THE DILEMMA OF CLIENTS' RIGHTS IN SOCIAL PROGRAMS

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Courts and legislatures often grant rights to clients of social programs so that the clients can protect their own interests in the programs. Previous research has questioned whether rights provide effective protections for clients' interests. In this study, I examine parental rights of school choice in Britain, showing that rights can provide effective protections for clients' interests under some conditions. However, this study also reveals the dilemma of rights: rights that are effective in protecting individual client interests can also undermine a social program's ability to serve the collective interests of all clients.

I. INTRODUCTION

Legislatures and courts often grant rights to clients of social agencies to protect the clients' interests in social programs. While the granting of such rights can protect individual client interests, even against the resistance of program officials, the granting of rights can affect more than the interests they are intended to protect. Rights intended to protect clients' interests can interfere with an agency's general concerns. In Scotland, parental rights of school choice have restricted the ability of education authorities to refuse parents' school requests. As a result, some schools are full, while others have too few pupils to offer a full range of courses. This is an example of the dilemma of rights in social programs: Rights must impose practical constraints on case-level decisionmaking to protect clients' interests, but those practical constraints also interfere with the agency's ability to serve collective ends. The dilemma of rights thus reflects the underlying conflict between clients' interests and collective concerns in case-level decisionmaking.

In this paper, I examine the effects of parental rights of school choice in England and Wales and in Scotland, explaining why parental rights in Scotland have "worked," while somewhat different

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rights in England and Wales and rights in other social programs generally have not "worked." I go on to look at the broader consequences of effective rights, showing how the dilemma of rights forces trade-offs between individual and general welfare, and how legal rights can play only a limited role in making these trade-offs.

Although I focus on parental rights of school choice in Britain, I also address questions about rights and clients' interests in a variety of social programs in both Britain and the United States. Of course, case-level decisionmaking in housing agencies differs from that in schools, and welfare officials in Britain work differently than those in the United States. However, the structures and practices of case-level decisionmaking in these agencies share certain central features, including case-level discretion, limits to bureaucratic control, scarce resources, formal and informal routinization of decisionmaking practices, rationing of benefits, and tensions between social service ideals and the practical constraints of service delivery.[1] These similarities make it possible to draw together research on the effects of rights in these agencies in order to develop a general explanation of rights and how they affect the conflicts between individual client interests and collective concerns in social programs.

II. CLIENTS' INTERESTS AND COLLECTIVE CONCERNS IN SOCIAL PROGRAMS

Social programs such as education, welfare, and housing affect both vital interests of individuals and important collective concerns. For instance, decisions about where a child is to go to school and what education she receives there affect her experiences in school as well as her job opportunities and the quality of her future life. At the same time, these decisions affect public interests in education such as training a work force, socializing children to civic values of participation and obedience to authority, and fostering racial integration and social mobility. Even in the best of times, these decisions involve conflicts between the child's interests and the other concerns of school officials. Her interests in attending a school that offers special job training or university preparation may conflict with other students' interests in obtaining one of the limited places. Her interests in attending a local school that she can walk to safely may conflict with the school district's responsibility to desegregate its schools. School officials often must

[1] Lipsky (1980) has argued forcefully for the importance of understanding social service programs as "street-level bureaucracies." Their common features result from institutionally and analytically similar working conditions that shape case-level decisionmaking. Lipsky focused on programs in the United States, but British researchers have made similar observations about social programs in their country (see Foster, 1983; Hill and Bramley, 1986; Howe, 1986).

make decisions that balance this child's interests against those of other children and the school's broader concerns.

These hard choices among conflicting interests and purposes occur in all social programs. Social service agencies distribute benefits and provide services to assist clients in ways that further collective welfare. Welfare agencies, for example, give benefits to poor families with children because both the families and the society are being helped. In serving clients' interests, agencies serve collective ends. In deciding what benefits and services each client receives, however, a particular client's interests are not all that matter. Agencies must also be concerned about limited budgets, substantive goals, and administrative efficiency. These considerations influence agencies' policy decisions and the case-level decisions that determine what benefits and services clients receive. In particular case-level decisions, officials apply policies that take into account both a client's individual interests and the agency's substantive goals and its limited resources for serving all clients. In some case-level decisions, these collective concerns about interests other than those of a particular client conflict with the client's interests and can result in decisions adverse to the client's interests. In addition, the personal interests and orientations of officials also influence case-level decisionmaking and often work against the client's interests (Blau, 1956; Brown, 1975; Cranston, 1985; Lipsky, 1980; Prottas, 1979).

A. The Failure of Rights

Over the past two decades, legislatures and courts have created and strengthened clients' rights in social programs, particularly in the United States and to a lesser extent in Britain. In the United States, welfare recipients received a right to an oral adversary hearing prior to termination of their benefits (*Goldberg* v. *Kelly*, 397 U.S. 254, 1970); and handicapped children obtained rights to an appropriate, publicly funded education and their parents received rights to participate in the decision of what education they should receive (Education for All Handicapped Children Act of 1975, 20 U.S.C. § 1400–1461 (1982)). In the United Kingdom, homeless persons were given a right to priority in housing allocation (Housing (Homeless Persons) Act 1977, c. 48), and parents were given rights to select the public schools their children attend (Education Act 1980, c. 20 [England and Wales]; Education (Scotland) Act 1981, c. 58). While these rights were established to protect certain interests of clients, studies of rights in social programs raise questions about their success. In this section, I survey research on the effects of clients' rights in two social programs: welfare (in the United States and the United Kingdom) and education for handicapped children (in the United States).

1. Welfare. Efforts to establish clients' rights were made first in welfare programs. Many welfare agencies were criticized for errors and abuses of discretion by caseworkers such as coercion, rude treatment, paternalism, neglect, and prejudice (Handler, 1979; Mashaw, 1971; Reich, 1965; Sosin, 1986). Following the lead of Reich (1964, 1965; see also Jones, 1958), many welfare advocates argued that the right to a hearing would correct erroneous decisions that could deprive clients of needed benefits and would protect clients from caseworkers' abuse of discretion and the influence of community opposition to welfare. If clients believed that they had been wrongly denied benefits or that they had been awarded less than they should have received, they could challenge the accuracy of the decision in a hearing. In addition, hearing decisions would guide officials about how to apply welfare regulations, and the prospect of hearings would deter officials from misusing their discretion (Hammer and Hartley, 1978; Reich, 1965). The right to hearings would also help assure the respectful treatment of welfare clients, who would now be active participants in the process (O'Neil, 1970; Reich, 1965).

In the 1970 case of *Goldberg* v. *Kelly*, the United States Supreme Court required welfare agencies to continue recipients' benefits until they could appeal the decision to terminate their benefits in a fair hearing. This decision strengthened the welfare recipients' rights to fair hearings established in the Social Security Act of 1935 (42 U.S.C. § 602). British welfare advocates were more cautious about the advantages of rights for welfare recipients. They particularly resisted any detailed specification of recipients' entitlements (Donnison, 1982; Titmuss, 1971). However, British clients did have rights of appeal to tribunals made up of nondepartmental officials, and client advocates began to take more active roles in asserting clients' interests (Bull, 1980).

Studies have found that rights in welfare provide only limited protection for clients. Welfare clients in both Britain and the United States have a right to a hearing before their benefits are terminated, but studies of welfare hearings raise questions as to whether this right adequately protects clients from errors and abuses of caseworker discretion. Several studies have examined the hearings in the American Aid to Families with Dependent Children program (AFDC). They identify caseworkers' widespread noncompliance with welfare regulations as well as several barriers to clients' effective use of the hearings: clients' lack of knowledge about their rights, agencies' failure to notify clients about their rights, clients' inability to use hearings effectively, agencies' efforts to control hearing outcomes, and clients' fears of disrupting their relations with welfare caseworkers (Baum, 1974; Handler, 1969; Jowell, 1975). The result is that few clients use hearings to challenge adverse decisions. One survey found that 28 percent of AFDC clients had complaints about caseworkers' deci-

sions, but that only 1.2 percent of clients whose welfare applications had been turned down and only .4 percent of clients whose benefits were discontinued actually filed appeals (Handler, 1969). Another study found that appeals were made by 6 percent of clients denied benefits (Baum, 1974). These studies also reveal that agencies often fail to change administrative practices that result in adverse hearing outcomes and that some agencies make calculated efforts to avoid continuing benefits for clients who challenge their termination (despite a court decision requiring continuation in cases of factual dispute). Rights to hearings have aided significant numbers of clients only when the use of the hearings was organized by welfare rights advocates (Baum, 1974; Hammer and Hartley, 1978; Handler, 1969, 1979).

In Britain, studies of welfare hearings also emphasize the weaknesses of the protection given clients. Clients often failed to make appeals because they either were unaware of their rights or feared an appeal would affect their caseworkers' future decisions. Tribunal members were not independent of the welfare agency, and the hearings were usually dominated by presenting officers representing the agency and by clerks who were nominally neutral but who often influenced the tribunals to support agency policy. Few clients had legal representation at the hearings (Bell, 1975; Hill, 1974; Lister, 1974). These studies also argue that clients' rights often result in an emphasis on clear rules that restrict the flexibility needed to adapt decisions to the circumstances of particular clients (Donnison, 1982; Titmuss, 1971).

2. Education for Handicapped Children. The rationale for welfare clients' rights has been applied to other social programs as well. In fact, the concept of clients' rights has become a major tool for social reformers, ostensibly shifting power from agencies and case-level officials to clients and their representatives (Scheingold, 1974). One example of this is the successful campaign for the rights for handicapped children to overcome the longstanding resistance of school districts to special education. The advocates of this position believed that a right to a public education and a right to due process hearings to challenge the decisions of school districts provided the best available protections for handicapped children, for these rights would enable parents or other representatives of handicapped children to ensure that the children received an appropriate education. In the United States, the Education for All Handicapped Children Act of 1975 (20 U.S.C. § 1400–1461 (1982)), gave handicapped children a right to a "free appropriate public education" and gave their parents rights to participate in meetings to decide which education is best suited for each child and to challenge decisions or other actions of school officials concerning any aspect of their children's education. Reformers aimed to end the exclusion of handicapped children from public educa-

tion and to institute a new approach to their education in which school officials and parents would design an "individualized education program" tailored to the needs and abilities of each child and handicapped children would be educated in general classrooms whenever possible (*Harvard Law Review*, 1979; Neal and Kirp, 1985; Tweedie, 1983).

Studies of rights of education for handicapped children show that the effects of these rights have been mixed. These rights have helped to produce substantial increases in spending and other improvements in special education. Virtually all students in need of special education services have been identified (Clune and Van Pelt, 1985; Gartner and Lipsky, 1987). However, the reformers' aim of focusing decisionmaking on the needs and abilities of each child have largely been frustrated by schools' limited resources and their need for efficient decisionmaking. Most handicapped students are assessed according to standard criteria, sorted into existing categories, and provided the education for that group; few have been moved out of special classes (Clune and Van Pelt, 1985; Gartner and Lipsky, 1987; Ysseldyke *et al.*, 1983).

The rights of handicapped children and their parents have not provided effective responses to these problems. Handicapped children's right to an appropriate, publicly funded education is defined in procedural terms as the outcome of the individualized education planning required by the legislation. Determining the appropriate education for a particular child is therefore largely in the hands of school officials. Only if parents participate actively in the decisionmaking process is there a check on school officials' discretion in individual cases. However, the participation of parents in planning meetings has been limited. While some parents in some school districts initially attended planning meetings and participated actively, this early activity soon faded. Moreover, the role of parents in planning meetings has been limited by the actions of school officials, especially by the dominance of professionals in those meetings. Parents, hindered by limited knowledge and continuing reliance on the schools, have seldom challenged school decisions in due process hearings. Studies indicate that appeals are made on behalf of less than 1 percent of the children receiving special education services (Clune and Van Pelt, 1985; Kirst and Bertken, 1983). In addition, school districts often continue to resist even after parents have won due process hearings (Budoff *et al.*, 1982). Finally, school districts have generally refused to implement the requirements of hearing decisions beyond the specific case involved. The prospect of a hearing, when so few occur, thus does not help to identify and enforce the obligations owed to handicapped children generally (Clune and Van Pelt, 1985; Handler, 1986; Weatherley, 1979). However, well-to-do and educated parents have used their hearing rights more effectively, in many cases obtaining public money for the private education of their handi-

capped child. And, as in the case of welfare hearings, client advocates have significantly strengthened the protection of their clients' interests in some areas (Clune and Van Pelt, 1985; Handler, 1986).

These studies of welfare and education for handicapped children demonstrate the failures of rights in social programs. While rights have benefited some clients and have curtailed abuses of clients in some programs, they generally have not produced the hoped-for transformation in how agencies treat clients. Officials continue to decide cases more or less as they did in the absence of rights (Cranston, 1985; Handler, 1973; Kirp, 1976). Moreover, rights have often imposed substantial costs, resulting in a net detriment to the interests of clients. In many cases, rights have corrupted the trust that is desirable between officials and clients and eliminated the discretion that officials had used to help clients. Officials have responded defensively to the possibility of review, adopting more formal and bureaucratic modes of dealing with clients to insulate themselves from criticism (Neal and Kirp, 1985; Simon, 1983, 1985; Titmuss, 1971). Finally, the clients who have most commonly gained from rights are those who were least disadvantaged in the beginning. Clients with personal and financial resources have been able to use rights to protect their interests. In contrast, rights have often increased the disadvantages of the most needy and have not protected their interests because these clients are usually not able to use the rights effectively (Galanter, 1974; Handler, 1969). Instead, rights have often consumed resources that agencies could have used to serve the most needy and distracted the efforts of reformers from more comprehensive changes (Piven and Cloward, 1971; Prosser, 1977; Sosin, 1986).

These studies have identified several factors that undermine the effectiveness of rights' protection of clients' interests. First, case-level decisionmakers interpret rights to protect the agency's collective concerns and their own interests. Unless the client challenges the decision, the case-level decisionmakers' interpretation determines what rights require (Blau, 1956; Lipsky, 1980; Weatherley, 1979). Second, clients often do not challenge adverse decisions because they lack administrative competence, or the skills required for asserting their interests in administrative and adjudicative procedures (Bruinsma, 1980; Carlin *et al.*, 1966; Nonet, 1969; Handler, 1979). Third, clients often do not challenge adverse decisions because they do not want to antagonize officials (Handler, 1979; Neal and Kirp, 1985). Fourth, client challenges that are made often do not improve the clients' treatment, even when their rights have been violated (Clune and Van Pelt, 1985; Simon, 1983). Finally, successful challenges by some clients often fail to effect general improvements in the treatment of clients' interests, because agencies usually do not incorporate the rationales of hearing

decisions into their case-level decisionmaking (Handler, 1986; Clune and Van Pelt, 1985; Kuriloff *et al.*, 1979).

B. The Counter-Example: Parental Rights of School Choice

The effects of granting rights of school choice to parents in Britain challenge much of this received wisdom about rights in social programs. In Scotland, parental rights have led education authorities to give virtually absolute priority to parental choice in school admissions. Scottish authorities grant parents' school requests even though the pattern of requests has undermined the authorities' ability to provide quality education in all their schools. In contrast, rights in England and Wales have not induced authorities to give increased weight to parents' school requests. Parental rights of school choice in Scotland show that rights can protect clients' interests even when they conflict with important collective concerns. Comparing rights in England and Wales with those in Scotland, we can begin to understand which features of legal rights make them effective protections for clients' interests.

Parental interest in which school their children attend can conflict with the ability of local education authorities (LEAs) to manage the number of children who attend each school. Parents often prefer a particular school because it is closer to their home or because they believe it has fewer discipline problems or offers a better education (MacBeth *et al.*, 1986; Adler *et al.*, 1989; Stillman and Maychell, 1986). LEAs, however, are generally not concerned with which schools particular children attend. They see admissions as the managerial task of allocating children in balanced numbers to their schools. They often set admission limits, so that no school has more children than it can accommodate and no school has so few children that it can not economically offer a full range of courses (Briault and Smith, 1980; Dennison, 1981; MacFayden and McMillan, 1984).

Until 1982, LEAs both in England and Wales and in Scotland had broad discretion to establish school admission policies and to make admission decisions concerning particular children. LEAs had to take account of parents' wishes about which school their child attended, but they were also free to decide that any other factors overrode the parents' wishes (*Watt* v. *Kesteven County Council* [1955] 1 Q.B. 408; see also Meredith, 1981; Tweedie, 1986). LEAs could also use admission limits to prevent overcrowding and under-enrollment (Meredith, 1981).

1. The Legislation. The British Parliament adopted the Education Act 1980, c. 20 [England and Wales] and the Education (Scotland) Act 1981, c. 58, which gave parents three important rights in school admissions. First, LEAs must allow parents to request a particular school for their child. Second, LEAs must give

the child a place in that school unless a statutory ground of refusal exists in the particular case. The primary statutory ground for refusal in England and Wales was that the parents' school request would cause "prejudice to the provision of efficient education or the efficient use of resources" (Education Act 1980, c. 20, § 6(3)(a)). In Scotland, the primary statutory basis for refusal was phrased more restrictively, that is, that granting the parents' request would be "seriously detrimental to order and discipline in the school or the educational well-being of the pupils there"[2] (Education (Scotland) Act 1981, c. 58 § 1(28A)(3)(a)(iii)). Under the Scottish legislation, schools could only refuse parents' school requests based on conditions at the requested school. The English and Welsh legislation allowed LEAs to base refusals on conditions at the requested school and also at other schools or in the LEA generally. Third, when the authority refused the request of the parents, the parents could appeal to a local appeal committee established by the LEA. In Scotland, the parents had a further appeal to the sheriff (the lowest trial court judge) (see Education Act 1980, c. 20, §§ 6, 7; and Education (Scotland) Act 1981, c. 58, § 1; see also Bull, 1980; Meredith, 1981; Tweedie, 1986).

2. Effects of the Legislation. Parental rights of school choice transformed school admissions in Scotland, where virtually all parents' school requests were granted after the 1981 Act. In contrast, parental rights did not significantly alter school admissions in England and Wales. A close look at school admissions in two authorities, one English and the other Scottish, illustrates the different effects of the two forms of parental rights. These case studies also reveal features of rights that determine how well they protect individual clients' interests in social programs.

3. An English Case Study: The Borough. Even before the parental choice legislation took effect, the English Borough[3] recognized and generally endorsed parental choice in its school admissions. Rather than assigning children to a particular school, the Borough sent parents a list of all schools in the Borough and invited them to indicate their top three preferences. Children were admitted to their parents' first preference school as long as the number of children did not exceed the school's admission limit, determined at this time by the physical capacity of the school. When

[2] Other grounds of refusal are specified in each act, but only these two grounds are relevant to the questions of overcrowded and underenrolled schools (Bull, 1980; Meredith, 1981; Tweedie, 1986).

[3] The accounts of school admissions and parental choice in the English Borough and the Scottish Region to follow are based on my field research (with the participation of Michael Adler and Alison Petch in the Region). As a condition of access, I agreed to protect the confidentiality of the Borough and the Region, their schools, and their members and officials. I therefore make no references to specific sources in these accounts.

schools were oversubscribed, children were admitted up to the limit according to the distance from their home to the school and the availability of their parents' other preferred schools. As in most other LEAs, Borough officials did not evaluate parents' particular reasons for wanting a school because such a process would require the comparison of different parents' concerns and would take too much time. Most children were admitted to their parents' first preference school (see Figure 1). Parents whose first preference school was full were given their second or third preference school, but in a small number of cases they had to accept other schools. A few parents appealed refusals to the director of Education and the chairman of the Education Committee, but no appeals were upheld.

Just prior to the implementation of the parental choice legislation, officials recognized that falling school rolls, particularly at the secondary levels, posed serious problems. They expected secondary rolls to fall by more than a third between 1977 and 1987, thus threatening the viability of a number of schools. In 1981, they limited admissions to all schools to protect the rolls of less popular schools. Unlike previous limits, the new limits were not set at the physical capacity of each school. Instead, admission limits were reduced up to 90 places below a school's physical capacity. This eliminated most surplus places so that no school could have less than four entry classes, the number of pupils considered necessary for a viable set of courses. For instance, in 1980, when secondary pupil intake was 2,682, the number of surplus places was 179. In 1987, with an expected intake of 1,961, the planned number of vacant places was 74, even though no changes had been made in the size and number of school buildings.

After parental rights of school choice took effect in September 1982, there was a slight increase in the proportion of parents whose children were admitted to their first preference secondary school (see Figure 1). However, parental rights did not have much effect on the Borough's consideration of parents' school preferences. The only policy change was to eliminate all discretion in admissions and instead to base admissions to oversubscribed schools strictly on the distance from home to school. The Borough has not made any exceptions to the admission limits set to protect the rolls of the less popular schools. Officials interpreted the general ground of refusal in the Education Act 1980, c. 20, § 6 ("prejudice to the provision of efficient education or the efficient use of resources") to authorize them to refuse parents' requests that would exceed their schools' admission limits. The appeal committees required by the 1980 Act have changed admissions somewhat. These committees have upheld a handful of parents' appeals to schools that are full. Indeed, Borough officials have encouraged appeal committees to let in two or three children to oversubscribed schools because a few children would not upset the Borough's bal-

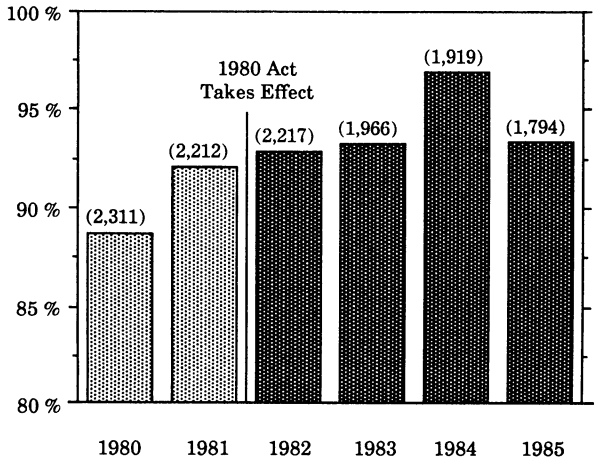

Figure 1. Percentage of Children Admitted to Their Parents' First Preference School in the Borough, 1980–85. (Number of Children Admitted to First Preference School in Parentheses.)

ancing of school enrollments and the appeal committees could evaluate the merits of parents' requests.[4]

The limited effect of parental rights of school choice in the Borough reinforces the conclusion that rights cannot protect clients' interests in social programs. At best, parental rights have made a marginal difference in school admissions, enabling a small number of children to enter their parents' preferred schools through appeals. The Borough remains able to protect its collective concerns, particularly its desire to maintain enrollments at less popular schools. No school has dropped below the four entry class level considered critical by the Borough.

4. A Scottish Case Study: The Region. The experience of the Scottish Region has been much different. In 1976, the Region adopted a school admissions policy based on a strong district school principle. The Region wanted to build links between the schools and their communities and to ensure that all schools received children with a full range of academic abilities and interests and had a balanced number of pupils. All children entering primary school or transferring to secondary school were initially assigned to the school that served their residential area. Parents could request an alternative school, but education officials granted such requests only if there was room available at the school *and* a sibling of the child attended the alternative school or there was a certified medical reason for attending the alternative school. Within the major city in the Region (where most requests were made), officials granted about one-half of parents' requests between 1977 and 1980

[4] For a more detailed description of the Borough's consideration of parents' school requests, see Tweedie (in press).

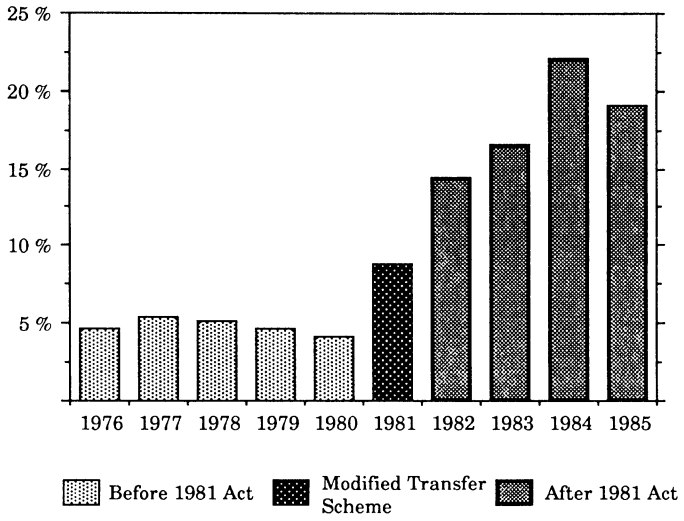

Figure 2. Percentage of Secondary Transfer Pupils Admitted to Non-District Schools in the City, 1976–85.

(See Table 1).[5] As parents learned of the strict application of this policy, the number of requests dropped.

Parents whose requests were refused by the officials could appeal to a subcommittee of the Region's Education Committee. The subcommittee looked at the specific circumstances of each appeal. It granted some appeals in 1976 and 1977, when many schools were full to their capacity. Starting in 1978, school rolls began to drop below school capacities and the subcommittee granted more parents' appeals[6] (see Table 1). However, officials continued to refuse a significant proportion of requests each year, and because fewer parents were requesting alternative schools, the proportion of children attending non-district schools declined slightly (see Figure 2).

Parental rights of school choice were implemented in the Region in September 1981, one year prior to when the 1981 Act formally took effect. Because of disputes with the Region over its policies on parental choice, the secretary of state for Scotland ordered the Region to comply with the 1981 Act's requirements a year early. Parental rights transformed school admissions. Children were still initially allocated to the school that served their

[5] The statistics for parental choice of school presented here focus on secondary schools in the city area of the Region. It was here that parental choice was a particularly controversial issue, primarily because schools in the outlying areas of the Region were far enough apart that few parents asked for alternative schools. I do not present the primary school admission statistics here, although the pattern in primary schools is similar to that in secondary schools. See Adler *et al.* (1989), chap. 3.

[6] Despite the substantial increase in new pupils, only five schools were full to capacity in 1978 compared to eight in 1976 and 1977. Anticipating the increase, the Region in 1978 opened a new school and added new intake classes to four of its full schools.

Table 1. Transfers to Secondary Schools and Appeals in the City,[a] 1976–80[b]

Decision	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
Transfer decisions										
New pupils	5,280	4,957	5,918	4,768	4,503	4,108	3,976	3,878	3,602	3,144
Non-district school requests	644	425	443	309	281	362	573	642	796	666
(% of new pupils)	(12.2%)	(8.6%)	(7.5%)	(6.5%)	(6.2%)	(8.8%)	(14.4%)	(16.6%)	(22.1%)	(21.2%)
Requests granted by officials	222	215	255	178	138	360	573	642	796	595
(% of requests)	(34.5%)	(50.6%)	(57.6%)	(57.6%)	(49.1%)	(99.4%)	(100%)	(100%)	(100%)	(89.3%)
Refusals to schools with places	181	148	60	133	143	0	0	0	0	0
Appeals of transfer decisions[c]										
Requests refused by officials	422	210	189	133	143	2	0	0	0	71
Appeals to transfer committee	184	160	112	63	73	1	0	0	0	12
(% of refusals)	(43.6%)	(76.2%)	(59.3%)	(47.4%)	(51.0%)	(50%)				(17%)
Successful appeals	24	64	64	35	45	0	0	0	0	3
(% of appeals)	(13%)	(40%)	(57%)	(56%)	(62%)					(25%)

[a] The largest city in the Region.

[b] In 1981, the Region's secondary transfer admissions were operated under a transfer scheme modified by the secretary of state for Scotland to include the statutory grounds of refusal contained in the 1981 Act.

[c] Between 1976 and 1981, appeals were made to a subcommittee of the Region's Education Committee; beginning in 1982, appeals were made to the Statutory Appeals Committee.

residential area, but with time substantially greater numbers of parents requested alternative schools, and the Region granted virtually all such requests for alternative schools. In 1985, the Region adopted admission limits for three of its most popular secondary schools because the high enrollments at those schools were forcing the Region to use temporary buildings and building annexes distant from the schools. This resulted in some requests being refused, but the great majority are still granted (see Table 1 and Figure 2).

Region officials interpreted the grounds of refusal in the 1981 Act (being "seriously detrimental to order and discipline in the school or the educational well-being of the pupils there") to allow them to refuse parents' requests only when the requested school was full to its physical capacity. The specific language of the 1981 Act and the availability of appeals to the sheriff as well as to local appeal committees led the Region to take this restrictive view of its powers to refuse parents' requests. Their decision to refuse requests only when schools were filled to capacity thus excluded the Region's concerns for balancing enrollments, building links between schools and their communities, and ensuring that each school had pupils with a full range of academic abilities.

Even though the Region faced problems of declining school rolls at least as serious as those encountered by the English Borough, it could not use admission limits to balance its schools' enrollments. As a result, parental rights and falling school rolls combined to produce a crisis in secondary school rolls. The Region considered 150 pupils each year necessary for the efficient operation of a full secondary curriculum. From 1982 to 1985, three schools received around 100 pupils or less, and three other schools received fewer than 150 pupils. This loss of pupils through parental choice occurred at schools that served the more disadvantaged areas of the city. It resulted in higher per pupil costs and restricted curricula at these schools. At the same time, three schools were filled to capacity, which required the continued use of temporary huts and building annexes located half a mile from the schools' main buildings. Although they were uncertain at first, in 1985 officials decided that the 1981 Act allowed them to set intake limits at the overcrowded schools and take unsuitable buildings out of use. However, they saw little they could do directly about underenrolled schools.

Somewhat ironically (given the role of appeals in leading the Region to an expansive interpretation of parental rights), parents' appeals have not played as great a role in the Region as they have in the Borough. The Region refused 132 of the 5,396 requests for primary entry and secondary transfer from 1981 to 1985. Parents appealed in sixty of these cases. Committees upheld appeals in only two instances (involving eight appeals). The committees upheld these appeals on the grounds that the parents had been

treated unfairly in the admissions process. (In one case, the Region had tried to limit admissions without announcing the possibility beforehand, and in the second case, the appealing parents cited as the reason for requesting the school that the Region had accepted similar requests from other parents.) Appeal committees have not questioned the Region's admission limits.[7]

The effects of parental rights in the Region counters conclusions from other studies that found that clients' rights cannot protect the interests of individual clients in social programs. The granting of parental rights caused a substantial change in the Region's decisions in response to parents' school requests, even though significant collective concerns were directly harmed as a result. Parental rights have restricted the Region's ability to deal with falling school rolls and have increased schooling costs and decreased curriculum breadth in several schools. The specific language of the 1981 Act and the availability of appeals to the sheriff as well as to local appeal committees effectively changed the Region's decisions on school admissions.

The case studies of the Scottish Region and the English Borough demonstrate that legal rights can protect individual clients' interests in at least some cases, and suggest that specific and unambiguous language and independent appeals play important roles in determining the effectiveness of rights. Of course, this conclusion rests on an assumption that the two case studies are typical of the LEAs under the 1981 Act and the 1980 Act, respectively. Only limited evidence is available to evaluate this assumption, but that evidence indicates that parental rights have had relatively little effect in England and Wales and have increased the role of parents' school requests in Scotland.

5. England and Wales: Other Authorities. There is little evidence that the legislation in England and Wales granting rights to parents has significantly affected other LEAs' admissions policies. The case study of the Borough's use of admission limits to apportion the declining school population among all its schools is typical of many English and Welsh LEAs. LEAs often reduced their schools' admission limits progressively as school rolls declined or set admission limits slightly above their schools' district populations to allow for only a small number of requests from outside the district. There are no national statistics on school admission decisions; nor is there a nationwide analysis of school admission policies that addresses LEAs' use of admission limits to protect the rolls of less popular schools. However, at least 40 of the 104 English and Welsh LEAs have reduced admission limits below their schools' physical capacities to allocate pupils among all their

[7] For a more detailed description of the Region's consideration of parents' school requests, see *ibid.* and Tweedie (in press).

schools. At the same time, at least 5 LEAs do not use admission limits in this way, instead granting parents' requests to fill popular schools to their physical capacities even though less popular schools might be hurt by underenrollment. All 5 of these LEAs strongly encouraged parental choice prior to the 1980 Act, which thus apparently did not influence their decisions to maintain admission limits at schools' physical capacities.[8]

The appeals procedures established by the 1980 Act enabled some parents to overturn LEAs' refusals, but appeals decisions have not threatened LEAs' concerns to protect underenrolled schools. As in the Borough, appeal committees usually considered only whether an appeal merited an exception to a school's admission limits. They did not challenge the limits; indeed, they seldom examined whether the limits could be justified (Bull, 1985; Tweedie, 1986).[9]

This limited picture of the school admission practices of English and Welsh LEAs suggests that the 1980 Act had little or no effect on the number of parents whose requests were granted or on the number of LEAs that set admission limits below schools' physical capacities. Rather it suggests that many LEAs have continued their restrictive policies toward parental choice, despite the 1980 Act.[10]

6. Scotland: Other Regions. Prior to the establishment of parental rights of school choice in Scotland, all twelve Scottish education authorities assigned children to schools on the basis of their residence, and most placed restrictions on parents' requests for alternative schools beyond the requirement that there be room at the schools. Three authorities examined each request individually, granting them if they agreed that there was good reason for the alternative placement. Two authorities, including the Region in the case study, operated strict district school policies.[11] No na-

[8] This count of education authorities is based on a secondary analysis of education authorities' responses to a study of parental choice sponsored by the National Foundation for Educational Research in England and Wales (a research organization sponsored in part by local education authorities) (Stillman and Maychell, 1986) and an examination of the reports of the Commissioners for Local Administration (regional ombudsmen established by Parliament to hear complaints by individuals against local government authorities) on investigations involving school admission complaints. These sources allowed clear findings on 45 of the 104 authorities. The Stillman and Maychell (ibid., pp. 36–40) study did not comment directly on this question but came to similar conclusions. See also Buck (1985) and Bull (1985).

[9] This conclusion is based on the secondary analysis of the questionnaires used by Stillman and Maychell (1986) and an examination of the reports of the Commissioners for Local Administration on investigations concerning school admission complaints.

[10] The Department of Education and Science reached similar conclusions. In the Education Reform Act 1988, c. 40, Parliament amended the English and Welsh legislation to restrict education authorities' powers to set admission limits below schools' physical capacities.

[11] The description of education authorities' policies is based on interviews

tional statistics were collected before the 1981 Act took effect, but the accounts that are now available show that several hundred requests were refused each year in at least two authorities and that several other authorities refused lesser numbers (Atherton, 1980; *Times Educational Supplement Scotland*, March 7, 1980, p. 2).

Since the implementation of the 1981 Act, virtually all parents' school requests have been granted in Scotland (64,370 of 66,534 from 1982 through 1985, or 96.7%). Most refusals of parents' requests have occurred in a few authorities where some schools have been filled to capacity. Authorities generally refuse a request only if the school's roll has reached its physical capacity. (Some requests are refused on grounds specific to the child involved, such as disciplinary problems.) The limited number of refusals has produced underenrolled schools in several Scottish authorities, causing officials to worry about how to maintain sufficient numbers of pupils in unpopular schools. Officials from several authorities believed that to deal successfully with falling rolls they had to be able to refuse parents' school requests even though the requested school was not filled to its capacity (just as most English and Welsh authorities use their admission limits) (Adler *et al.*, 1989; MacFayden and McMillan, 1984). However, the officials recognized that this approach was precluded because the statutory grounds of refusal referred only to conditions at the school requested by the parent and circumstances involving the particular child. This inability to deal with the low enrollments caused by parents' school requests, which were concentrated in secondary schools in disadvantaged working class areas, has resulted in reductions in resources and curriculum offerings at rejected schools.[12] Disparities have grown between these schools and those that have gained pupils as a result of parents' school requests (Adler and Raab, 1988).

The effects of parental rights in Scotland requires a revision of the current understanding of how clients' rights affect the operation of social programs. The different effects of parental rights in Scotland and in England and Wales indicate the focal point of this explanation: Parental rights in Scotland impose practical constraints on authorities' decisionmaking because they contain rela-

with officials in 4 authorities and an examination of their submissions to the Convention of Scottish Local Authorities during consideration of parental choice legislation.

[12] Although the losses in enrollment have been concentrated in schools in disadvantaged areas, 2 surveys of parents found that making school requests is not significantly associated with either parents' socioeconomic status or their educational background (see Adler *et al.*, 1989; MacBeth *et al.*, 1986). This finding runs contrary to the conclusions of other research about rights in social programs that found that it is the relatively advantaged clients who are better able to use rights and to benefit from them (Galanter, 1974; Handler, 1979). A third study of parental choice found some relationship between parents' occupational status and education and their decisionmaking process (Stillman and Maychell, 1986).

tively specific substantive limits on the discretion of authorities in case-level decisionmaking and provide for independent review of case-level decisions.[13] Parental rights in England and Wales do not contain such substantive limits; nor do they provide for independent review. The study of parental rights of school choice provides the basis for a new explanation for the consequences of rights in social programs.

III. EXPLAINING THE CONSEQUENCES OF RIGHTS

For rights to be effective, they must impose substantive practical constraints on case-level decisionmaking, for otherwise officials can disregard rights or interpret them to protect the agency's general concerns or their own personal interests. If rights are to act as practical constraints on case-level decisionmaking, two conditions must be present. First, there must be a substantial chance that decisions adverse to clients will be reviewed. Second, reviews must interpret the rights to impose substantive changes in how the agency considers the clients' interests absent the rights. If both of these conditions are present, rights can cause the agency to take greater account of clients' interests.

By comparing rights in parental choice of school with those in other social programs, we can identify five characteristics of clients, social programs, and rights that appear to influence how rights affect case-level decisionmaking: (1) the administrative competence of clients; (2) the dependence of clients on continuing support from the agency; (3) the clarity and specificity of the substantive duties rights impose; (4) the clients' access to independent review; and (5) how much conflict exists between rights and the concerns of the agency's officials.

A. Administrative Competence of Clients

Rights can only empower clients if clients can act to protect their own interests, that is, if they have administrative competence (Nonet, 1969; Carlin *et al.*, 1966; Handler, 1969). The assumption that competence exists is not warranted in many programs, particularly welfare programs. However, in programs that serve a broad

[13] Another reason that parents' rights so strongly affect school admissions is that many of the limits on the effectiveness of rights do not apply strongly to parents' rights of school choice. First, parents come from a range of socioeconomic backgrounds, not only disadvantaged ones. Many parents (although not all parents nor all types of parents) are willing and able to exercise their rights of choice and appeal. Second, school choice would seldom harm an ongoing relationship between the parent and the school, since choice entails an *exit*, or a movement away from the school that might resent the choice. Indeed, the requested school might appreciate the choice, since more pupils bring more resources. Third, school choice involves a discrete decision—admission to the requested school—that is therefore susceptible to clear and specific standards and is easy for the appeal committee or the sheriff to order and monitor. However, these reasons apply equally well in England and Wales, so they do not sufficiently explain the effects of parents' rights.

range of clients, clients as a *whole* do not lack administrative competence. The experience in Scotland suggests that if enough clients are willing to assert their rights, the agency's interpretation of rights in *all clients' cases* will be affected. Even the prospect of challenges in some cases may be enough to cause the agency to incorporate the protections of rights in all cases. For example, officials in the Scottish Region expected that most parents would not appeal if their requests were refused and thus decided that by disregarding parental rights they could have significantly reduced the problem of underenrollment in their schools. However, the officials declined to take this path because they perceived that even a small number of appeals would cause trouble. The prospect of appeals in which committees would find that the Region had clearly failed in its duty caused the Region to grant almost all parents' requests. Because some parents would appeal, the Region granted all placing requests except those few for which refusal was clearly justified by a restrictive reading of the statutory grounds of refusal. Similarly, the willingness of some welfare clients to challenge the rationing of clothing grants caused a welfare agency to stop rationing the grants in all cases (Piven and Cloward, 1971).[14]

Even when few clients possess the necessary administrative competence, rights can still help protect clients' interests. Educating clients about their rights and providing them with advocates to help them represent their interests can help to make up for a lack of administrative competence. If more clients are able to assert their own interests, such an increase may lead the agency to respect all clients' rights (Handler, 1979, 1986).[15] Administrative reviews of particular decisions can also supplement client challenges (Handler, 1979; Mashaw, 1974; Simon, 1983).

B. Long-Term Relations

A second reason why rights might not protect clients' interests is that clients often do not assert their rights when they depend on continuing support from the agency. When most clients are concerned about protecting continuing relations, the agency can afford

[14] The "ripple effect" of some appeals is not unlimited. Officials would balance the costs of more expansive interpretations of rights in all cases against the costs of appeals or settlements with all appealing clients. When the stakes are sufficiently high, programs would stick to their restrictive interpretations of clients' rights and concede only to those clients who actually challenge their decisions. See section D below on the balancing of rights with other concerns.

[15] However, even when programs do incorporate rights into case-level decisionmaking, some rights still do not benefit all clients. Rights of choice, for instance, do not protect clients' interests if clients do not choose. Rights of participation also require clients to act to protect their interests and so do not protect the interests of those clients who do not participate effectively. Rights can protect *all* clients' interests in *participation* or *choice* while protecting the underlying interests of only those clients who are able to use participation or choice effectively (Handler, 1986; Neal and Kirp, 1985; Weatherley, 1979).

to disregard clients' rights in case-level decisions. However, while concern for continuing relations and pressure from officials do discourage many clients, the notion that clients' dependence on continuing relations wholly undermines the value of rights is overdrawn for several reasons. First, each client does not have to assert her rights to receive protection as long as enough other clients are willing to do so. Second, the division of authority and the growing bureaucratization of case-level decisionmaking limit the danger of officials' retaliation, although clients may not accurately perceive such danger as minimal. Because officials' decisions are subject to rules, it is often difficult for them to withhold benefits or services. Also, the official challenged may not be responsible for making any other decisions that affect the client (Lipsky, 1980; Simon, 1983). Third, the case-level decisions in which protections are most important are those decisions in which the very existence of long-term relations are at stake, such as the denial or termination of benefits or services, or in which fundamental questions about benefits or services are involved, such as whether a child will receive special education services. In decisions such as these, the client's concern for long-term relations often should not outweigh her stake in correcting an adverse decision (Handler, 1979; Neal and Kirp, 1985).

C. *Rights as Practical Constraints: Substantive Constraints and Independent Review*

If legal rights are to provide effective protections for individuals' interests, the content of these rights must take into account the central role played by case-level officials in interpreting and applying the rights. For most clients, program officials are the sole interpreters of their rights and the sole decisionmakers about the benefits and services they are to receive. Because the programmatic and personal ends of officials may strongly influence how they interpret clients' rights, rights are more likely to be effective when they restrict the discretion of case-level officials. Discretion is limited both by constraining judgment in initial decisions and by providing procedures for correcting inappropriate decisions. Judgment is constrained in initial decisions when the substantive requirements of rights are stated in unambiguous and specific terms. The terms of the rights thus clearly indicate when the rights apply and what the rights require. Such terms limit the considerations officials can include in interpreting clients' rights (Denvir, 1975; Handler, 1979; Simon, 1983). A procedure for correcting inappropriate decisions exists if rights provide clients with access to an independent review of how case-level officials have interpreted rights. When independent review is unavailable or unlikely, program officials can interpret rights to protect their collective concerns or ignore rights altogether. Independent review provides a

check against such interpretations, and officials, anticipating the prospect of review, would adopt less restrictive interpretations (Friendly, 1975; O'Neil, 1970). Together, clearly stated rights and access to independent review provide at least some protection for clients' interests, even when those interests conflict with the agency's collective concerns or the officials' personal concerns.

Neither clearly stated substantive rights nor access to independent review is sufficient alone. First, consider independent review in the absence of clear substantive rights. Independent reviewers would presumably not be influenced by program officials' concerns in their scrutiny of the case-level decisions according to the terms of the rights. The prospect of review would lead most officials to adopt the interpretation of rights used in reviews. However, if the terms of rights do not impose clear restrictions on case-level discretion, reviewers are not likely to develop consistent standards of review. Without a substantive basis for overturning the decisions, reviewers may often defer to the agency's expertise and responsibility, upholding appeals only when officials have clearly violated the agency's rules (Handler, 1969). Even if reviews overturn a substantial number of decisions, a vague general standard will provide little foundation for the development of consistent standards by reviewers. Nor can case-level decisionmakers incorporate the standards of review into their decisionmaking. Some clients may gain, although not those with the strongest claims, but rather those with a bit of luck and the resources to persevere. The reviews will not contribute to the protections of clients' interests in any meaningful way and may interfere with collective concerns by imposing the costs of hearings on the agency and by granting extraordinary benefits and services to less deserving clients.[16]

Second, in the absence of independent review clear substantive rights are unlikely to protect clients' interests effectively. The agency's collective concerns shape their interpretation and application of rights. When rights significantly impinge on the collective concerns, the agency limits the rights as much as possible. If clients have ready access to appeals, this restrictive interpretation of rights can be challenged and overturned. Without independent review, no such check is available.

The Scottish experience with parental choice illustrates the

[16] For example, administrative law judges in disability insurance cases uphold around 50% of appeals, although they do not evince any clear patterns of review (Cofer, 1985; Mashaw, 1983). Similarly, parents' successes in approximately one-third of all special education hearings have not produced consistent standards of review. School officials do not recognize any standards to be incorporated and instead see hearing outcomes as being substantively unpredictable. Moreover, hearing examiners have sometimes refused to take cost into account in deciding the "appropriate" education that the school district must provide, resulting in expensive programs or private school placements for some children while depleting the resources available for other handicapped children as well as non-handicapped children (Bartlett, 1985; Budoff *et al.*, 1982; Kuriloff *et al.*, 1979).

need for independent review to protect clients' interests in the face of competing demands. When one Region discussed refusing parents' school requests, officials and councilors emphasized both the clear statutory terms and the availability of appeals, especially the appeal to the sheriff. Opponents of expanding parental choice of school first argued for expansive interpretation of the statutory grounds of refusal to protect underenrolled schools; they then conceded they would lose too many appeals with this position. The Regional Solicitor used the prospect of appeals to persuade the Region to accept the strong version of the parental rights so that requests were refused only when schools were physically overcrowded. Other Scottish authorities have adopted similarly strong interpretations of parental rights. On the other hand, most English and Welsh LEAs have adopted expansive interpretations of the 1980 Act's grounds of refusal. Because they select appeal committee members and run appeal hearings, the LEAs believe that the committees will support their interpretations.[17] An independent review would be necessary to change appeals and the LEAs' decisionmaking.

When substantive rights can be clearly stated and when clients have and can use access to independent review, rights can empower clients in case-level decisionmaking. However, one final factor also influences how effectively rights protect clients' interests: the degree of conflict between the interests that clients' rights seek to protect and the collective concerns and personal interests of officials.

D. Officials' Balance of Rights with Other Concerns

Rights can protect clients' interests if they impose practical constraints on case-level decisionmaking. The strength of that protection depends on the weight of rights' practical constraints and the counterweight of the officials' concerns that conflict with rights. Officials balance competing concerns in making decisions. Rights that impose practical constraints give added weight to certain interests of clients. However, that weight might not be sufficient to overcome countervailing concerns of officials and so might not change case-level decisions.

For example, one Scottish authority chose to disregard sheriffs' interpretation of parental rights of school choice because officials perceived that accepting the interpretation would have disas-

[17] English and Welsh authorities rely on appeal committees' support even though the only relevant judicial decision on the 1980 Act's grounds of refusal read them very restrictively. The judge required the authority to show how the admission of a *single* child would cause "prejudice to the provision of efficient education or the efficient use of resources," despite the authority's claim that it could not ever prove how a single child would have that effect (*R.* v. *South Glamorgan Appeal Committee, ex parte Daffyd Evans*, May 10, 1984, unreported). Most education authorities did not inform their appeal committees of this judicial decision and have resisted such an approach.

trous consequences for the region's schools. The sheriffs' approach would have made it virtually impossible to refuse any parents' school requests.[18] Several of the schools were filled to their physical capacity, and three hundred more parents were asking for admission. If all requests had been granted, the requested schools would have been filled well beyond their physical capacities, and other schools' enrollments would have been decimated. The costs of resistance in the form of increasing numbers of appeals were not sufficient to make the region accept those consequences. It ceased contesting parents' appeals to the sheriffs, conceding these appeals as soon as they were lodged, while also refusing to adopt the sheriffs' interpretation of parental rights in its own decisions or instructions to appeal committees.[19]

Rights that impose practical constraints alter the case-level decision-making balance. The strength of rights depends on the practical constraints that they impose. However, sometimes even vital interests of individuals can be outweighed by other concerns, and thus an agency's disregard for an individual's rights can be justified. The strength of rights is not necessarily calibrated to the relative importance of the rights-protected interests compared to competing concerns. Therefore, rights can be too weak—failing to protect vital interests adequately—or too strong—protecting individuals' interests when collective concerns are more important. This is the obverse side of rights—the dilemma of rights in social programs. The use of rights to protect vital interests of clients can alter the pattern of decisions in ways that frustrate important collective concerns, including important interests of clients generally.

IV. THE DILEMMA OF RIGHTS IN SOCIAL PROGRAMS

The tension between collective concerns and the protection of clients' interests is inherent in the nature of social programs. Collective concerns require that case-level decisions be made while attending to the pattern of other case-level decisions and the effects of that pattern on the agency's use of limited resources. For instance, a school may decide that a handicapped child should be taught in a regular classroom because it has already assigned a teachers' aide to that class to help with another child. Standards governing case-level decisionmaking must be flexible and inclusive if agencies are to direct such decisionmaking toward collective ends. However, strong rights work by *restricting* agencies' flexibil-

[18] The sheriffs' approach required that the authority prove that the admission of a single child would cause serious detriment *by itself* before the child could be refused admission. The authority claimed, and some sheriffs accepted, that this meant that no requests could be refused (Tweedie, 1986).

[19] Similarly, school districts often resist hearing decisions on special education issues that require expensive new services and refuse to extend the decision standard to other children's cases (Bartlett, 1985; Budoff *et al.*, 1982; Clune and Van Pelt, 1985).

ity in case-level decisionmaking. There are inevitably some trade-offs between effective protections for clients' interests and collective concerns. Substantive standards for case-level decisionmaking cannot include all relevant collective concerns without losing the clarity and specificity necessary to protect clients' interests (Goodin, 1986; Lipsky, 1980).

Rights' interference with collective concerns is often exacerbated by the narrow focus of legislatures or judges in protecting clients' interests. Legislatures and judges respond to the lack of consideration given particular interests of clients. They seek to remedy officials' abuses of discretion, coercive treatment of clients, or failure to give sufficient weight to clients' interests. They focus on problems that exist in individual decisions, not on the cumulative effects of new standards and procedures on the pattern of case-level decisions. The rights they establish retain this focus on individual cases, divorcing case-level decisions from the context of agencies' efforts to use limited resources to achieve collective ends (Schuck, 1979).

Parental rights of school choice in Scotland illustrate how disruptive the narrow focus of rights can be. In shifting the balance in favor of parents in school admissions, the Scottish legislation excludes concerns for the expense and quality of education at underenrolled schools, for academic and social balance in schools, for links between schools and their communities, and for efficient planning and administration. These important concerns are now subject to the pattern of parents' school requests. Authorities may not directly act to protect them from the effects of such requests. Parents' school requests have, for example, frustrated several authorities' plans to vacate unsuitable buildings at popular schools. They have also resulted in many underenrolled schools, requiring higher per pupil spending and restricted curriculum at those schools. These underenrolled schools usually draw from poor, working class areas, so that the pupils most harmed by parental rights of school choice were already disadvantaged and are generally less able to use rights to protect their own interests (Adler *et al.*, 1989).

The dilemma of rights demands a trade-off: How much of the efficient pursuit of collective concerns should be given up to increase the recognition of particular interests of clients in case-level decisionmaking? The trade-off between clients' interests and collective concerns cannot be decided precisely. It involves too many questions that can only be answered vaguely: What are the key collective ends and clients' interests involved in case-level decisions? How are these collective ends and clients' interests related? What are their relative values? How can agencies be instructed to make case-level decisions in a way that reflects these choices and is insulated from subversion by bureaucratic pressures and officials' personal concerns? Although clear and precise answers may

be beyond policymakers' capabilities, the quality of justice in social programs depends on efforts to deal with these questions.

A. The Possibility of Justice

Justice in social programs requires an equitable balance between the agency's collective concerns and clients' interests in case-level decisions. The agency's basic responsibility is to serve collective ends, that is, to use limited resources in an efficient way to provide appropriate services and benefits to clients. Officials must make trade-offs among competing goals, and the competing interests of different clients are inherent in this responsibility. On the other hand, officials' discretion must be restricted to ensure that they take adequate account of clients' interests. The officials' focus on the pattern of case-level decisions and their own interests undercuts concern for individual clients' interests (Lipsky, 1980; Weatherley, 1979).

Confronting this dilemma requires a new perspective toward individuals' interests and case-level decisions. Justice in case-level decisions is not solely concerned with particular decisions; decisions in individual cases are interdependent. Decisions whether to grant hearings in particular cases or to give benefits or services to particular clients affect the agency's ability to provide hearings, benefits, or services in other cases as well as its ability to pursue collective ends. In short, what one client receives affects what other clients can receive. What matters in social programs is the cumulative effects of case-level decisions.

Therefore, justice in individual decisions involves a balance between one client's interests and collective concerns that may be apparent only from the perspective of the pattern of case-level decisions. An exclusive focus on the consequences of the specific case leads to a neglect or under-estimation of the effects of decisions on collective concerns. The orientation toward the pattern of case-level decisions need not, however, disregard individual clients' interests. Clients' interests can be protected by standards that relate decisions in particular cases to the pattern of case-level decisions coupled with procedures for the review of individual decisions. The discretion of case-level officials can be restricted to protect key interests of clients, although exceptions to those restrictions can in turn protect more important collective concerns.

The research on rights discussed above shows that both substantive standards and procedural safeguards are needed to make rights effective. The substantive standards require three components, all stated as specifically and unambiguously as possible. The standards identify the clients who possess the entitlements or the circumstances that qualify clients for the entitlements; they state the clients' entitlements in terms of what the agency must do for the qualified clients, and they describe the collective concerns that

can be used to justify withholding the entitlements. These substantive rights set the terms of the balance between clients' interests and collective concerns in case-level decisions.

Procedures for reviewing case-level decisions provide the second part of rights' protection for clients' interests. Given standards that specify the proper balance between clients' interests and collective concerns, case-level decisionmaking poses two dangers to clients' interests. First, officials may disregard or misinterpret the standards in deciding cases (Prottas, 1979). Second, officials may develop routines that mechanically apply standards so that the means of following standards displaces the end of doing justice in individual cases (March and Simon, 1958; Brown, 1975; Cranston, 1985). Review procedures can counter these dangers. Such procedures must be independent in order to insulate them from officials' programmatic and personal concerns, and focused on doing justice in individual cases to avoid routinization and mechanical application of standards.

To establish the balance between clients' interests and collective concerns, review procedures need to examine three aspects of the agency's decision. First, the agency's interpretation of clients' rights in the internal policies and rules that govern case-level decisionmaking must be scrutinized. For instance, in education for handicapped children, school officials develop standards for determining when a mentally retarded child should be placed in a separate class; these standards are often based on intelligence test results (Gartner and Lipsky, 1987; Weatherley, 1979). Clients' rights can be protected if they are able to question an agency's policies as violating the substantive duties owed by the agency to the clients. In special education appeals, parents can argue that the intelligence test standard was set at the wrong level or that children with mental skills at a certain level should remain in the ordinary classroom rather than be placed in a special class. The agency under this system would have to justify its policy, offering the evidence and judgments on which it based its decision for the scrutiny of reviewers. Reviewers would evaluate the agency's justifications and the clients' challenges and decide whether to uphold the policy. The burden of justification that the agency would carry could be adjusted according to the importance of the clients' interests and the complexity of the questions involved.

Second, clients' interests can be protected if clients are able to question how officials applied the agency's policies in deciding the clients' cases. Officials might make mistakes, especially given the emphasis on rapid case processing, by misunderstanding the facts of a case or misapplying a rule. Also, officials might bend or ignore rules to protect their own concerns. The right to question enables clients to obtain an independent check on officials' fact-finding and application of agency policies. For instance, a welfare recipient may claim that her caseworker should not have counted

missing support payments in calculating her budget (Handler, 1969; Mashaw, 1971). (This claim assumes that welfare regulations provide that missing support payments should not be counted. If federal and state welfare regulations left this question to the discretion of the county welfare agency, the recipient could claim only that the county agency's policy violates some other statutory duty of the agency.)

Third, both clients' interests and flexibility in agency decisionmaking can be served if clients are able to argue that their circumstances justify an exception, even though the agency's policies comply with its substantive duties and officials correctly applied those policies in deciding the clients' claims. Bureaucratic rules and routinized procedures fit clients' claims into pre-existing categories that determine the appropriate outcome. Decisions that are formally correct can be substantively wrong, thereby denying benefits or services to a client when regard for fairness or the program's purposes would dictate a favorable outcome. For instance, means-tested welfare benefits might not allow consideration of a child's chronic health problems, which the client might argue create special needs that are not met by other agencies (Simon, 1983; Titmuss, 1971). Or a disability insurance claimant might argue that the applicable vocational regulations do not adequately address the circumstances that affect her ability to obtain substantial gainful employment, such as slight mental retardation, limited job skills, permanent hand injury, or severe cardiovascular impairment (Mashaw, 1983). Reviewers would evaluate the program's purposes and the client's particular circumstances together to correct for the tendency of case-level decisionmaking to focus on a few key factors according to the terms of rules (Kagan, 1978; Selznick *et al.*, 1969; Tribe, 1975).

Clients' arguments for exceptions to agency rules set up an implicit balance between the clients' claims and the agency's collective concerns. The question involved in granting an exception is whether the agency's purposes would be served better by making the exception or adhering to the rules. In programs such as welfare, in which the interdependence of case-level decisions is negligible, this issue involves only the relation between the agency's purposes and the circumstances of the particular case. In programs in which the interdependence is relatively strong, such as special education or housing, this balance would also include the effect of the decision on collective concerns. Because the effect of a single decision can seldom be measured, the value of making an exception and the effects of that decision on collective concerns cannot be directly balanced. Instead, reviewers would use a standard for making exceptions that would reflect the magnitude of the decision's *marginal effects*. For instance, a school admissions appeal committee might adopt a low threshold for exceptions at a large secondary school but a higher threshold for a one-form pri-

mary school in which additional pupils would have a greater effect. Reviewers in a housing program might use a very high threshold for exceptions because they are allocating discrete goods—the decision to provide one family with public housing removes one unit from those available for others (Lewis and Livock, 1979).[20]

Substantive and procedural rights could thus be combined to balance clients' interests and collective concerns and to provide clients with the potential for meaningful participation in the decision of their claims. Two problematic assumptions underlie this approach, however. First, clients would have to assert their rights with enough force to cause the agency to incorporate the independent standards of review into its own decisionmaking. As noted, the problems of clients' competence and dependence on agencies are significant but not insurmountable obstacles to the effective protection of clients' interests, particularly if supplemented with advocacy programs and administrative review. Second, legislatures and judges would have to be able to decide how conflicts between clients' interests and collective concerns should be resolved and to state standards that would give clear guidance to both officials and reviewers.

To develop these standards, policymakers would need to identify relevant clients' interests and collective concerns, anticipate how those interests and concerns might conflict in case-level decisions, and choose the circumstances in which one or the other should prevail. Moreover, the policymakers would have to develop standards that accurately communicate their resolution of these issues to program officials and those officials responsible for reviewing case-level decisions. The standards would have to be very clear when strong incentives exist for either the agency or the officials to frustrate clients' interests.

Establishing a set of standards that meets these requirements is beyond the capacity and the inclination of legislators and judges. The issues involved in social programs are too complex, the circumstances of clients too varied, the resources of language too limited, and the choices involved too difficult (Mashaw, 1983; Braybrooke and Lindblom, 1963). Case-by-case adjudication could supplement the legislature's standards. Adjudication would subject case-level decisions to the restraint of rights; agencies would have to justify their decisions in terms of the rules and principles that implement the program's purposes and protect clients' interests. Most cases could be decided on the basis of legislative stan-

[20] Challenges to the administration of the program's policies raise a similar question: Does the injustice done to a particular client outweigh the effect of changing that decision on collective concerns? When marginal effects are negligible, errors—accidental or intentional—would always justify upholding challenges. When marginal effects are not negligible, reviewers could weigh unfairness to the client and the substantive reasons for granting the claim against a threshold for granting exceptions.

dards interpreted in previous cases. When the application of existing standards did not decide a case or resulted in a substantively questionable result, the adjudicator would elaborate the standards, amending them or creating new standards to produce a just result. Because adjudicators would not have to develop a coherent set of standards for all cases, their task would be less overwhelming. They would instead focus on the facts of the specific case and the principles needed to decide that case and similar cases that may arise (Fuller, 1978; Kagan, 1978). Case-level decisions would thus be held accountable to standards interpreted and elaborated to further the program's purposes and to protect important interests of clients (Kagan, 1978; Nonet, 1969).

However, the actual practices of case-level review bear little resemblance to this portrait of adjudicatory justice in social programs. Appeal decisionmakers usually focus on "individualized justice," that is, determining whether exceptions should be made in a particular case without reference to general standards or the outcomes of previous cases. Because they often differ over which grounds justify an exception and in their willingness to make exceptions, appeal outcomes are inconsistent and frequently idiosyncratic (Matza, 1964). In addition, most decisionmakers lack the foundations necessary for the adjudicatory development of standards for several reasons.

First, appeal decisionmakers often lack expertise in the substantive issues that come up in appeals. Although they develop a working knowledge of the issues that commonly arise, they seldom gain the skill and insight that could produce useful elaborations of the standards for case-level decisionmaking (Mashaw, 1983). Second, detailed explanations of appeal decisions are rarely given; when they are given, they are usually not shared with other decisionmakers; and when they are shared, they are usually not read by other decisionmakers. Past decisions are also rarely available to clients challenging the agency's decision (Handler, 1979; Kuriloff *et al.*, 1979). Third, clients, even when represented, seldom have the competence or resources to address arguments about what the rules should be, as opposed to why their claim should be granted. Clients' advocates sometimes challenge an agency's policies, but the resources of advocacy would have to be expanded tremendously for advocacy to play an adequate role. Fourth, appeal decisionmakers have shown little inclination for the hard task of elaborating standards through analyzing the reasoning in past cases, nor have they been willing to rely on past reasoning in deciding the cases before them (Kuriloff *et al.*, 1979; Mashaw, 1983). Fifth, case-level decisionmakers in many social programs are already overloaded with instructions. Adding rules or interpretations of rules to these instructions is likely to lead to confusion and, paradoxically, can contribute to case-level discretion rather than constraint (Prottas, 1979; Titmuss, 1971).

Even if all these problems could be solved, the sheer number of case-level decisions frustrates the development of review procedures that could contribute to the establishment of adjudicatory standards. Agencies do not have the resources for this kind of review. Large numbers of appeals have to be processed rapidly, just as large numbers of case-level decisions must be made. The solution to each situation is the same: bureaucratic procedures or informal practices that expedite decisionmaking by sacrificing responsiveness to individual circumstances or consistency in decisionmaking (Mashaw, 1974; Lipsky, 1980).

In sum, numbers and complexity of appeals and the limited competence and resources of social programs and their clients combine to frustrate the ideal of adjudicatory justice in social programs. Appeals cannot produce the elaboration of standards for case-level decisionmaking necessary to restrict the agency's trading off clients' interests except in cases in which more important collective concerns are threatened. At best, appeals can clarify decisionmaking standards somewhat and enforce them more or less consistently. Appeals that work in this way can offer some protection to clients' entitlements as specified in rights without unduly interfering with the agency's collective ends. However, appeal procedures in many programs have not overcome the burdens that impede the implementation of adjudication (Handler, 1979; Kuriloff *et al.*, 1979; Mashaw, 1983; Tweedie, 1986). Legislatures, judges, and program officials would have to devote more attention and resources to reviewing individual case-level decisions before even this limited vision of justice in social programs could be realized.

V. CONCLUSION

Social programs are destined to fall short of the aspiration of justice in case-level decisionmaking—the efficient pursuit of collective ends with proper concern for individual clients' interests. Absent the restrictions of strong rights, clients' interests are often sacrificed for the program's collective concerns and officials' personal concerns. Legal rights can provide some protections for clients' vital interests, but only by imposing restrictions on case-level decisionmaking that also interfere with the program's collective concerns. Compromise of collective concerns and clients' interests can be limited by clear legislative choices between such conflicting concerns and interests along with adjudicatory procedures for elaborating and enforcing standards of case-level decisionmaking. However, the incremental nature of policymaking and the practical limits on adjudication in appeals frustrate the goal of eliminating undue sacrifices of collective concerns and clients' interests.

Finally, there are inherent limits on the effectiveness of legal rights, including clients' lack of administrative competence, long-term relations between agencies and clients, the difficulty of for-

mulating standards that restrict discretion in the provision of most services, and the capacity of agencies and officials to resist compliance or to comply formally without improving client treatment. These limits mean that rights cannot be effective protections for some clients' interests, particularly those in qualitative services, and that rights can often protect the interests of only some clients, namely those with the knowledge and assertiveness to use rights. Administrative protections for clients' interests are also needed.[21]

However, even when rights cannot fully protect clients' vital interests, rights direct some attention to how agencies treat the *individual clients*. This may be the central importance of rights in social programs. The growth of the administrative state has increasingly subjected individuals' interests to the decisions of bureaucratic agencies. Rights can help counter the tendency of bureaucracies and overburdened officials toward routines and stereotyped categorizations of clients. On the other hand, social programs are designed to serve collective ends that may conflict with an individual client's interests. Rights that pick out key interests of clients for special protection and that set out collective concerns that can justify frustration of those interests provide a framework for working out the place of individuals in the administrative state, even though legal rights alone cannot secure that place.

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[21] Analysts who have concluded that rights are not sufficient have made several proposals to help protect clients. See, e.g., the proposals of Denvir, 1969 (clearer rules, competition among service providers, ombudsman, and civil liability for case-level officials); Handler, 1979 (ombudsman, mediation, and clearer rules); Lipsky, 1980 (enhanced professionalism and limited discretion); and Simon, 1983 (administrative review of individual cases and professionalism).

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