidate from the *Union Cívica Radical*<sup>1</sup>, took office in 1983. His administration faced the consequences of the human rights' violations conducted during the seven years of the previous authoritarian regime. As a result of the accelerated democratic transition in Argentina, some members of the armed forces went to trial for their human rights' violations (Acuña & Smulovitz 1996). During this legal proceeding, the Judicial Branch demonstrated a high level of independence applying "the law against human rights violators" (Tedesco 2002). Despite its success in its human rights policies, the Alfonsín administration confronted several military uprisings, strikes and labor conflicts which caused a lack of political and financial support, "while civil society became increasingly exasperated by the endless confrontations between the government, the trade unions and the armed forces" (Tedesco 2002: 473).

The percentages obtained in the presidential elections in 1983 and the legislative elections in 1985 gave Alfonsín enough confidence to not seek coalitions with other sectors (Tedesco 2002). In the legislative elections in 1987, the *Radical Civic Union* lost its parliamentary majority, and in 1989 Carlos Menem from the *Peronist Justicialist Party* was elected president with a wide margin of votes.

As Tedesco concludes, "the lack of consensus and cooperation was a crucial feature of the first democratic government and helped bring about its chaotic end" (2002: 473). Alfonsín left office six months before the end of his term (Levitsky 2000). Tedesco (2002) attributes the failure of the Alfonsín administration to the denial of legitimacy to the political opposition. She affirms, "[the Alfonsín administration] sought to impose its way through confrontation, interference and the de-legitimization of its opponents, and then promoted conciliation each time this approach failed" (2002: 473).

### *MENEM POLITICAL ADMINISTRATIONS 1989-1995 & 1995-1999*

In 1989, Carlos Menem was elected president of Argentina by 47.36% of votes (Political Handbook of the World 1990), and as it was mentioned before, he took office six months earlier than the stipulated date. Menem advanced the power of the executive. During his administration the number of members on the Supreme Court was increased from five to nine, and the Court was "stacked with Menem loyalists" (Levitsky 2000: 57).

Menem's executive authority was characterized by his frequent utilization of executive decrees. These "*Decrees of Necessity and Urgency*" gave Menem the possibility to legislate on specific issues when he did not have total support from the Legislative Branch or when he wanted to implement new policies more quickly.

Midway through his first term, Menem worked hard to remain in power through re-election, and consequently in November 1993 he reached, with *Radical Civic Union* leader Raul Alfonsín, what is known as the *Olivos Pact* (Levitsky 2000; Tedesco 2002; See Corrales 2002). The alternative to negotiation with the opposition was to hold a plebiscite on the constitutional reform. Alfonsín, in his role of leader of the opposition, knew that Menem "would win the vote and the real possibility that such an outcome would provoke an institutional crisis" (Levitsky 2000: 58), and so he made a deal in Olivos with Menem that led to a constitutional amendment that permitted Menem's reelection in 1995.

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<sup>1</sup> UCR – *Radical Civic Union* is one of the most important Argentinean political parties in the 20<sup>th</sup> century; the second most influential after the *Peronist Justicialist Party*.

Menem signed an amnesty for “those accused of military crimes against the people” which, according to one scholar, under the label of national reconciliation “weakened the Judiciary’s credibility and that of the democratic institutions as a whole” (Munck 1997: 12).

Traditionally, there always has been a closer relation between the unions and the *Peronist Justicialist Party*, which was used as an advantage during Menem’s administration. Menem found out that through co-optation of some labor leaders, he would avoid the confrontations with labor that Alfonsín faced in his government (Tedesco 2002; See Munck 1992). Munck points out that “unlike Alfonsín, who never sought to limit the right to strike in spite of repeated general strikes, Menem moved rapidly in 1990 to restrict the right to strike for public-sector unions” (Munck 1992: 14). The first term of Menem was characterized by general labor quiescence.

Mainly, the *Radical Civic Union*, after the bad experience of Alfonsín’s government and the *Olivos Pact*, was deeply discredited; for instance, the *Radical Civic Union* obtained 52% of votes in the presidential elections in 1983, but only 17% in the elections of 1995 (Levitsky 2000: 61). As a result, people started voting in fragmented ways: they chose provincial parties, and new political parties emerged; such as *Frente Grande* (Big Front), which later became *FREPASO*, as well as *MODIN*, and *ARI*<sup>2</sup> (Levitsky 2000).

During the presidency of Menem, there was a sequence of “scandals involving *narcodollars*, bribery and many other things” (Munck 1997: 12) where people very close to the president were accused. However, thanks to the fragmented opposition, these scandals did not prevent Menem’s reelection in 1995.

Both scholars, Tedesco and Levitsky, mention in their analysis of Argentina during the 1990s, O’Donnell’s concept of “*delegative democracy*” as a very persistent feature of national politics during that time. O’Donnell says that a “*delegative democracy*” is “a polity based in large part upon a supposed preference for direct vertical accountability between the president and the electorate over horizontal mechanisms of accountability between the different institutional sites of a democratic system” (O’Donnell 1994: 55).

By the mid-1990s, the economic situation was less positive. Menem’s second term started with a high level of unemployment, huge social inequality and a declining level of political legitimacy. When Levitsky & Murillo (2003) summarize Menem’s political legacy at the end of his ten years in power, they point out,

“...a marked decline in public trust in politicians and political institutions. A lack of transparency in key policy areas, a series of high-profile corruption scandals involving Menem government officials, and political shenanigans such as the packing of the Supreme Court created a perception of widespread and unchecked abuse of power. By the end of Menem’s second term, corruption and unemployment consistently ranked in public opinion polls among the most acute of Argentines’ public concerns.”

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<sup>2</sup> *FREPASO*, a “center-left” alliance; *MODIN*, a “rightwing nationalist” movement, and *ARI*, a “left leaning” coalition.

In Menem's second term, he and his coalition began to lose political support as strong opposition emerged within his own party led by Buenos Aires governor and former Vice-president Eduardo Duhalde, and opposition parties began to move toward greater unity under the *Alianza*<sup>3</sup> banner. The public perception of political corruption and the high level of unemployment were affecting the Argentinean population. In 1995, the political alternative *Alianza* won the presidency with a similar percentage.

#### NEOLIBERAL ECONOMIC POLICIES 1976 – 1983 AND ALFONSIN'S INHERITANCE

Even though neo-liberal economic policies reached their peak of development during the Menem administration, Argentina had some neo-liberal experiments under the military regime from 1976 to 1983 (Santarcangelo and Schorr 2000; Germano 2005). The military government pursued big changes in the national economy: it applied "modifications on the import tariffs" – making imports more accessible – and "transferred industrial resources to other sectors which produced slowdowns in the national industries" (Germano 2005: 23). Summarizing briefly, the heritage from the *Proceso de Reorganización Nacional*, was social disintegration, stratification of the working class, and mainly a profound crisis in the national industrialization (Germano 2005).

Alfonsín's economic policies can be summed up as emphasizing accumulation and investment as a means to reach a modernization model (Germano 2005). Given its unenviable inheritance from the military government, the Alfonsín administration had economic failures, such as high levels of inflation, which affected the population and forced the president to leave office in July 1989, several months ahead the culmination of his mandate.

#### NEOLIBERAL ECONOMIC POLICIES 1989 - 1999

Carlos Menem, President Alfonsín's successor, was elected president for two consecutive terms: 1989-1995 and 1995-1999. As was mentioned before, Menem took office facing an economic crisis inherited from the Alfonsín administration. Soon, Menem appointed businessmen and economically liberal politicians as members of his Cabinet. He "announced a program of orthodox reforms to open up the economy and reduce government intervention" (Treisman 2003: 95). It is important to mention that Menem belonged to the *Peronist Justicialist Party*, the political party founded by Juan Perón. Perón, a populist nationalist, represents the origins of *Peronism*, and Menem, a populist liberalist, represents a new version of the political party (Leaman 1999).

In promoting the economic neo-liberal approach after his 1989 election, Menem passed two fundamental laws: the *Economic Emergency Law* and the *State Reform Law*. The first one "eliminated various manufacturing subsidies which had long prevailed and authorized dismissals for redundancy of public sector employees", and the second one "made legally possible for the government to engage in full-scale privatization" (Baer et al. 2002 64). The key economic policy of his first period of government was the privatization of the state owned companies. Baer et al. (2002) affirm that Argentina experienced one of the fastest privatization plans in the world: in five years the Menem administration privatized almost all public services – telephone,

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<sup>3</sup> ALIANZA – *Alliance for Jobs, Justice and Education*, a coalition of the UCR and FREPASO, was an alternative to *Menemismo*. The party, formed at the end of the 1990s, "promised to combat corruption and address the social costs of the economic reforms generated broad public support, particularly among the middle classes" (Levitsky & Murillo 2003: 154).

electricity, gas and water – and commercial activities – highways concessions, and airlines and train railways services (Sartancangelo and Schorr 2000). Baer et al. (2002) mention that the privatization process had some negative aspects, such as the increases in the prices of public utilities. These authors consider that the price increases were generated by “monopoly power and the clauses of the privatization process that tied the concession contracts to US inflation, which for a while was higher than in Argentina” (2002: 73).

#### *THE CONVERTIBILITY PLAN AND ITS CONSEQUENCES*

The main characteristic of the Argentinean neoliberalism, during the 1989-1999 period, was the “Convertibility Plan” (Germano 2005; Santarcangelo and Schorr 2000; Brenta 2002; Baer et al. 2002). Brenta sustains that, “Argentina accepted to be part of the convertibility plan or currency board because it would receive preferential treatment from foreign investors and credit financial agencies” (2002: 2). The most crucial aspect of the Plan was to “tie a new Argentinean peso to the dollar on a one-to-one basis, eliminate the power of the government to finance budget deficits through the Central Bank and restrict new money creation to the inflow of foreign exchange” (Baer et al. 2002: 64). Germano adds that the Convertibility Plan ruled in favor of the market’s conditions and liberalized the foreign investments (2005).

The implemented policies generated many problems: higher unemployment, more unequal income distribution, indebtedness, and fiscal austerity (Germano 2005; Massetti 2004; Baer et al. 2002; Santarcangelo and Schorr 2000; Rofman 1997). Between 1991 and 1994, the unemployment rate doubled and the underemployment rate was fluctuating reaching almost 30%. In 1994, the national economy declined, the unemployment and the underemployment expanded. During the second half of the 1990s, the average wage dropped significantly generating high levels of impoverishment and underemployment. In the 1995-1999 period, while the unemployment decreased from 17% to less than 15%, the poverty and the indigent rates increased.

The other main consequence of the programs implemented by the Menem administration was the drastic change in the distribution of income. The wealthiest 20% of the population “increased [its income share] from 50% in 1990 to 52% in 1998”, while the poorest social sector had a decreased income share “from 4.8% to 4.2% in the same period” (Baer et al. 2002: 69).

#### **THE PIQUETEROS**

*Piqueteros* is the name given to a group of unemployed people which emerged as a protest movement in Argentina in 1996. It was analyzed before that Argentina and several Latin American countries experienced the neo-liberal model following the IMF impositions. The neo-liberal policies brought to Argentina a general discontent which was shown through massive demonstrations demanding jobs that impeded public circulation of people and goods. Petras (2002: 13) describes the tactics of the *piqueteros*:

“The strategy of blocking highways, which is the functional equivalent of workers downing the tools of production, paralyzes the circulation of inputs for production and outputs destined for domestic or overseas markets. Close proximity of major highways supplying and transporting goods and commuters to and from the major cities and across national frontiers heightens the strategy’s effectiveness.”

The *piqueteros* movement involved people who had lost their jobs and seen their careers interrupted. To be part of the movement was a new identity to those who were carrying the stigma of unemployment (Svampa & Pereira 2004). It was more dignifying to be a *piquetero* than to be just an unemployed person. This self-identification as *piqueteros* is the important “framing” that Baldez describes as the third theoretical concept in her analysis of the emergence of women’s movements in Chile (Baldez 2002: 11). The *piqueteros* identified themselves as unfairly unemployed people and, consequently, they demanded attention to their immediate needs.

The movement’s growth was manifested in 1996, and later in 1997, in Cutral Co and Plaza Huincul, two cities in the province of Neuquén. In both these cities, the main industrial activity was the oil production which was under YPF – Fiscal Petroleum Fields - the Argentinean state-owned company. There was a similar reality in General Mosconi and Tartagal, two cities in the province of Salta whose local economy was based on the oil petroleum

The privatization of YPF brought high levels of unemployment in those cities where the urban economy was closely connected to the state oil company. This caused a general discontent in the population of those cities, which started organizing massive demonstrations “against job cuts and plant shutdowns resulting from privatization” (Petras 2002: 11; See also Svampa & Pereira 2003, 2004; Petras and Veltmeyer 2003; Mazzeo 2004; Escude 2005; Massetti 2004; Schneider Mansilla & Conti 2003; Sala 2005; Petruccelli 2005; Orlansky & Makon 2003; Klachko 1999). Soon, these manifestations were propagated in bigger and highly populated cities. One of the most concentrated areas with a high unemployment rate is La Matanza, in Greater Buenos Aires, where *piqueteros* manifestations quickly followed the mobilizations in Neuquen and Salta (Petras 2002; Svampa & Pereira 2003, 2004; Schneider Mansilla & Conti 2003). Jujuy, another province, experienced 19 *piqueteros* manifestations in 1997, in which women workers were important actors (Rodríguez Blanco 2002). During the 1990s in that province, industries were affected because some mines closed and there was a large firing wave that caused a high level of unemployment. Rodríguez Blanco (2002: 17) contends that in 1997, Jujuy reached 50% unemployment and Petras (2002) states that some areas in Argentina had 80% unemployment. On the other hand, official indicators contend that by 1997, the highest rate of unemployment in Jujuy was 18% (INDEC 1995-2000).

The *piqueteros*’ particular method of protest has consisted of surprised blockings of important roads and highways and setting fire to tires (Svampa & Pereira 2003, 2004; Mazzeo 2004; Massetti 2004; Schneider Mansilla & Conti 2003; Rodríguez Blanco 2002; Kohan 2002). Petras (2002: 11) expresses, “... once a highway or principal artery is designated for blockade, the assembly [the council of the *Piqueteros*] organizes support within the barrios. Hundreds and even thousands of women, men and children participate, setting up tents and soup kitchens at the roadside.”<sup>4</sup> In other words, the *piqueteros* depended on supportive communities and civil society. These are some of the internal resources that are emphasized in resource mobilization theory.

By the time of the growth of the *piqueteros*, Argentina was going through economic recession, and therefore the government could not satisfy the demands of the social movement for good-paying jobs (Svampa & Pereira 2003, 2004; Ponce 2006). Ponce, writing from a market-oriented perspective, mentions wage determination, job security legislation, mandatory contributions to social security, and subsidies for

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<sup>4</sup> Petras (2000) also explains the structure of the movement. “Each municipality has its own barrio-based organizations. Within each barrio, each few blocks have informal leaders and activist. Each municipality is organized by its general assembly where all active members participate.”

workers training as areas where the Argentina government interventions may have contributed to higher unemployment.

The immediate answer from the government to face and contain the progressive unemployment crisis and the growing protest movement was the creation of specific subsidies, or emergency employment programs – called *Plan Trabajar*, and later *Jefes y Jefas de Familia* – which were a kind of unemployment compensation (Svampa & Pereira 2003, 2004; Ponce 2006; Mazzeo 2004; Schneider Mansilla & Conti 2003; Massetti 2004). These subsidies represent the most immediate help for the basic needs of the *piqueteros*. (Svampa & Pereira 2003, 2004; Petras 2002; Ponce 2006).

#### EXPLANATIONS

Olson's theory of *collective action* and Tilly's *mobilization model* associate individual interest with collective organizations, and the *piqueteros* partly concord with this conception. They started mobilizing as a movement "to press for and secure thousands of minimum wage temporary jobs from the state, food allowances and other concessions" (Petras 2002: 10). The *piqueteros* knew that the individual protest would be unsuccessful; therefore, they joined their interests, became strong and powerful enough in order to get "*selective incentives*", the subsidies for their movement members. They demanded for more jobs and the opening of workplaces, and even though they were not satisfied, the Argentinean government did hear their demands by distributing the subsidies.

Certainly, the "*free-rider problem*" and the "*efficacy problem*", both origins of the conflict between personal and collective interests, have been present in the emergence of the *piqueteros*, but the movement was able to solve those problems because it was well organized to provide some benefits for participation (Petras 2002; Svampa & Pereira 2003, 2004; Massetti 2004; Mazzeo 2004; Isman 2003). Ponce adds (2006: 26), "by granting private property rights through monetary allowances (participation in exchange for the subsidy), the *piqueteros* leaders ensured the active participation of their members and the consolidation of their power."

However, rational choice theories are not sufficient to explain the emergence of the *piqueteros*. Unemployed people from Cutral Co and Plaza Huincul mobilized in 1996 because they considered it was the appropriate moment to do so. Tarrow affirms that the political opportunities are more manifest to people with oppression and needs. That was what happened in those cities: unemployed people, who had been YPF employees, gathered spontaneously in the privatized YPF main plant protesting for their layoffs. Klachko (1999) makes a very detailed chronology of the events in Cutral Co and Plaza Huincul in 1996. She gives an explanation that helps us to understand why in Neuquen unemployed people started protesting against the government in 1996, when according to INDEC, in Neuquen the unemployment rate actually went down from 16.7% in 1995 to 13% in 1996. In other words, people started protesting when the unemployment rate had decreased. Klachko conceptualizes a "*tardy rebellion*" because people did not protest when the Argentinean state privatized YPF – the most powerful state-owned company. Rather, the rebellion began when people spent the money they received for layoff compensations, and when many of them invested the compensation money and started their own business, but later had to declare bankruptcy<sup>5</sup> (1999:124).

When the conditions to protest were politically expanded by rifts within the regime elite, the declining support of Menem's government, and the rise of political opposition, and after the events of Cutral Co and Plaza Huincul, unemployed workers in Salta, Greater Buenos Aires and Jujuy started mobilizing as well. Tarrow (1998)

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<sup>5</sup> Klachko (1999) mentions that 1,800 former YPF employees were involved in bankruptcy.

emphasizes that political opportunities affect some groups more than others or one specific area more than others. Baldez (2002) underlines Tarrow's statement when she analyzes the Chilean women uprisings during the Allende and Pinochet administration. She affirms that movements rise and fall as a reaction of political changes (2002).

How did Argentina's political situation in this period shape the political opportunity structure for protest? In the period 1996-1997, when the *piqueteros* emerged, Menem was ruling Argentina after winning the elections for a second term with a wide margin of electoral votes; however, Argentina was economically, socially and politically unstable. Economically, the implementation of neo-liberal policies was not as successful as expected because it negatively affected a big percentage of society – mostly workers from the middle class – who started the *piqueteros* protests in small and quiet towns from southern and northwestern provinces. Politically, the ruling party – *Peronist Justicialist* – was becoming bitterly divided between two political leaders (“caudillos”): President Menem and former Vice-President and Governor Eduardo Duhalde, who always had presidential ambitions generating political rivalry between them (Svampa & Pereira 2003; Ponce 2006).

“Duhalde's main challenge was to avoid Menem's reelection and to consolidate his power in the Peronist party and Argentine state. Thus, the lack of cohesion within the Peronist party, the adversarial relationship among leaders, the strength of the national leaders, and the informal organization of the ruling party allowed Duhalde to pursue these goals” (Ponce 2006: 15).

This *Peronist* factionalism was understood by the *piqueteros* as a sign of weakness of Menem's government which was more concerned in holding the power than in the needs and demands from the society. Meanwhile, the opposition, mainly constituted by *UCR* and *FREPASO*, was recovering from the failure in the 1995 presidential elections. The *UCR*, the historical political opposition of *Peronist Justicialist Party*, obtained just 17% of the electoral votes and lost the majority of the seats in Congress in 1995; however, *FREPASO*, “an amalgam of dissident, *Peronists*, socialists, communists, and Christian Democrats” was becoming a much stronger opposition to the Menem administration (Latin America Regional Reports, 1995: 3). Later on, it was *Alianza* the joining of *UCR* and *FREPASO*, which constituted as the main political opposition to Menem's policies. *Alianza* grew so strong that they won the presidency in 1999 with a broad percentage of popular votes.

The policy of subsidies for the *piqueteros* found some support in the Argentinean unions (Schneider Mansilla & Conti 2003; Massetti 2004; Germano 2005; Ponce 2006). Ponce, who explains this relationship through a “basic assumption of rationality”, has an interesting view. He argues,

“...because labor unions intend to provide their associate member with high salaries and wages, these organizations always attempt to keep the labor supply low. Basic economic theory predicts that a contraction in the labor supply would increase wages in any labor market. Therefore, the permanence and consolidation of the *piqueteros* members as an unemployed mass of people would favor the union's long-term

goal of high salaries or wages in the formalized labor sector” (2006: 31).

Ponce’s correlation between the Argentinean unions and the *piqueteros* states that the unions supported the *piqueteros* protests and government subsidies to this movement because the unions wanted to protect their own interests. If the *piqueteros* were hired or considered employable, it would affect the wage of those who already had a job.

Resource mobilization theory has a small role in the explanation of the emergence of the *piqueteros*. Mobilizing people and their consequent internal organization represent the major resources “owned” by the *piqueteros*. That constituted a fundamental supply considering the particular method of protest implemented by the *piqueteros*. The *piqueteros* owned money when they started receiving from the government monthly subsidies, which was destined to the movement’s expenses.

The political opportunity approach emphasizes that people – “challengers” – find the opportunities to mobilize, demand and claim “when institutional access opens, rifts appears within elites, allies become available, and state capacity for repression declines” (Tarrow 1998: 71). During the growth of the *piqueteros*, my research shows that the ruling party became divided, the Menem administration was quite unstable and a new political party, *FREPASO*, was in control of the opposition – later it led the successful *Alianza* political party. Thus, “shifting alliances” and a “divided elite”, and growing opposition gave the *piqueteros* their moment of opportunity to mobilize into a major movement. This also reinforces Baldez’s concept of “timing”.

However, on the matter of state repression, Tarrow’s theory needs to be modified to account for the *piqueteros*. From their beginning, the *piqueteros* were brutally repressed by police.<sup>6</sup>

“Movement growth was accompanied by state repression... five *piqueteros* were killed, dozens wounded by gunfire and thousands were arrested. The town of General Mosconi, [province of Salta] where three *piqueteros* were killed, was taken over by hundreds of national gendarmes, in the best style of military dictatorship. The regime criminalized collective action by the unemployed whose increasing militancy – evidenced in expansion and frequency of mass road blockades – was the desperate response to the regime’s policy of replacing nutrition with coercion” (Petras 2002: 13).<sup>7</sup>

According to Tarrow, if the state loses capacity for repression, it would facilitate the emergence of social movements (Tarrow 1998). This statement cannot be applied to the initial growth of the *piqueteros* in Argentina because the reaction was reverse to what Tarrow proposes: the Argentinean state repressed the *piqueteros* savagely to an extreme of killing people, and yet the *piqueteros* kept protesting. It was

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<sup>6</sup> Klachko (1999) presents an elaborated work about the police and the Argentinean National Gendarmerie repression toward the *piqueteros* in Cutral Co and Plaza Huincul.

<sup>7</sup> Petras (2002) points out five *piqueteros* killed, but currently the number is bigger. Several policemen were put in jail because it was proved that they killed two young *piqueteros* during a manifestation on Pueyrredon Bridge on June 26<sup>th</sup>, 2002 (La Nacion, 2002).

only later, after the movement was already formed, that the government began to make concessions to the movement in the form of subsidies.

## FINDINGS

The *piqueteros* is a social movement which emerged in Argentina during the 1990s, as a consequence of the social effects of neo-liberal economic policies under the Menem administration. Most of the members of the group are middle class people who were displaced by unemployment and an increasing rate of impoverishment. Based on this situation, people demanded that the government provide more social programs. They started organizing and mobilizing to protest for better living conditions.

Following the political opportunity theory, the *piqueteros* perceived the right opportunity to emerge: the Argentinean government was weak and the politicians' public image was decreasing. People experienced the harmful consequences of policies implemented by the government, and this impact was reflected in the decreasing level of popularity of politicians. Politically, the opportunities for mobilization around the country (an occurrence that Tarrow 1998 mentions in his theory) were not equal. *Piqueteros* from Buenos Aires and its nearby areas had a better organization because the population is bigger than in the rest of the country. The number of unemployed people grew, and they started becoming an influential movement whose methodology of protest has been to block important roads and highways. This organization has demonstrated how powerful movements can be when they form to challenge the government.

Resource mobilization theory suggests that the *piqueteros* at the time of their emergence were powerful in mobilizing people because people represented the major important resource "owned" by the *piqueteros*. They did not have money until later when they asked for a monthly quota which was destined to the movement's expenses. Thus, resource mobilization theory provides some insight but is not sufficient to explain the emergence of the *piqueteros*.

The "framing" concept, proposed by Baldez, helps to understand the connection between the lack of political representation and the growing self-identification of unhappy unemployed people with the emergence of the *piqueteros*. They were not politically represented, so they decided to represent themselves. To be part of the movement was a new identity for those who were carrying the stigma of unemployment (Svampa & Pereira 2004). It was more dignifying to be a *piquetero* than an unemployed. The *piqueteros* identified themselves as unemployed people who demanded political representation and social support.

The *Piqueteros* emerged in Argentina in 1996 as a consequence of the social effects of neo-liberal policies implemented during Menem's administration, the sharp decline of support for the government as result of the public perception of political corruption, and the need of political representation.

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## **Developing Animal Right Legislation: A Political Strategy for a Social Movement**

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### Introduction

Social movements have often sought to achieve their goals through public policy initiatives. The hope is that laws will change public perceptions and behavior, producing the desired ends (Lineberry, 1977). The animal rights movement fits into this category. For many years Humane PACs at the state and national levels have lobbied successfully for legislation to protect animals. The goal, from the animal rights perspective, is to better protect animals in the short run and provide incremental steps toward the ultimate goal of eliminating all human uses of animals. Most of the legislation enacted in the United States can be described as animal welfare laws rather than animal rights laws. Welfare laws are aimed at regulating not eliminating animal use. These laws usually set minimum standards for the treatment of animals. Typical welfare laws are those designed to prevent animal cruelty. Caretakers, on farms, in laboratories, or in residential dwellings are restricted from overworking, torturing, injuring or neglecting animals. In contrast to animal welfare, animal rights philosophy seeks an end to all animal use by humans. An animal rights law would be one that calls for a ban on some use of animals by humans. An example of an animal rights law would be a ban on the use of animals in circuses.

An examination of some of the major animal related legislation passed by Congress in the 20<sup>th</sup> century reveals that these laws are essentially welfare laws. An example is the Animal Welfare Act (AWA), which was passed in 1966 and amended several times thereafter. The AWA covers certain animals bred for commercial use, used in research, transported commercially or exhibited to the public. The law requires minimum standards of care and treatment, such as, housing, handling, food, water, and veterinary care. An example of welfare legislation is the Humane Slaughter Act passed by Congress in 1958. This law requires farm animals to be anesthetized before being slaughtered. It states that animal slaughter “be carried out only by humane methods” in order to “prevent needless suffering” (Moorehead, 2004). The law covers most types of animals used for food but excludes chickens, turkeys and other birds as well as fish. The law also exempts animals slaughtered under religious or kosher law.

Another example is the Marine Mammal Protection Act enacted in 1972. The law prohibits the killing, capturing, or harassing of any marine mammal without a permit. The law protects whales, porpoises and dolphins but exempts those killed in the practice of commercial fishing, scientific research, and hunting by indigenous people.

This paper examines the extent to which the animal rights agenda can be met through legislative action. First, it addresses whether or not it is possible to develop animal rights oriented laws that differ from animal welfare laws. In order to answer this question the paper analyzes the differences between animal rights and animal welfare and identifies the criteria needed to distinguish animal rights laws from animal welfare laws. The paper also addresses some of the formidable obstacles in the way of animal rights legislation. These include: a policy process that favors marginal changes in the status quo rather than the radical changes required by animal rights proposals; a bureaucracy that impedes attempts to enforce animal laws and is more receptive to opposition groups, agribusiness and animal researchers; a court system that is unwilling to impose strict penalties on violators; and legislatures at the national and state levels that attempt to pass symbolic legislation to placate non-elite groups rather than substantive and specific legislation that is usually reserved for elite groups. Second, the paper focuses on the

extent to which animal rights goals are served by supporting animal welfare laws. It does this by examining the secondary effects, both positive and negative, produced by welfare laws. The positive effects include favorable publicity to animal issues that can serve a public education role, placing the issues on the political agenda, and providing the potential to transform the animal rights movement from outsider group to insider group status. On the negative side, these laws may have unintended consequences which achieve the opposite results of the animal rights's goals, such as, resulting in more animal deaths. Third, the paper draws some conclusions about welfare and rights laws.

#### Rights versus Welfare

Considerable confusion exists between the terms animal rights and animal welfare. This is in part due to the fact that the animal rights movement is composed of a diversity of individuals, tactics and beliefs (Finsen & Finsen, 1994) and contains organizations that range from conservative to radical. It is also due to the fact that many animal rights organizations support welfare strategies and welfare legislation (Francione, 1996).

Often this confusion of philosophical position is reflected in animal rights leaders. A good example of blurring the lines between animal rights and animal welfare is the recent book by Singer and Mason (2006). Both of these authors have impeccable credentials in the animal rights movement. Singer is considered the father of the movement thanks in large part to his seminal book, *Animal Liberation* (Singer, 1975). Mason is a staunch defender of animal rights, has a long history of working in the movement, and has written one of the most important animal rights books, *Unnatural Order* (Mason, 1993). In their new book, *The Way We Eat* (Singer & Mason, 2006), an explanation of the ethics of food choices, they vacillate in their views between animal rights and animal welfare. For example, at one point, they state that the best ethical option for an environmentally conscious consumer is veganism, consuming no animal products. This is clearly an animal rights position. However, at another point in the book they assume an animal welfare position by suggesting that it is ethically acceptable for consumers to buy meat, dairy, and eggs from non-factory farm sources.

The essential component of animal welfare is that animals be treated humanely when used by humans. This means that animal suffering is reduced or eliminated whenever possible without fundamentally altering the status of animals in their relationship with humans. The belief is that when humans use animals they have an obligation to do what they can to ensure that the animals are treated fairly. According to animal welfare theory, the aim is to prevent cruelty, improve humane treatment, and reduce the stress and strain animals encounter in their relationship with humans (Dunayer, 2004; Francione, 1996).

Animal rightists share with welfarists the belief that nonhuman animals are sentient beings, capable of experiencing pain and pleasure (Guither, 1998). However, they also recognize that nonhumans share many other characteristics in common with humans. They assert, as recent studies have shown, that animals have emotional lives, are capable of problem solving, are able to use tools, can utilize language, possess memory, have self-awareness, have a sense of the future, and live as members of social and political communities (Byrne, 1995; deWaal, 2000; deWaal, 2005; Griffin, 2001; Long & Sheldrake, 2005; Pepperberg, 1983; Regan, 1983; Vauclair, 1996). As a result, animal rights advocates believe that animals have the inherent right to live a life apart from humans and that this right precludes all human use currently made of animals (Regan, 2004).

Welfarists differ most significantly from rightists in their willingness to use animals in activities that involve the taking of animal life, such as for: food, clothing, medical research, and education. According to welfare theory if animals are used by humans the animals' basic physical needs should be met. Animals must be supplied with

water, food, shelter and health needs and experience no “unnecessary” suffering (Animal Welfare, 2006). The Humane Slaughter Act is a good example of animal welfare legislation. It requires that animals in the slaughtering process be rendered insensible to pain before being killed.

The animal rightists view the relationship between humans and animals much differently. Most animal rights activists perceive the rights of animals similar to that of humans. Animals are considered to have a right to a life apart from humans and that the rights of animals should be protected even when it benefits humans to use animals (Regan, 1983). In this thinking, animals are not the instruments or property of humans. As a result they should not be used: in research, for food, in clothing, for testing of household products and cosmetics, and in entertainment.

In some European countries animal welfare laws have embraced some tenets of animal rights. In Europe, animal welfare laws have expanded beyond the biological requirements of food, water, and shelter to include emotional needs and the right to engage in natural behaviors. Under this expanded definition of welfare, animals are required to be kept in environments where they are able to experience comfort, contentment and the normal pleasures of life, as well as to be reasonably free from prolonged or intense pain, fear, and other unpleasant states. In this view, it is not enough for animals to be well fed and free of injury and disease. They must be in conditions where they are able to lead natural lives and do not show signs of frustration, discomfort, and boredom. As a result, this has led to the banning of some forms of intensive animal agricultural practices such as battery cages for egg laying hens (Fraser, 1998; Hewson, 2003).

In the United States the situation is much different. Animal welfare laws have not recognized the emotional needs of animals and animal rights theory is yet to be translated into a legislative strategy. Instead, most of the animal rights organizations in the U.S. have embraced more traditional welfare legislation. This is due to the fact that animal rights theory is seen as utopian or impractical from a political standpoint or because welfare laws are viewed as a first step that will eventually lead to animal rights legislation ( Francione, 1996).

#### Criteria For Animal Rights Legislation

There have been few attempts to establish the criteria needed to develop animal rights legislation. One scholar who has made the effort to develop an animal rights legislative framework is Francione (1996). He states that there are five conditions that need to be met for incremental legislation to qualify as serving animal rights ends:

1. *The law must ban some form of animal exploitation.* The law must prohibit some reasonably identifiable behavior or abolish a particular practice. Laws, such as the AWA, that require people to treat animals “humanely” or prohibit “unnecessary” infliction of suffering cannot create rights because nothing specific is prohibited. Some examples of laws that would qualify as a prohibition on animal exploitation are: a ban on canned hunts, a ban on the sale of foie gras in restaurants, and a ban on the sale of exotic pets. These bans, if passed, would end specific animal abuses.

2. *The ban must end a salient part of the exploitation.* The law needs to address an important component of institutionalized animal exploitation. Any incremental change should help serve the ultimate animal rights goal of ending animal suffering. For example, a law that prohibited horse slaughter would be consistent with animal rights theory but a law that changes the practices on factory farms such as ban on battery cages or gestation crates would not. The reasoning is that the former outlaws an important practice of animal exploitation but the latter only causes a marginal reduction in animal suffering and does not alter the condition of the animals kept in intense confinement on factory farms.

3. *The legislation must be recognized as serving animal interests not human needs and concerns.* The goal of animal rights is to end the legal recognition of animals as property. Currently, in the United States animals are human property under the law. This assures that they have no legal interest that merits protection. Legislation needs to have at least an implied notion that the animal reforms made in the law are being enacted because animals have inherent value and interests apart from any human social benefit. Most animal welfare laws such as anticruelty statutes and humane slaughter laws are enacted to serve human needs. For example, anticruelty laws are enacted to assure that humans adhere to a moral code of conduct that includes proper treatment of animals rather than because animals deserve to be treated justly. Humane slaughter laws are, in large part, designed to protect the quality of the animals as food. Grandin designed a physical system that tries to prevent animals from knowing that they are being led to slaughter (See the explanation under point 5). The animal handling guidelines developed by Grandin were adopted by the American Meat Institute and McDonald's because they believe these practices will result in less carcass damage, fewer worker injuries, and higher profits (Francione, 1996). In contrast, the horse slaughter prevention bill introduced in Congress in 2005 is a good example of a law that would protect the interest of animals over humans. The bill, if passed, would prevent the slaughter, sale, and possession of horse flesh. This law would benefit approximately 100,000 horses that are slaughtered each year in the U.S. for their meat over the interest of the humans who seek to traffic in horse flesh (2006).

4. *The law is not merely protection of some animals at the expense of others.* The law should not provide for a kind of speciesism (a prejudice toward the interest of members of one's own species against those of members of other species) which seeks to protect some animals and not others. Most animal welfare laws in the U.S. reflect the higher social regard for companion animals (mostly dogs and cats) and the almost total public disregard for farm animals and most animals used for research. For example, chickens are excluded from the Humane Slaughter Act and most states exempt agricultural practices from animal cruelty statutes. Customary agricultural practices, such as, castration, dehorning, debeaking, branding, and tail docking are not covered by animal welfare laws even though they are done without anesthesia.

5. *The law should not replace one form of exploitation with a more "humane" form.* A major weakness of most animal welfare laws is that they focus on animal suffering in the short term and do little or nothing to improve the basic condition in the long term. An example is People for the Ethical Treatment of Animals' (PETA) KFC Campaign, "KFC Cruelty" (2006). It recommended replacing electrical stunning and throat-slitting of fully conscious chickens with controlled-atmosphere killing, i.e., the use of gas chambers this was clearly not serving animal rights goals. Placing chickens in gas chambers may reduce some small measure of suffering at the end of their lives, but it is not furthering the goal of ending the practice of killing chickens for food.

The same can be said for the Grandin method of "humane" slaughter aimed at reducing the stress animals undergo in slaughterhouse chutes on the way to the killing floor. In her system, the chutes have rubber louvers on the sides which prevent the cattle from seeing people. The chutes are also equipped with non-skid surfaces which prevent the animals from falling. These devices are said to help the animals reduce stress and remain calm (Grandin, 1995).

Another example of replacing one form of abuse with a more humane one is found in Switzerland when battery cages were outlawed. Hens, no longer confined to cages, are placed in overcrowded warehouses, similar to the way broiler chickens are kept in the U.S. Broiler chickens are confined to large buildings with no windows to let in natural light and fresh air, and no way for the birds to engage in normal pecking and dustbathing behavior (Dunayer, 2004).

Similar findings were reported by Singer and Mason when they attempted to verify the "certified humane" label on Pete and Gerry's organic eggs. Although not in

cages, the chickens are kept in large buildings in intensive confinement. They have little room to move around and are unable to engage in natural behaviors. They are also debeaked (the practice of cutting off the tip of a chicken's beak) to prevent cannibalism, a behavior produced by overcrowding (Singer and Mason, 2006). In the wild, chickens spend their time pecking and scratching in a search for food. They also take dustbaths to keep their feathers in good condition (Folsch, 2000).

To summarize the above five point, animal rights theory can be consistent with the incremental approach to legislative reform. To achieve this end, laws must be aimed at banning significant animal abuses. Most welfare laws, such as, those that deal with the way animals are killed, and those that prohibit inhumane treatment or unnecessary suffering do not qualify. Any attempt to balance human and animal interests within the law is inconsistent with animal rights goals. An animal rights legislative strategy must propose laws that are consistent with the inherent value of the animals.

Another set of criteria that may be useful in developing animal rights legislation is proposed by Russell and Burch (Russell, 1959/2006). They wrote an ethical protocol for laboratory experimentation, classifying the use of animals into three categories known as the Three Rs, refinement, reduction, and replacement. These guidelines were intended as a way of establishing rules for the humane treatment of animals in the lab not as recommendations for developing animal rights legislation. However, they provide some important insight into the differences between animal rights and animal welfare laws.

1. Refinement *suggests minimizing animal suffering and distress*. The authors argue that minimizing pain and distress is not only ethical behavior but creates better science because animals that are not under duress produce more accurate results. Williams and Burch suggest that the conditions under which animals are housed should be improved. For example, they recommend that mice be given toilet paper rolls or egg cartons to hide in, that rabbits be given straw and dogs be given toys to play with. They also recommend that anesthetizing animals whenever appropriate and possible.

2. Reduction *involves using the minimum number of animals possible*. Using the fewest number of animals to obtain the desired amount of information should be the goal. This can be achieved by: a) notifying other researchers when an animal is to be killed so organs can be shared; b) creating better experimental designs using statistical principles; c) better choice of species used in experimentation; and d) use of pilot studies which can result in fewer animals being used in experimentation.

3. Replacement *means avoiding the use of living animals*. The authors argue that alternative methods should be used whenever possible to replace animal experimentation. They suggest, for example, the use of physical and chemical analysis techniques and the use of mathematical and computer modeling to replace animal experimentation.

Of the three principles the first is contradictory to animal rights goals. It assumes that it is ethical to use animals for human needs as long as animal suffering is kept to a minimum. This is clearly animal welfare. According to this reasoning, animals are necessary in experimentation because they can help further human knowledge. Animal use is justified because it serves human knowledge and comfort. The obligation to the animals under these conditions is to provide them with some amenities to make their lives as comfortable as possible. Animal rights philosophy rejects this notion and contends that the improvements made in the lives of animals under these conditions are insignificant compared to what is taken from them.

The second principle, reduction, is similar to the first. Using the minimum number of animals does nothing for the animals used by humans and violates the principle of animal rights that animals should not be used to further human needs. The only significant principle, from an animal rights perspective, is the third, replacement. This suggests finding alternatives to the use of animals. It could provide the basis for legislation that has an animal rights perspective. For example, there are alternatives to

dissection in science education including, interactive computer programs, videos, and videodisc simulation.

A better model for creating animal legislation has developed in some European countries that have adopted the "Five Freedoms". First defined in 1979 by the United Kingdom's Agriculture Ministry, they are: 1) freedom from hunger and thirst, by ready access to fresh water and a diet to maintain full health and vigor; 2) freedom from pain, injury and discomfort by providing a suitable environment including shelter and a comfortable resting area; 3) freedom from pain, injury and disease by prevention or rapid diagnosis and treatment; 4) freedom to express natural behavior by providing sufficient space, proper facilities and company of the animals' own kind; and 5) freedom from fear and distress by ensuring conditions which avoid mental suffering.

The fourth principle, the freedom to express natural behavior and the fifth, freedom from mental suffering are denied animals kept on farms, in labs, and in entertainment venues. These two principles could be used to form the basis for legislation that can legally challenge the way animals are currently being treated in the U.S.

The Five Freedoms form the foundation of animal legislation throughout the European Union (Lora Chamberlain, 2004). These principles seem to go well beyond any ideas about animal welfare found in the laws in the United States. The implied concept is that animals have inherent value. This is in sharp contrast to the U.S. where they are seen as the property of their owners. Under the five freedoms animals are recognized as having the right to health and well being. This extends not to just physical condition but social and psychological health as well. There is acknowledgment that animals have a right to express natural behaviors, engage in social behaviors, and to avoid conditions that cause mental as well as physical pain and suffering. These are consistent with animal rights principles and could be useful in the formulation of laws with an animal rights orientation.

#### Animal Rights Criteria

Many of the criteria identified in this paper can be used in developing animal rights legislation. It is the authors' contention that there are at least three essential criteria necessary to framing any animal rights law. The first is that legislation must incorporate a ban on animal use (e.g. a ban on fox hunting or canned hunts). A ban is necessary because animal rights is an abolitionists movement (Regan, 2004). Any law that is animal rights in nature must call for an end to some form of animal use. The ban should include a category of animals, such as, elephants, dogs or horses used for human purposes. An example is a ban on keeping elephants in zoos. Secondly, the ban has to result in a significant change in the lives of some types of animals (e.g. foxes and animals used in the canned hunts would no longer be hunted and killed). In other words, the law must provide relief to this class of animals. An example of insignificant change in the law is the ban on battery cages for egg-laying hens. This ban has removed the cages and placed the hens on the floor of over-crowded sheds. Since the law provides for only a marginal improvement in the condition of the animals it is considered insignificant.

The third is that the law must recognize the inherent rights of animals as the reason for the law (e.g. a ban on zoos keeping elephants would recognize that the needs of the animal cannot be met in a zoo environment). The law would not be written, as most animal welfare laws are in the U.S., to fulfill human needs. Most animal control laws, such as, spay and neuter practices and maintaining animal control shelters are designed to protect humans from the effects of stray dogs rather than because of a concern for the well being of the animals.

Tom Regan (2004) identified a number of goals that can serve as a potential list of animal rights laws. They would seem to fit the three criteria. They include: 1) removal of elephants and performing animals from circuses, 2) end the use of dolphins in

entertainment, 3) abolish canned hunts (animals kept in fenced enclosures for the purpose of shooting them at close range and guaranteeing a kill every time), 4) end of greyhound racing, 5) elimination of fur farms, 6) end of seal hunts, 7) ban on compulsory dissection in schools, 8) end to dogs used in research, 9) ban on the LD50 toxicity test, 10) end to pound seizure (the practice of allowing animal shelters to sell or donate animals to research labs), and 11) elimination of Class B dealers (merchants who buy dogs and cats from the public and sell them to research labs). Three of the proposals on this list are currently the law in some places in the U.S. A ban on canned hunts has been enacted in 22 states and an end to compulsory dissection in schools is the law in 9 states. In the city of Detroit there is a ban on keeping elephants in zoos.

#### Obstacles to Legislation

Using the legislative process to achieve animal right's goals is hampered by a number of political obstacles. Foremost among them are: the nature of the law making process in the United States; a bureaucracy that is dominated by the opposition groups that hamper enforcement of animal laws; the tendency of the legislature to pass symbolic legislation to appease non-elite groups; and the failure of the criminal justice system to apply appropriate sanctions to those who violate the laws.

#### Policy Process

The public policy process in the United States is essentially a conservative one. It is better suited to defeating legislation than promoting new laws. The process involves numerous participants including executive and legislative officials, interest groups, political parties, and public opinion interacting in a system that involves sharing power. These policy players must interact with each other in an effort to build a majority coalition necessary to enact legislation (Simon, 2007).

The process is further complicated by the fact that power is decentralized in Congress and state legislatures create numerous obstacles to the passage of legislation. There are also committees and subcommittees in the House and the Senate as well as executive action to consider. The result is a process characterized by negotiation, bargaining, and compromise. This means that in order to secure the needed votes to pass a bill it is usually watered down at every decision point in the process. Almost all legislation that survives this difficult process can be described as incremental, that is, it makes only marginal changes in existing policy rather than dramatic and fundamental changes in the way things are done (Gosling, 2004).

Therefore, it is not surprising that most legislation dealing with the treatment of animals is more likely to be animal welfare oriented rather than animal rights oriented. Animal rights legislation which calls for more radical innovations is especially difficult to pass (Van Horn, 2001). For example, one of the goals of animal rights is the elimination of rodeos. However, a law that would outlaw rodeos would have little or no chance of passing in most states, so the focus of proposed legislation is usually on ending the most abusive rodeo practices, such as calf roping or horse tripping, events that often severely injure or kill the animals. Successful passage of this form of legislation does little toward reaching the animal right's goal of ending the abuse of animals in rodeos. Outlawing calf roping and horse tripping does not end the abuse of either cows or horses in the rodeo. This is because these animals are used in other rodeo events, such as, bronc busting or calf riding ( an event that involves several children attempting to jump-on and ride the calf).

## Symbolic Legislation

Since the policymaking process is decentralized and requires numerous compromises along the way, many of the laws that survive the policy process can be described as symbolic legislation. Symbolic laws are general in nature and lack the specific prohibitions that would make them meaningful. The statute and its subsequent regulatory enforcement prove to be hollow and intangible rather than real and concrete. Symbolic laws provide reassurance to the public rather than redress, prevent, or punish wrongdoing.

Edelman (1983) argues that the public policy process can be viewed as a system that rewards tangible, specific benefits to a few powerful elite groups and only symbolic, intangible reassurance to non-elite groups and the unorganized. As a result many statutes do not deliver what they promised. Their regulatory policies are not actively pursued unless they are acceptable to the regulated groups or serve the interest of these groups.

Applying Edelman's framework (1983), some animal welfare legislation can be seen as symbolic policy. AWA is a case in point. It appears to be a general anticruelty statute but it fails to regulate the food, fashion, and pet industries. The original purpose of the AWA was to protect dog and cat owners from theft and to prevent the use of these pets in animal research (Francione, 1996). However, the law is limited to the protection of animals used in research, exhibitions, transported commercially, or sold by animal dealers. It also excludes rats, mice, and birds used in research and does not prohibit any experiment, no matter how painful (Moorehead, 2004). The AWA is further weakened because it covers only the animals in the laboratories that are not being used in research projects. Additionally, the USDA, the administrator of the AWA, does not review the research design of the experiments to evaluate possible animal abuse or provide any guidelines for animal use in experimentation (Regan, 2004)

Animal laws at the state level are not much different. Anticruelty laws appear to be mostly symbolic in nature. At first glance they seem to be protection for animals in general, but there are many exemptions. These include animals used in: veterinary practices, research, in the wild, on farms, in slaughterhouses, in pest control, in rodeos, in zoos, and in circuses (Morehead, 2004).

Although not using the term *symbolic* to describe animal welfare legislation, Francione argues that laws that require people to treat animals "humanely" or prohibit causing "unnecessary" animal suffering do little to protect animals because no specific behaviors are prohibited (1996). The Guardianship Ordinance now the law in cities such as, Boulder, Colorado and West Hollywood, California are examples of symbolic legislation. This law advocates that the words *pet-guardian* be substituted for *pet-owner* in official statutes, ordinances, and public communications. The reasoning behind the change is that it is believed that more respectful language will lead to more respectful treatment of animals (Nolen, 2001).

If animal legislation is going to be more than symbolic and be concrete it must create specific limitations on the behavior of people using animals. These behaviors must be clearly defined and easily understood. There also needs to be strong sanctions that send the message that violators will be severely punished (Francione, 1996).

In contrast, animal laws are characterized by limited culpability under the law. Francione (1995) found that most state anticruelty laws provide for a minimum level of criminal responsibility. Penalties for violations usually do not exceed a fine of \$1,000 or a prison term of more than one year. Moorhead (2004) reported similar findings. He stated that sanctions are weak and include: counseling, community service, forfeiture of an animal, seizure, and reimbursement for cost and care. Often when the animal abuser performs one of these acts the abused animals are returned to them.

It appears that animal laws are not taken seriously enough by the criminal justice system. Offenses are rarely prosecuted and when they are they usually do not go

to trial. If there is a conviction the sentence is often not adequate to fit the offense. This is similar to the problem that Mothers Against Drunk Driving (MADD) faced in the last two decades (Kollman, 1998). They had to engage in a massive public education campaign to convince the public and the politicians to treat the issue seriously. Animal rights advocates face a similar challenge.

#### Administrative Enforcement

Animal welfare laws are also weakened by a lack of administrative enforcement. This is the result of powerful groups, such as those representing animal agribusiness, research laboratories, and animal breeders. Usually these industries see the law as a threat to their profits or ways of conducting business. These opposition groups direct their attention to the administrative agencies responsible for implementing the act. They are usually able to persuade the regulatory agencies to serve the needs of the industry rather than regulate it. One way they do this is by convincing executive officials, who make appointments to the agencies, to staff them with "experts" from the regulated community. Appointing members of the regulated community to administrative agencies is a common practice. In fact, the practice of moving from industry to government and back again is so commonplace that it is referred to as a "revolving door". It usually results in an agency that is dominated by ex-members of the regulated industry. Under these conditions it is not surprising that animal laws are not rigorously enforced. For example, the USDA has general responsibility for enforcing the AWA. According to the Office of Inspector General (OIG) audits and investigations continuously reveal that the USDA is not staffed to enforce the law, downplays the number of violations of the law, ignores repeated violations, and is unwilling to levy high monetary penalties. According to one OIG inspector turned whistleblower, "The USDA has a good ol' boy relationship with the research industry and the laws are nothing more than smoke and mirrors" (Budkie, 2005, p.13; Monks & Minow, 1991).

Dunayer (2004,) agrees with the notion that the AWA is not effective. She states that the AWA excludes several types of animals including: invertebrates, amphibians, fishes, reptiles, and many mammals and birds. She cites the state of puppy mills in the U.S. as further proof that the AWA is not doing a good job of protecting animals identified under the Act. In most puppy mills female dogs are bred for the pet industry. At every ovulation cycle females are impregnated. When she reaches age five or six and her production declines she is killed. For these dogs life in the puppy mill is spend in a small, dirty, wire cage-denied all exercise (2004). Life is not much better for other animals covered under the Act. Animals kept in zoos and circuses are required to have only enough space to stand up, lie down, and turn around. Other performing animals are also often mistreated. For example, in alligator shows humans sit on, stand on, and jump on alligators. Participants drag them by the tail, wrestle them, hit and poke them on the nose and in the eyes, and pass them around to audience members (Dunayer, 2004).

Animals protected by the Humane Slaughter Act are also abused at the slaughterhouse because of a lack of enforcement. Some slaughterhouse operators violate federal law by failing to properly anesthetize animals on the assembly line. (Gay, 2001) cites affidavits by workers claiming that between 10 and 30 percent of the animals are processed while conscious. He also refers to a U.S.D.A. study that found almost two-thirds of slaughterhouses nationwide were not in compliance with the Humane Slaughter Act requiring animals to be rendered insensible to pain prior to killing. Similar results are reported by Eisnitz who found that every year thousands of animals are cut, scalded, beaten, and skinned while fully conscious. This is the result of improperly functioning equipment, poorly trained staff, lack of a sufficient number of federal meat inspectors, and the constant pressure to speed-up the assembly line (1997). An investigative report by the *Washington Post* in 2001 reported similar findings. An analysis of enforcement

records, interviews, videos, and worker affidavits verified repeated violations of the Humane Slaughter Act. For example, the government took no action against a Texas company that was cited 22 times for animal cruelty. These violations included chopping hooves off live cattle (Warrich, 2001).

#### Secondary Results of Welfare Legislation

Despite the weakness in enforcement animal laws can have positive secondary effects that can benefit the goals of the groups sponsoring the legislation. Almost all animal legislation, rights and welfare, has a positive secondary result of public education. Media coverage of the issue on television and in newspapers can inform the public as to the nature of the issue and its effects. This was the case recently in Chicago when the city council passed an ordinance to ban the serving of foie gras, (a pate produced by force feeding ducks to make their livers enlarge) in city restaurants. Interest groups on both sides of the issue were given media coverage which lasted for several months. Chicago Chefs for Choice, and Hudson Valley Foie Gras spoke against the ordinance while SPEAK (Supporting and Promoting Ethics for the Animal Kingdom), Farm Sanctuary, and The American Society of the Prevention of Cruelty to Animals (ASPCA) spoke for it. These interest groups appeared in public hearings before the city council and in interviews with the media (Paulson, 2005). This provided an unusual opportunity for animal organization representatives to inform the public about the cruelty surrounding the issue. While it is not known how many people were influenced by what the animal activists said, it is clear that a great deal of free publicity was provided and a significant animal issue was placed on the political agenda of the city.

A positive secondary effect of animal rights legislation is that a ban on a specific practice used in an industry may serve as a "back door" way of eliminating the entire enterprise. For example, efforts to ban a particular event in a rodeo, such as, steer wrestling, bull riding, or saddle bronc riding can be crucial to the success or failure of the rodeo. Similar results could be achieved in zoos or circuses. For example, after three elephants died at Lincoln Park Zoo in a six month period, the city council of Chicago entertained an ordinance that would have expanded the space required to keep elephants at the zoo to five acres indoors and five acres outdoors for each elephant. The legislation also addressed circus elephants, mandating 18,000 square feet for each elephant and placing a ban on the use of bull-hooks, electric prods, and baseball bats, commonly used to discipline circus elephants. The space requirement at the zoo and the ban on the disciplinary devices in circuses would have made it impractical for either zoos or circuses to continue to maintain elephants. In effect, this legislation would have created a "back door" ban on elephants in both venues (Lydersen, 2006).

Another positive secondary effect of successful animal rights legislation is to help develop what Garner calls insider group status. Insiders are interest groups that have prestige and legitimacy among both the public officials, who determine public policy, and the general public, which help inform that policy. Insider group status is desirable because insiders are much more likely to have access to policy makers and to be successful in influencing the direction of public policy (Garner, 1993). In contrast, outsider groups are usually unsuccessful in achieving their political goals. They are relegated to engaging in outsider tactics, such as boycotts, demonstrations, and civil disobedience. While these strategies may gain publicity for an outsider group, that exposure can have a negative effect (Berry, 1999; Gais & Walker, 1991; Kollman, 1998).

The animal rights movement is a case in point. Relegated to outsider status, publicity given the movement is usually through media coverage of protest demonstrations, acts of civil disobedience, and interviews with extremists in the movement. Most of this seems to produce negative publicity. For example, in a recent 60 Minutes segment on eco-terrorism animal rights was included. During the report, Ed Bradley interviewed Dr. Jerry Vlasak, identified as a practicing trauma surgeon in Los

Angles. Dr. Vlasak was also acknowledged as a spokesperson for Physicians Committee for Responsible Medicine; a board member of Animal Defense League; the Treasurer, Sea Shepard Conservation Society; and scientific advisor to In Defense of Animals (CBS News, 2006).

In the interview, Vlasak appeared to support the use of assassination as a way to deal with the opposition. He stated that people who harm animals, such as animal researchers, slaughterhouse workers, and heads of corporations needed to be stopped. When asked if this meant he supported assassinating these people he responded, "I think people who torture innocent beings should be stopped. And if they don't stop when you ask them nicely, they won't stop when you demonstrate to them what they're doing is wrong, then they should be stopped using whatever means necessary" (CBS News, 2006).

The *60 Minutes* program made no attempt to include in their report any of the numerous moderate and nonviolent leaders of the movement. Instead, they left the impression with the public that the animal rights movement is made up of eco-terrorists committed to assassination and property destruction (CBS News, 2006). Given the popularity of *60 Minutes*, the image of the eco-terrorist may supplant the long-standing image of the animal rights activist as a demonstrator throwing red paint on a woman's fur coat during a Fur Free Friday demonstration (Reed, 1989).

Another negative secondary effect of legislation is unintended consequences. Instead of generating the intention of the legislation (primary results) the results are often the opposite of those intended by the law. Francione argues that this is the case with most animal welfare legislation. The aim of anticruelty and welfare laws at the national and state levels is to reduce the suffering of animals. However, he argues that because these laws do not prohibit anything they are ineffective. For example, anticruelty laws require those who conduct research on animals to provide a certain amount of food, water and cage space. Since these requirements offer only the minimal level of protection, they do little to reduce animal suffering. Regan (2004) states that in a typical year, the Animal Welfare Act receives a 98% compliance rate. This is not the result of the high quality of care given to animals but rather the very low standards required in the law (Francione, 2000).

Successful passage of animal welfare laws may have other unintended consequences. Animal advocates, who promote new laws, often see them as the first step in a linear progression toward better treatment of animals and the eventual elimination of animal use. In fact, the process may be quite different. It may instead be one step forward and two steps backwards. For example, the large health food store chains, Whole Foods, Wild Oats, and Trader Joe's have foods that are packaged with new terminology: free-range, cage-free, natural, all-natural, certified organic, organic, not-genetically modified, fairly traded, animal care certified, and drug-free. However, only the organic label is regulated by the government. These labels have done little to improve the quality of life for animals and tend to mask the real conditions in which animals are kept. Some of them like cage free, and free range suggest that animals are being raised in natural surroundings.

Some animal rights organizations advocate efforts to standardize and regulate labels, such as, free-range, cage-free, and animal care certified. The goal is to include in the regulations improvement in the way animals are treated on factory farms. However, this strategy may not serve the interest of animals used for food but may instead work to increase the consumption of eggs and meat products, resulting in more, not less, suffering and death for the animals (Francione, 1996). It is possible that consumers will be attracted to these new labels because they think the animals have been raised humanely.

Another example of humane labeling is in the area of veal production. In recent years, several animal rights groups have promoted a boycott of veal emphasizing the cruelty involved in its production. Public education campaigns stress the fact that a male calf is separated from his mother within one to three days of birth, is kept in a small

crate where he is chained at the neck, kept in darkness except at feeding time, is barely able to move, unable to turn around. The calf is fed a milk replacer which is deficient in iron and fiber and causes anemia and diarrhea.

The result of the campaigns against veal production has been a 70% reduction in the amount of veal consumed in the United States since 1980 (Mallory, 2000). It has also resulted in something known as “free-range veal.” A company in Colorado is marketing a veal product that it says has no hormones, or antibiotics, no confinement or inadequate diet. The calf stays with his mother until he is about six months old, when he is sent to slaughter (Farney, 2006). However, it is doubtful that this “more humane” process is what animal rights activists intended from their efforts. If free-range veal becomes popular, it will have the opposite effect of that intended by animal rights advocates: the end to the slaughter of calves used in the veal industry.

Applying a humane label has also been tried with the leghold trap, an apparatus used to capture furbearing animals. The trap is made up of two steel clamps, referred to as jaws, and a spring in the middle. When the animal steps on the trigger the trap closes around the foot or leg preventing the animal from escaping. This device has been banned in most countries and eight states in the United States because of its cruelty. Traditionally, the trap is designed with steel shaped teeth at the top of each clamp to insure that the animal does not escape. Proposed bans have generated recommendations for a more “humane trap.” This trap replaces the teeth shaped steel jaws with smooth ends producing a trap that does not pierce the leg of the animal (Animal Trapping, 2005). The rhetoric used to describe this new trap suggests it is a more compassionate method of hunting and does not cause pain to the animals (Regan, 2004). This is a case in which applying a humane label has backfired on the animal rights movement.

#### U.S Animal Welfare Laws Compared to Other Countries

The leghold trap has been banned throughout Europe and is an indication that when it comes to animal welfare legislation the United States lags far behind many European countries. The European Union (EU) has adopted several laws phasing out or banning practices that are commonly used on factory farms in the United States. The EU has outlawed battery cages, farrowing and gestation stalls for pigs, veal crates, hormonal growth promoters, and the routine use of antibiotics. Switzerland, Germany and Norway have outlawed: castration, ear and tail docking, placing a ring in the nose of a cow, dehorning, and debeaking. Germany has outlawed the production of foie gras by prohibiting the force feeding of ducks and geese. Austria has Europe’s strictest anti-cruelty law. The law covers animals on farms, zoos, circuses and in pet shops. It forces farmers to uncage chickens and outlaws the use of lions and other wild animals in circuses. It also prohibits pet owners from clipping their dogs’ ears or tails and makes it illegal to restrain dogs with chains, choke collars or invisible fences. (Tough Animal Rights, 2004).

The most significant difference between animal welfare laws in Europe and the animal welfare laws in the United States is a comparison of anticruelty laws. The laws in Europe tend to be preventative, outlining the ways animals should be cared for to avoid disease and injury. In the United States, welfare laws are usually prescriptive, addressing behavior that is in violation of the statute (Tomaselli, 2003). For example, anticruelty laws in the United States protect against intentional infliction of pain, suffering, injury and death of animals. In contrast, under European laws, animals must be fed, housed and cared for in a way that is consistent with their physiology and behavior. This means that a dog should be walked or allowed to run because it has the right to obtain sufficient exercise. The legislation also includes provisions relating to temperature, tethering and fresh air. Under European welfare laws there is concern for the psychological as well as physical needs of the animals. Environments in which animals are kept must enable the animals to exhibit natural behaviors and avoid boredom and stress.

Another area of animal welfare law that differs dramatically in the United States and Europe is animal transport regulation. In the United States the law that covers transportation of animals raised for food is the Twenty Eight Hour Law of 1877. The law, which applies only to interstate transportation, states that animals cannot be confined for more than 28 hours without being unloaded for food, water, and rest. The law specifies that the rest period must be five hours long. There are several exemptions in the law, such as, extending the time by eight hours if the confinement ends at night or if the transporter requests an extension to a 36-hour limit (Tomaselli, 2003). These minimal protections given animals under the transport laws are not rigorously enforced in the U.S.

In contrast, under EU animal transport laws, animals are only allowed eight hours of travel. Then, they must be given food, water and rest. Provisions of the law address numerous species-specific guidelines and regulations dealing with: type of compartment, temperature, ventilation, and space. In the United States neither federal nor state laws address these living conditions in the transport laws (Moorhead, 2004).

Many of the animal welfare changes in Europe are being proposed in the United States by both animal welfare and animal rights organizations. However, most of these changes in the way animals are treated on farms do not comply with the criteria for animal rights legislation identified in this paper. A ban on farm animal practices, such as, debeaking, dehorning, castration, and ear and tail docking will alleviate some of the suffering animals endure but will not fundamentally alter the condition of animals raised for food. These animals will still be kept in intensive confinement, denied natural behaviors, and sent to slaughter long before they reach their natural lifespan.

However, some of the legal changes in the EU are consistent with animal rights theory. Legal recognition of animals as sentient beings, capable of feeling pain and pleasure, acknowledges that they are more than human property. This is in sharp contrast to the U.S. laws where animals are considered property. As a result they are referred to in agricultural publications as “production units”, or “meat machines”. This view of animals is further illustrated in the egg industry where male chicks are described as “material” and “waste” (Dunayer, 2001).

Raising the status of animals above that of property provides the basis for more progressive animal welfare laws in Europe (Francione, 1995; Tomaselli, 2003). When animals are viewed as sentient beings, there is a greater likelihood that welfare laws will be written to benefit the animals rather than serve human needs. It also makes it less likely to have laws that protect some animals and exempt others. This is the trend in the United States where anticruelty laws protect companion animals but not those on farms and in research labs.

#### Impact of Laws on Animals in the United States

Despite the efforts of animal groups to strengthen anticruelty laws and pass new laws, the general conditions of animals in the U.S has not improved significantly. On farms and in research labs animals are kept indoors during their entire lives. They are crammed into small and overcrowded sheds, cages, crates and stalls that are often so small that the animals are not able to turn around, stretch, or comfortably lie down. They are forced to live in almost barren environments devoid of stimuli found in their natural surroundings. These living conditions prevent them from performing natural activities and social behaviors characteristic of their species. If allowed to live naturally many animals would engage in nest building, child rearing, searching for food, traveling long distances, socializing with other members of their species, and finding their place in the social order (deWaal, 2005). All of these natural behaviors are denied by intensive confinement. As a result they are prevented from developing normal physical and mental capacities.

The physical health and well being of the animals is negatively impacted by intensive confinement. On chicken and turkey farms thousands of animals are crowded in

large sheds. When these animals are fully grown, turkeys have about three square feet of space and chickens less than one square foot. As the litter becomes wet, hard, and ammonia-saturated, the birds develop foot ulcers, ankle burns, breast blisters, respiratory and eye disease, including blindness (Dunayer, 2001).

Poor physical health of animals is also the result of being fed an unnatural diet, antibiotics, hormones and other growth enhancers. Chickens and turkeys, for example, are bred to grow fast and develop much differently than they would if they were raised naturally. John Robbins describes the Thanksgiving custom at the White House. Each year about a week before the holiday, the National Turkey Foundation presents a live turkey to the President of the United States. In the ceremony the President acknowledges the gift and then grants the turkey a pardon. Rather than have the turkey become part of the President's Thanksgiving dinner, it is sent to a sanctuary to live out its natural life. However, the turkey usually only lives a few months. It dies of a heart attack or its lung collapse (Robbins, 1987).

Similar results are reported for other animals. On pig farms the unnatural flooring and lack of exercise cause obesity, crippling leg disorders, and sudden death. The deprived environment also results in psychological disorders including: chronic stress, depression, aggression, stereotypical behavior, and abnormal and neurotic coping (Farm Sanctuary, 2005).

## Conclusion

Many organizations in the animal rights movement view animal welfare laws as a major tool in their strategy to achieve the movement's ultimate goal: the abolition of all human use of animals. Even though these laws offer only modest improvements in the lives of animals, activists consider them to be incremental steps toward ultimate emancipation of animals (Francione, 1996). Few organizations have attempted to propose animal rights legislation and there has not been much of an effort to operationalize animal rights goals into an incremental legislative strategy. This may be because animal rights legislation is viewed as more difficult to pass than welfare laws or because animal rights goals are considered utopian and politically unrealistic. The idea that animal rights goals are not being met by pursuing welfare legislations is not shared by most of the animal rights organizations engaged in the legislative process even though an examination of legislative outcomes suggest that it is highly questionable that welfare laws can eventually lead to animal liberation.

Few animal rights exponents seem to even question whether or not welfare laws are improving the circumstances of animals despite the fact that there seems to be little improvement in the conditions of most animals being kept for human use. The major problems with the welfare laws seem to be, lack of specific prohibitions in the law, exemptions made to the law, and lax enforcement. Industries continue to exploit animals through intensive confinement, mistreatment, and experimentation which lead to the death of billions of animals every year (Wise, 2002).

Laws that make marginal improvements in the lives of animals, such as, those that mandate larger cages or more humane methods of slaughter are not consistent with animal rights philosophy. Most laws that address factory farm practices also fall into this category. Outlawing battery cages, veal crates, and gestation crates do little to further the goal of ending the practice of using animals for food. The animals are still essentially in the same condition they were before the laws were passed. In addition, these laws send an anti-animal rights message: that it is acceptable to eat animals as long as they are treated humanely (Dunayer, 2004). It is important to recognize that these laws are counterproductive from an animal rights perspective.

Similarly, legislation designed to regulate terms used to market the way animals are raised, such as, "free-range" and "cage-free" can have the same counterproductive results. They may increase consumer demand for the products and result in higher profits

for the industries. Consumers are led to believe they are making ethical choices by buying these products (Singer & Mason, 2006). However, the end result may be an increase rather than a decrease in animal suffering and death.

Determining the place of welfare legislation in the legislative strategy of animal rights organizations is complicated by the fact that almost any welfare legislation, even a symbolic welfare law, can produce some positive secondary effects. On the one hand, this may make it worth supporting. On the other hand, there is always the possibility of unforeseen negative consequences. As a result, there is a need to assess the long term effects of incremental welfare legislation.

In contrast, animal rights oriented legislation will produce more beneficial outcomes, but passing animal rights laws will be more difficult. Probably the most challenging area to achieve legislative success is in factory farming. In order to fit the criteria of animal rights, legislation aimed at factory farms would have to call for a ban on production. This was accomplished recently in California when the government halted the production of foie gras.

The same results could possibly be achieved with veal farming, or fur farming. However, it seems impractical to suggest that any of the major types of animals farming could be banned in the U.S.

A better strategy may be to seek a "back-door" approach. Animal rights organizations, for example, could propose an end to adding antibiotics and other growth hormones to the feed of animals. There is support for this idea among some medical doctors, organic farmers, and consumer advocates (Public Interest, 2002). If animal rights organization could form a coalition with these groups a ban would be possible. This would have a major impact on animal farms because these drugs enable animals to be raised in-doors, in intensive confinement. Although the law would not end animal farming, it would be a step in that direction because it would make it impossible to have large factory farms and it would threaten the current economic structure of most animal farming in the U.S.

It will probably be easier to pass animal rights legislation in other areas of concern to animal rights organizations. A ban on animal testing for cosmetic and household product is one example. Following the lead of the EU, legislation could be proposed to exclude certain animals, such as great apes (gorillas, chimpanzees, bonobos, orangutans) from these tests. This could be a first step toward eventually fazing-out animal testing for these consumer products. It may also be possible to pass a ban on other uses of animals such as exhibiting large animals in zoos and circuses, ending fur farming, and banning certain animal sports like greyhound racing.

Animal rights organizations should also seek to follow the European example of recognizing the social and psychological needs of animals. This provides an important step toward creating animal rights. European anticruelty laws now recognize that animals are social beings that should be allowed to interact with members of their own species and allowed to exhibit normal behaviors. Adopting these principles in the U.S. could form the basis for fundamentally altering the way animals are kept. It is the view of the authors that following the European model in the United States would be far more productive than the legislative welfare strategy currently employed.

Animal rights organizations need to recognize that they face a difficult struggle in the legislative arena. The obstacles to passage of animal rights oriented laws will not be easy. However, similar obstacles have been overcome by other social movements in the past. The civil rights movement and the women's movement are two examples. Like the animal rights movement they faced formidable opposition and threatened the economic, social, and political status quo. They faced a long and difficult struggle before achieving their goals. It will probably be no different for the animal rights movement. Only time will tell if they are able to achieve their legislative agenda.

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## Introduction

Every March, the Chinese People's National Congress holds its annual session in Beijing. During a two weeks session, over 2,000 national representatives have hot discussions revolving around important national political issues and topics that concern the public most. Every year, without exception the topic of public health reform is one of the hottest topics debated by many representatives.

In the past two decades, China's economy represented by gross domestic product (GDP) index has grown dramatically since its economic reforms. However, the health status of China's citizens and the general healthcare service are not improving at the same pace. Complaints about high drug prices, poor healthcare services, and low coverage of health insurance are often heard. A new survey conducted by Zero Survey, a private institution, shows that about two thirds of Chinese citizens have no health insurance coverage or insufficient coverage.<sup>2</sup> These data are more serious in China's vast rural areas where 80% of China's population resides. For the majority of China's rural residents or peasants, the severe health risk is rather the high cost of healthcare (which can drain a Chinese peasant's entire life savings) than the direct infection of diseases. Compared to their urban counterparts, they are less able to deal with healthcare expenses and more vulnerable to financial bankruptcy caused by diseases. In a survey, nearly 50% of interviewees would choose staying at home when they are sick, instead of receiving medical attention in a hospital.<sup>3</sup> The most important reason they gave is that they cannot afford the high healthcare expenses. The most detrimental risk for hundreds of millions of Chinese rural residents is that they are not able to afford expensive medical procedures and illness is a leading cause of poverty among these farming households.

The Chinese government has come to realize that decisive measures must be taken to guarantee that peasants can afford healthcare expenditures and to stop them from going financially bankrupt due to diseases. In October 2002, China's central government officially put healthcare for China's 900 million rural residents on the agenda of the Central Committee of Communist Party, the ruling party in China. The New Cooperative Medical Scheme (NCMS) seeks to institute a new system of group insurance, allowing peasants to benefit from risk pooling. To date, NCMS programs have been implemented in 678 pilot counties in China, and by 2010 the NCMS is meant to operate nationwide. In this year's National People's Congress annual conference, the Prime Minister, Mr. Wen Jiabao, announced the advancement the NCMS's timetable by two years, namely, by 2008 the NCMS should be set up across the whole nation.<sup>4</sup>

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<sup>1</sup> The author appreciates great assistance from Ms. Hang Lianrong and her colleagues in the Provincial Public Health Department of Shanxi and public health officials of Caoping District and Yangqu County of Taiyuan, Shanxi. They provided great help during the paper research.

<sup>2</sup> Please refer to Ni Yan "Kan Bing Zhi Huo" (The Puzzle of Going to See a Doctor), *Zhong Hua Gong Shang Shi Bao* (China Industrial and Commercial Times), November 23, 2005. The news coverage is also available at <http://www.cbt.com.cn/cbt/seachshow.asp?id=2382&ml=&bt=>, last visited on September 28, 2006.

<sup>3</sup> *ibid.*

<sup>4</sup> "He Zuo Gong Ji Jian Qing Yi Liao Fu Dan, 1.79 Yi Nong Min Can Jia He Zuo Yi Liao" (Cooperative Medical System Relieving Burden, 179 Millions Peasants Participating in), *Zhong Guang Wang*

This paper is a research of China's current rural healthcare system and is to do a preliminary evaluation of the new program. The first part of the paper reviews the history of the healthcare system in China's rural areas, then it introduces the nature of the new program, how it is structured, how it relates to local government obligations and costs. The paper also will analyze the weaknesses and strengths of the new program.

#### Why the New Cooperative Scheme?

In the past three decades prior to economic reforms, the rural healthcare system in China was an integral part of the collective agricultural system. Prior to the conception of NCMS, China adopted a public health risk management system called the Cooperative Medical System (CMS) in its countryside, which came into existence in the 1950s after the Communist Party took power in mainland China.

The northeast provinces first promoted a cooperative system and public funds (raised primarily by the peasants themselves) to build local public health organizations, which was publicized and affirmed by the central media in 1952.<sup>5</sup> These cooperative medical organizations operated by risk-pooling and they are said to take shape and had laid the foundation for the later development of medical cooperation. At the peak of the agricultural cooperative in 1955, in Shanxi, Henan, Hebei, Hunan, Guizhou, Shandong, Shanghai, and other provinces, there came into existence a number of health posts and medical posts sponsored by agricultural cooperative communes. In 1956, the National People's Congress explicitly expressed that the cooperative communes should be responsible for medical treatment of commune members' who are injured or ill at work. It was the first time that the cooperative commune's role was introduced to medical treatment for rural residents.<sup>6</sup>

At that time, the Mishan united healthcare post was an early example that implemented a healthcare-and-commune combined system, in which commune members paid a small proportion of healthcare fees and the cooperative communes provided healthcare subsidies. After the winter of 1955, the Mishan case was promoted to many areas in the country, and a number of collective-economy-based, commune-individual-combined, and mutual-aided collective healthcare clinics, or coordinated medical aid posts were established. The basic approach at that time was: first, under the leadership of township government, the healthcare clinics or posts were co-sponsored by agricultural cooperative communes, individual peasants and medical practitioners; second, under the principle of voluntary participation, peasants contributed healthcare fees and could enjoy healthcare service and free registration, free treatment and free injection services; third, the funds of healthcare clinics were from fees paid by peasants, medical subsidies from cooperative communes, and medical business income (profits from drugs).<sup>7</sup>

In November 1959, the Ministry of Public Health held a national work conference on rural public health in Jishan County of Shanxi province. After the meeting, the conference drafted a report to the Central Committee of Communist Party of China (CPC), affirming the collective healthcare system involving commune members, and forwarded specific suggestions:

"Regarding the people's commune system, currently there are two major forms: who gets

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<sup>5</sup> Please refer to Wang Shidong, Ye Yide, "Nong Cun He Zuo Yi Liao Zhi Du De Hui Gu Yu Fa Zhang Yan Jiu" (Historical Review and Development Research of Rural Cooperative Medical System), *Zhong Guo Chu Ji Bao Jian* (The Preliminary Healthcare in China), issue 4, 2004. It also could be retrieved at [http://www.cnr.cn/kby/zl/t20060405\\_504189971.html](http://www.cnr.cn/kby/zl/t20060405_504189971.html), last visited on September 28, 2006.

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

the medical service, who pays for it, and the collective healthcare system. The conference delegates agreed that under the current production level and the public awareness under the current situation, the collective healthcare system fits the commune system generally. The main points are: first, commune members must pay an annual healthcare fee; second, commune members only have to pay a registration fee or pay for medications when they receive medical treatment; third, communes subsidize commune members through communal funds and grants. The specific approach may be based on local conditions.”<sup>8</sup>

In February 1960, the CPC Central Committee forwarded this report to all other provinces and called on all localities to take it as a reference and implement it based on local conditions. Thereby, the development of the rural cooperative medical system was greatly promoted.

In June 1965, Mao Zedong made an instruction “to focus on the rural healthcare issue.” On September 21, the CPC Central Committee emphasized strengthening basic healthcare in rural areas by forwarding the Ministry of Public Health’s work report; thus the development of rural cooperative medical system stepped forward again. In 1968, Mao Zedong read and introduced the rural cooperative medical system implemented by the LeYuan commune in Hubei province, and he also added his own comments and thought highly of the practice. Since then, the cooperative medical system in the country started to develop and boomed. Until 1976, almost 90% of communes had a cooperative medical system.<sup>9</sup>

At that time, all production materials were owned collectively in China, thus the village clinics were established by the villages, by the communes, or by the township hospitals. The medical cost was reserved in the commune’s general withholdings. In the villages or communes carrying out the cooperative medical system, commune members could get free medical treatment (“cooperative treatment”) or could get free medications (“cooperative medications”) when they visited the village clinics. In some places, commune members could have both free medical treatment and free medications.

Under the auspices of the rural Cooperative Medical System, individual commune members or villagers contributed a small portion of their incomes to a commune-based medical fund. In the event that a commune member needed medical care, the fund paid all or part of the expenses incurred. The rural Cooperative Medical System thus served as a risk-pooling measure for hundreds of millions of Chinese rural residents.

After economic reforms began in the 1980s, the Rural Cooperative Medical System came to an end. The introduction of the household-contract responsibility system in rural areas weakened the collective communal economy. The rural cooperative medical system began to lose financial resources as the collective economic system collapsed. In other words, the privatization of the economy resulted in the dismantling of its healthcare system. By 1989, the administrative villages which still implemented cooperative medical system only accounted for 4.8% of total administrative villages in China.<sup>10</sup>

Also, China reduced the central government’s share of healthcare spending from 32 per cent in 1978 to 15 per cent in 1999, transferring this function to provincial

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<sup>8</sup> From “Guan Yu Quan Guo Wei Sheng Gong Zuo Shan Xi Ji Shan Xian Chang Hui Yi Qing Kuang De Bao Gao” (The Report of Nation Conference on Rural Public Health in Jishan, Shanxi), reinterpreted by the author. Please also refer to Wang Shidong, Ye Yide, “Nong Cun He Zuo Yi Liao Zhi Du De Hui Gu Yu Fa Zhang Yan Jiu” (Historical Review and Development Research of Rural Cooperative Medical System), *Zhong Guo Chu Ji Bao Jian* (The Preliminary Healthcare in China), issue 4, 2004. It also could be retrieved at [http://www.cnr.cn/kby/zl/t20060405\\_504189971.html](http://www.cnr.cn/kby/zl/t20060405_504189971.html), last visited on September 28, 2006.

<sup>9</sup> *ibid*

<sup>10</sup> *ibid*

and local authorities. “This action favored wealthy coastal provinces and led to growing disparities between urban and rural healthcare. The privatized healthcare facilities were forced to rely on the sale of services in private markets to cover their expenses” (Mamdani, URL). Urban-rural differences in access to healthcare resulting from the increasingly urban-rural economic development discrepancies are another important reason. Peasants who are sick either spend down entire family savings to purchase healthcare or forego medical services and these expenditures on health care exacerbate the poverty of the rural areas. In this sense, disease could give rise to the persistence of poverty in rural China, because either the depletion of savings or labor difficulties associated with a lack of medical attention may force many rural households into impoverishment.

The collapse of the cooperative medical system explains why Chinese rural residents find it more and more difficult to get medical attention when they are ill. However, there are still other reasons preventing rural residents from enjoying medical services. In an interview<sup>11</sup>, Mr. Gao Qiang, the Minister of Public Health, summarized five aspects. The first one is the irrationality of public health resource distribution. Almost 80% of China’s public health resources are in urban areas or cities while rural areas suffer serious insufficiency of medical resources. Rural patients cannot get effective medical attention in local medical institutions which forces them to visit hospitals in big cities and adds to their financial burden. The second reason is that rural residents lack sufficient medical insurance as discussed before. In a survey conducted by the Ministry of Public Health in 2003, about 79.1% of the rural population has no insurance coverage and they get medical treatment at their own expense. In some poor regions, citizens who return to poverty because of illness account for two thirds of the total poor population. The third reason is the insufficient financial input into the rural public health administration. Many medical institutions seek profits only and harm the citizenry’s public interests. The fourth reason is that the production and distribution of medications and medical equipment are out of order. The last reason is that there are insufficient medical professionals in rural areas. About 21.6% medical practitioners in rural areas have no professional certificates or diplomas and they are not able to provide qualified medical services.

The Chinese government has come to realize that decisive measures must be taken and new policies must be adopted to guarantee that peasants can afford healthcare and enjoy good medical services. In October 2002, China’s central government officially put healthcare for China’s 900 million rural residents on the Party agenda and the central government launched experiments to create a rudimentary financial safety net for rural healthcare. NCMS is designed to institute a new system of group insurance, allowing peasants to benefit from risk pooling. From 2003, central finance should provide 10 Yuan for each rural person in the scheme except for people in the central and western areas of China, while local finance should provide more than 10 Yuan. “The decision also pointed out that the obligation of paying money for joining in the scheme to reduce health risks should not be considered as increasing rural people’s burden” (CCMS, URL). According to the Ministry of Public Health, this is the first time in history that the Chinese government was making a major effort to resolve rural people’s basic healthcare problems. By the end of 1995, NCMS programs have been implemented in 678 pilot counties in China, accounting for 23.7% of China’s counties and covering 23.6 million peasants. Among the 23.6 million peasants, 17.9 million peasants participate in the

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<sup>11</sup> Li Yumei, “Zhong Guo Nong Min Wei He Kan Bin Nan Kan Bin Gui, Gao Qiang Cong Wu Fang Mian Xi Yin” (Why It is Hard and Expensive for Chinese Peasants to Get Medical Treatment? Gao Qiang Analyzes Five Reasons), *Xue Xi Shi Bao* (Study Times), December 26, 2005. Also available at <http://www.chinajilin.com.cn/2004xwzx/doc/2005-12-26/7157.htm>, last visited on September 28, 2006.

NCMS with a participation rate of 75.8%. In 2005, 12.2 million participants were compensated by the NCMS and the total outlay for them is 6.176 billion, which accounts for 81.95% of total funds raised in that year<sup>12</sup>.

The NCMS was meant to operate nationwide by 2010 when it was conceived in 2002, but in this year's National People's Congress annual conference, the Prime Minister, Mr. Wen Jiabao, announced the advancement of the NCMS's timetable by two years, namely, by 2008 the NCMS should be set up across the whole nation.

#### The Administration of NCMS

Documents of the central government stipulate the system design of NCMS. NCMS is a government organized and conducted scheme of mutual assistance among voluntary participating peasants against serious diseases. As the Center of China Cooperative Medical Scheme states,

“The new rural CMS fund is collected by voluntary contributions by rural people, supported by collectives, and subsidized by governments, and is a social fund which is raised by the people and subsidized by the state. The administration principles should be as follows, i.e. to find the appropriate amount of expenditure by judging the revenue, to strike a balance between revenue and expenditure, and to be open, fair, and just. The fund must be allocated for its specified purpose. It must be deposited in specified accounts and must not be used for other purposes (Center for China Cooperative Medical Scheme, URL).”

It makes use of multiple channels and diverse funding sources from personal payments and government and collective subsidies. The standard of annual payment per rural resident should not be less than 10 yuan. Regions with favorable economic situations should raise the standard accordingly. Rural collective economic organizations or village-owned enterprises which are able to financially support the NCMS should and are encouraged to do so. The nature of the organizations and the financing standard are determined by county governments. Other social organizations and individuals are also encouraged to financially support the new rural CMS. Local financial departments should support the new rural CMS by contributing not less than 10 yuan as matching funds for each participating individual each year. Standards of support and the proportion for each reimbursement level should be determined by the provincial government. In the eastern region, which is more prosperous than other regions, the governments may increase input accordingly. Since 2003, the central government has annually financed each individual enrolled in the scheme and living in the region central and western regions by 10 yuan through transfer payment.

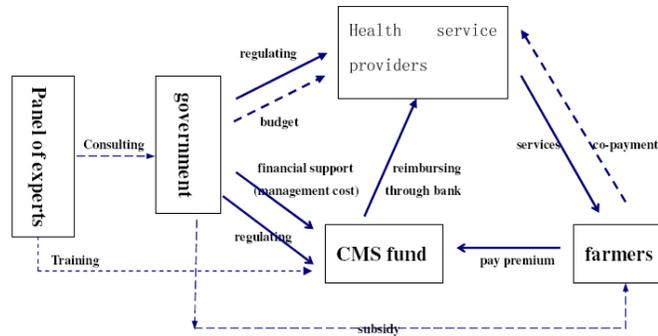
The goal is just to protect peasants from becoming poverty-stricken because

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<sup>12</sup> Please refer to “He Zuo Gong Ji Jian Qing Yi Liao Fu Dan, 1.79 Yi Nong Min Can Jia He Zuo Yi Liao” (Cooperative Medical System Relieving Burden, 179 Millions Peasants Participating in), *Zhong Guang Wang* (China Radio Web), April 05, 2006 at [http://www.cnr.cn/kby/zl/t20060405\\_504189871.html](http://www.cnr.cn/kby/zl/t20060405_504189871.html), last visited on September 28, 2006

of catastrophic illness. There are four major stakeholders in the framework of NCMS: government, health service providers, NCMS fund managers, and peasants, who form a multilateral relationship of mutual checks and balances. Mao Zhengzhong describes the mutual relationships using the figure below:

**Figure 1: Relations among NCMS Stakeholders**

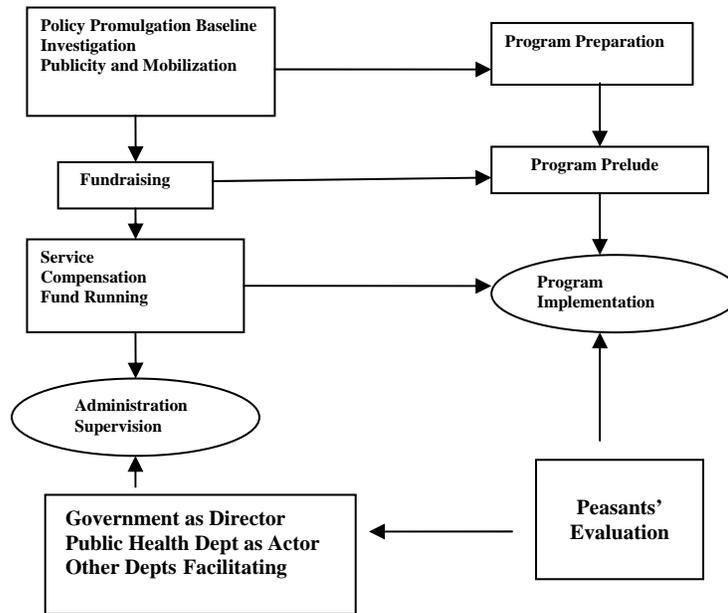


Mao holds that “the government plays the dominant role, who is not only the framer of all the game rules of NCMS, regulating and monitoring behavior of all related parties, but also the main capital contributor of the scheme through subsidy to participants and providing health service provides within the budget.” The peasants, however, besides their voluntary choice of participation, “are not well-informed about how to play their role and guard the right and benefit in the implementing of the scheme.” Mao argues that Health departments, in many places, play the role of managers for both health service providers and the NCMS fund, which may cause a conflict in roles, undermining its effect as a representative of farmers as collective purchasers.

The NCMS administrative system is established from central to local governments in charge of policy framing and supervising of the implementation of the scheme. At the county level, administrative offices are responsible for the concrete operation of NCMS. The NCMS fund is administered by the NCMS Administration Committee and its executive organizations. “The latter should establish specified accounts for the fund in state-owned commercial banks certified by the former, to ensure the security and integrity of the fund. Rules and regulations should also be made, which would guide the proper collecting and prompt verification and payment” (CCMS, URL). Figure 2 shows the operating system of NCMS. The NCMS fund comes from multiple resources, with voluntary payment (premium) by peasants and subsidy from tiers of government. Peasants are required to participate as family units, so as to reduce the adverse selection caused by “voluntary participation”. The portion paid by individuals and collectives should be collected annually by the township (town)-level subordinate organizations (or personnel) or trustee organizations responsible for the executive organizations. This part of the fund should be deposited into specified accounts. The matching funds from local governments should be transferred to the specified accounts by financial departments at all levels according to the actual number of participants. The specified fund to aid the middle and western regions from the central government should

be transferred by the Ministry of Finance to provincial financial departments. The Ministry of Public Health verifies the actual participating number and the fund management. All levels of government should transfer the funds promptly and integrally.

**Figure 2: NCMS Operating System**



The fund in the NCMS is mainly to subsidize individual peasants for their high medical costs and/or their inpatient medical expenses and in order to improve their anti-risk financial ability. For those who have participated in the NCMS but have not used the fund within that year, they can receive a one-time conventional physical examination free of charge. Each province, autonomous region, and municipality directly under the Central Government must make a list of basic medicines whose consumption could be reimbursed. Based on the total amount of local funds and specific situations, each county should establish their appropriate reimbursement scope, standards, categories and methods for conventional physical examinations to avoid the NCMS fund exceeding expenditures or leaving to much surplus.

Executive organizations need to make regular reports to the NCMS committee about the balance and the use of the fund. They also need to keep this financial information open to rural residents in order to increase the participation rate. The participants also have the right to know the circumstances and have surveillance rights. The county level governments should establish the NCMS executive committee which is composed by related government agencies and participants' representatives who can examine and supervise the administration of the fund. The NCMS committees need to report periodically to supervising committees and the People's Congresses at the

## Peasants' Evaluation

corresponding level. The balance and administration of the NCMS fund are also subject to the auditing department's regular audit. Figure 3 shows the administration and supervision framework. All the administration is paid for by government.

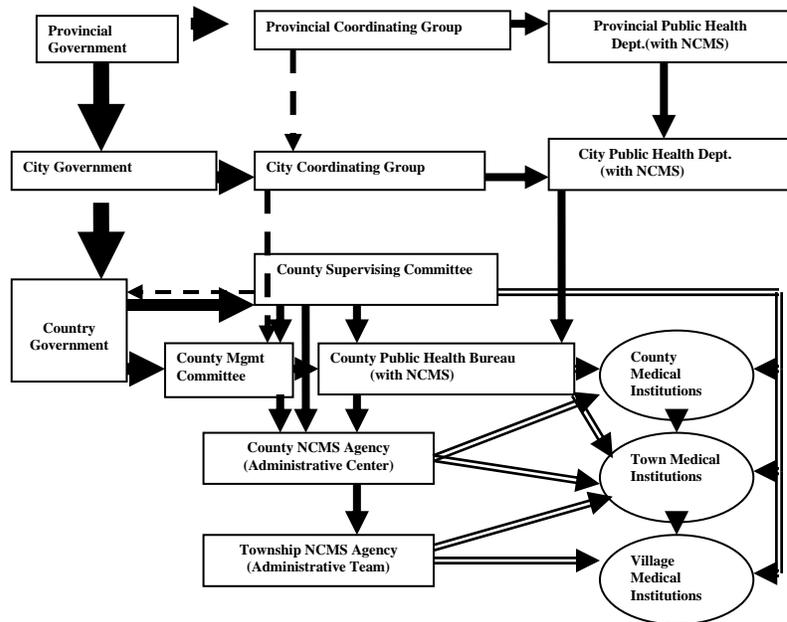
Figure 3 shows first that a provincial NCMS coordinating group is established in each province which is composed of members from the Department of Public Health, the Department of Finance, the Department of Agriculture, the Department of Civil Service, the Auditor's Office, the Office of Poverty Relief, and the Commission of Reform and Development. Usually the group is headed by the vice governor who is responsible for public health. The city government should establish a parallel NCMS coordinating group. The coordinating groups are responsible for macro-administration issues, including leading, organizing, coordinating, and policy-making. Their specific jobs include 1), regulating the NCMS administration, fund-raising, and NCMS implementation plans; 2), determining the reimbursement standards for the peasants enrolled in the NSMS at each level of government; 3), making the NCMS financial administration, accounting and auditing regulations; 4), coordinating relevant departments to implement the NCMS policies and fund-raising; and 5), reporting to the Party committee, the People's Congress and the government at corresponding levels regarding any problems and proposed solutions in the implementation process.

The daily administration of health care was to be carried out by the public health bureaus at the level of provincial, city and county governments. The responsibilities of the departments or bureaus of public health include: 1), training administrative personnel; 2), directing how the NCMS implementation plans are made and scrutinizing the implementation plans; 3), formulating administrative rules and medicine catalogues; 4), inspecting the implementation of the cooperative medical service and standardizing its operation; 5), researching and finding solutions to the problems during NCMS operations, and 6), reporting to the NCMS administration committee periodically.

Headed by the county mayor, the NCMS county administration committee includes officials from the bureaus of public health, finance, agriculture, civil service, poverty relief, and planning, township leaders, and also representatives of peasant participants. Subordinate to the county administration committee, a county NCMS agency or administration center is supposed to be created which is usually a settlement agency composed of cashiers, accountants, statisticians and other administrative staff. A township agency or administrative team could be set up upon request in any township.. Two of the most important jobs of the agencies are to manage the NCMS fund accounts and to evaluate the authorized medical institutions. The township administration agency should also publicize the NCMS policy, evaluate it, organize, and mobilize the masses to participate in it.

At the county level, the independent NCMS supervising committee monitors the operation of the administration committees, bureaus of public health and NCMS agencies, but also can supervise the quality of medical services delivered by country hospitals, township hospitals and village clinics. This relationship also is reflected in Figure 3. The administrative fees of the NCMS come from the fiscal budget of local governments. How to keep costs down is a key concern.

Figure 3: NCMS Administration and Supervision Institutional Scheme



At present, there are two related problems in implementation. On the one hand, there is a shortage in both administrative staff and financial outlay, which is especially the case in the middle and western areas. For example, in two pilot counties of Shanxi province, NCMS administration offices are established in the local Bureau of Public Health with reimbursement being entrusted to township health centers. The goal is to get around the shortage of staff and save money. On the other hand, Mao (URL) finds that “there is a considerably high administrative cost, caused by the ‘voluntary participation’ principle, especially for door-to-door motivation and collection of fees from scattered farm households.”

Mao (URL) also notices that,

“According to the statistics of the Ministry of Health, the management cost of pilot counties paid by the finance department of local governments is 84.924 million yuan, about 1 yuan per capita. Of course, this does not include the recessive cost such as staff outlay beyond authorized size. In general, the average cost in the country as a whole is 2.91% of the financed sum, with the highest average being 3.48% in the west, 2.61% for central areas and the lowest, 2.54% in the east. Compared to the factual reimbursement sum, the management cost accounts for 9.77%, 5.07% and 3.03% in western, central and eastern areas respectively. But, the figure gained from field investigation is

much higher than the proportion. So it remains the biggest issue how to enhance efficiency and control cost in management of NCMS.”

Another important major proposed goal of the NCMS is to cover medical expenditures for catastrophic illness. Introducing catastrophic health insurance through the NCMS seeks to provide a form of financial risk protection to reduce poverty due to illness. As an admirable goal, however, will the NCMS approach be the most efficient and effective way to improve overall public health? The World Health Organization’s answer is “probably not.” That is because “many of the most effective and efficient health interventions are preventive and rely on early treatment offered by basic health services.” As the World Health Organization argues that those “welfare” services are provided through outpatient services and health disease prevention and health promotion services, but “many would not be covered or would be provided with little coverage through the existing NCMS design, since most New CMS implementation schemes consider only hospitalization services as ‘catastrophic’ services.” In addition, the World Health Organization summarizes six important points here:

A. “Insurance schemes that mainly cover catastrophic diseases may cause patients to take undue risks with their health. Because they must pay for earlier, preventative treatment, patients may decide to delay dealing with their health problems until they are severe enough to qualify for the larger reimbursements of higher treatment categories like hospitalization. Such delays can make users more ill and undermine the use of less costly outpatient, preventive and health promotion services.”

B. “Will the New CMS increase farmer's access to basic healthcare services? The answer is also probably ‘no,’ unless people define the services that treat catastrophic diseases as basic health services. And will large-scale implementation of the New CMS increase farmers' satisfaction with the care they receive? Certainly, satisfaction will increase for those that encounter catastrophic illness and get partial reimbursement.”

C. “The probability of contracting catastrophic disease is relatively low, meaning that most participants will get very limited benefit from the new scheme. According to the results from the national health services survey conducted in 1998 and 2003, only 3% to 4% of Chinese farmers were admitted to hospitals for inpatient services annually. Here is a typical example: About 1.175 million have participated in the New CMS since March 2003 in Luchuan, Tengxian, and Pingguo counties in Guangxi province. By the end of 2003, about 14,400 of them had received reimbursements from the scheme - 1.23% of all participants. Those people who get little or no benefit from the scheme may eventually be dissatisfied with the fact that they receive little actual benefit from the plan. After a few years they may refuse to participate. This was the lesson learned in many counties where so-called ‘Risk-type CMS’ was implemented in the late 1980s and early 1990s.”

D. “Can the primary objectives of providing financial protection and reducing poverty due to catastrophic illness actually be achieved? Based on the result of the national health services survey conducted in 1998, per capita medical expenditure for the rural population is 9% of their income, about RMB 134. This figure is expected to be higher in 2003 due to increased income, inflation, and greater use of services. At this level, the total per capita New CMS fund is only 20% to 30% of the anticipated total medical expenditure at existing premium collection levels. In such a situation, out-of-pocket payments will still be very significant for farmers. Access barriers will be reduced, but will still be perceived to be high in the minds of farmers.”

E. "Reimbursement rates will also affect the objective of greater access to healthcare. Due to limited funding, most reimbursement for catastrophic services is about 20% to 60% of cost to the patient."

F. "Finally, national statistics show that many catastrophic diseases requiring hospitalization are chronic, non-communicable conditions such as cerebral-vascular disease, heart diseases and chronic liver problems. After hospitalization for such disease, outpatient follow-up treatment has to be maintained for some time. In most implementation pilots for the New CMS, reimbursement for these basic health services are, at best, limited. Without follow up care, treatment effects can multiply making patients even worse off and ultimately in need of more care."

#### **Concluding Remark**

Compared to the old cooperative medical system, the new cooperative medical scheme contains several features:

A, it has a wider funding base and a risk-pooling scope. The principal fund-raising and risk-pooling unit is the county and individual financial inputs are matched by funds from governments, which enhances the peasants' financial anti-risk ability and increase the total funds available for medical treatment;

B, the risk-pooling scheme is designed against catastrophic diseases and covers large medical expenditures for catastrophic diseases;

C, each level of government contributes funds and subsidizes;

D, there is an extensive bureaucracy, to make up the rules for the program, supervise service provision and reimbursement, collect and disburse revenues, evaluate service provision, report on problems and recommend solutions, and actually provide the services.

E, there is a complete supervision system

It is a complicated systematic project to establish a sophisticated cooperative medical scheme. Although more and more Chinese peasants benefit from the new cooperative medical service, the NCMS is still facing many challenges and problems. The first and biggest problem is that rural healthcare financing is an area of great deficiency. In particular, the local governments in poverty-stricken mid and western regions have very limited financial capacity, which undermines the affordability of services and the capacity of some county and township health facilities to provide even basic health services. The World Health Organization finds that "after fee-for-tax conversion in 30 provinces, municipalities and autonomous regions across China since 2003, county and township governments lost further extra-budgetary ability to support rural services. Given such long-term downward trends and policy decisions, whether and how public finance can build a rural medical security system remains a crucial question."

Second, even with improved financing, medical equipment and service content in rural areas will still be a problem. Such problems appear in the public health services offered in rural county and township facilities, village clinics, and private drug dispensaries. The poor condition of medical equipment and infrastructure prevent peasants from enjoying high-level service. The rural areas lack competent medical practitioners and health workers.

Third, many regions are backward in their administrative methods. They still manually handle all the data and information of enrolled peasants and computerized

information-processing is not universally used. Over-staffing and low utilization rate cause low work efficiency.

Fourth, local public health officials find that many peasants are still constrained by traditional thoughts and economic situations and do not fully realize the benefits of joining the cooperative medical schemes. It is commonly held by many peasants that illness is their own business and there is no use to put own money into the collective risk-pooling funds. They are still concerned about the effectiveness and value of the NCMS. Hence, government must do more to introduce, promote and publicize how the NCMS will benefit participants and help them gain confidence in the cooperative medical system. To fulfill the mission that by 2008 the NCMS will be carried out in every county in China, the Chinese government is facing challenging and arduous work to mobilize hundreds of millions of rural residents.

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