

The Fellows Review

2020 - 2021



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The Fellows Review

SELECTED PAPERS OF THE
2020-2021 PRESIDENTIAL FELLOWS PROGRAM

CENTER FOR THE STUDY OF THE PRESIDENCY & CONGRESS

Editor

ERICA NGOENHA

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The Fellows Review: 2020-2021

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Foreword

Over the last year, the United States has faced immense challenges, including a raging pandemic, long-simmering racial divides coming to a head, and a bitter election cycle that ended with an armed insurrection against the U.S. Capitol. These events have tested our faith in government and in one another. But even as we despair over all that has been lost, the work has already begun to rebuild, reenergize, and renew the foundations of our democracy. We see this in the frontline workers bravely putting their lives on the line to heal their fellow citizens and inoculate them against the virus, in the activists and community leaders joining together to bring about change and realize a vision of a more perfect union for all, and in the political leaders working to offer a more hopeful brand of politics. I see it first-hand in the students that we serve through the Center's Presidential Fellows programs. Our Fellows have every reason to be frustrated and disengaged with our political system and nevertheless their belief in what is possible endures. Even with the tremendous hurdles they have each faced, our 2020-2021 class of Fellows has been resilient, maintaining a sense of optimism about the journey ahead even while acknowledging the problems we must collectively face. Their optimism gives me faith that if we invest in our youth and give them the tools to create change, we can meet the challenges we face head on and build the foundation for a more prosperous and equitable future.

With this outlook in mind, I am proud to present the outstanding research of the 2020-2021 Presidential Fellows. In the pages that follow, you'll find in-depth research on topics ranging from voter disenfranchisement to presidential authority to launch offensive cyberattacks. We are immensely proud of the work these Fellows produced under difficult circumstances in a primarily virtual environment.

I would especially like to recognize five Fellows whose research merited special distinction:

Kassie Sarkar from Emory University was awarded The Donald B. Marron Award for Best Historical Analysis for her exploration of South Asian identity and activism in American politics through the lens of Vice President Kamala Harris's path to the White House.

Diego Vasquez from the University of Toronto was awarded the David M. Abshire Award for Most Outstanding Paper by an International Fellow for his analysis of the U.S. military's response to unipolarity during the collapse of the Soviet Union.

Manuka Stratta from Stanford University was awarded the Richard H. Solomon Award for the Most Original Paper on Foreign Policy or Diplomacy for her exploration of a U.S. diplomatic agenda to lead on 5G technology.

Dean Farmer from the University of Kentucky was awarded the James R. Moffett Award for the Most Original Paper on the Modern Presidency or Congress for his examination of the wage impact of the H-1B visa program on domestic workers.

Ryan Johnson from the United States Military Academy at West Point was awarded the Robert A. Kilmarx Award for the Best Military, Intelligence, or National Security Strategic Analysis for his research on Congressional oversight of military affairs.

These pieces and 18 other research papers are included in this year's *Presidential Fellows Review*. The Center is proud to publish this work, and we congratulate all of the members of the 2020-2021 class on their successful completion of the Presidential Fellows program.

While it was an unusual year that was centered on Zoom-enabled engagements, our Fellows still had outstanding experiences meeting virtually with Senator Blanche Lincoln and Congressman Mike Rogers to talk about how to launch a political campaign; learning from former White House Chief of Staff to President George W. Bush, Joshua Bolten, and former Deputy Secretary of Labor Chris Lu about the art of a presidential transition process; and engaging with award-winning journalists like Astead Herndon from the New York Times and Tia Mitchell of the Atlanta Journal-Constitution to conduct a post-mortem on the 2020 elections.

None of these experiences would have been possible without the support of our Fellowship sponsors. We are thankful for their contributions which allow us to provide substantive and meaningful opportunities for our Fellows. We are also grateful for the participating universities for their guidance and support of these students.

We are indebted to Sarah Naiman for her editorial work on this publication under the guidance of Erica Ngoenha, Director of the Presidential Fellows Program.

I hope as you read through this collection of research papers, you'll be inspired, as I have been, by the promise of these future leaders.

Glenn C. Nye III
President & CEO
Center for the Study of the Presidency and Congress

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Part 1

The Executive & Legislative Branches

FOR “THE PEOPLE”: ANTI-ELITE APPEALS IN U.S. HOUSE ELECTIONS

BEAR BROWN
The Ohio State University

I develop a novel theoretical conception of anti-elitism to contribute to the growing literature on populism. I go on to deploy that innovation in empirical work that grounds the theory in American federal congressional elections. I investigate more than 800 candidate biographies from those running for U.S. House in the 2020 elections. In addition to collecting data on both the candidate and their district, I use a dictionary-based method of text analysis to generate “scores” for each candidate that allows for a comparison of anti-elite rhetoric that has not been explored in the American context to this point. I find that Democratic candidates have stronger anti-elite appeals than Republican candidates on average. Also, candidates from both parties are similarly unresponsive to changing district characteristics when it comes to their anti-elite framing. Instead, anti-elitism is used as a broad appeal, irrespective of the actual composition of a particular constituency.

INTRODUCTION

In a cartoon featured in *The New Yorker*, a frustrated passenger on an airplane stands up, turns to the other passengers, and declares, “These smug pilots have lost touch with regular passengers like us. Who thinks I should fly the plane?” This humorous commentary on the preference of voters to eschew professional politicians in lieu of “normal” people succinctly captures a constitutive element of American politics: anti-elitism. Within political science, and particularly within the field of American politics, this concept of anti-elitism exists as a largely untapped vein of research that has the potential to reshape our perception of U.S. electoral politics. We see it every election cycle: candidates make appeals to end the influence of special interests in Washington, root out corrupt elites, flush out dark money from politics, and other similarly intentioned sentiments. Rather than being trivial campaign tropes, however, I argue that this framing is part of a coherent ideology in U.S. politics. Anti-elitism is quite different from the related phenomenon of populism which contains a clear anti-pluralist element. It is the explicit or implicit rejection of a system that serves the wealthy or inordinately powerful. Frequently, anti-elitism is framed rhetorically as a struggle on behalf of “the people” against “the elite” for ultimate political authority within a democracy or democratic aspiration of politics.

I undertake an investigation of more than 800 candidate biographies from those running for United States House Representative in the 2020 elections. Contrary to what might be

expected with an anti-elite message, a candidate’s level of anti-elite rhetoric in their candidate biographies was unrelated to several factors that are theoretically tied to anti-elitism. Income, education, race, and type of occupation in a district were all unrelated to anti-elite rhetoric employed by candidates running in that district. Further, the race and gender of candidates, with particular exceptions for Black candidates, was unrelated to a candidate’s anti-elite score. However, party affiliation, challenger status, and previous electoral margin were all significantly associated with a candidate’s anti-elite score.

Below I deepen the concept of anti-elitism and provide a promising look at how it functions in the American context. First, I situate my concept of anti-elitism in the constellation of populism. Second, I explain how that concept, once separated from populism, operates in the United States. Third, I operationalize the concept and test relationships with it. Last, I analyze the results and offer a normative appraisal of what the data show and where future research should continue.

SEPARATING ANTI-ELITISM FROM POPULISM

Whenever one uses the term “populism”, a definition of the concept should follow. Even if one thinks of populism as an essentially contested concept, what one *means* when they employ “populism” varies substantially enough that an appraisal of any claims about populism is nearly impossible to make without understanding how someone is using the term.¹ It matters if someone understands populism similar to Laclau as the very way in which the political is constructed, and consequently that populism can serve as a democratizing force for those excluded from modern democratic practices or benefits in some systematic way.² Or, perhaps, one may understand populism as a much more nefarious force in our politics. This is the approach that scholars like Urbinati take as they understand populism to mean a “project of government” that seeks institutional means to transform democracy with a new form of “direct representation”, and

¹ W. B. Gallie, “Proceedings of the Aristotelian Society,” *New Series* 56 (1956).

² Ernesto Laclau, *On Populist Reason* (London: Verso, 2005); Laura Grattan, *Populism's Power: Radical Grassroots Democracy in America* (Oxford: Oxford University Press, 2016).

consequently that populists exploit democratic concepts and institutions to implement the will of an exclusive conception of “the people.”³

When I use the term populism, I mean it most similarly to Mueller, who defines populism as the combination of anti-elitism and anti-pluralism.⁴ Populism on my conception is normatively harmful toward democracy, and observers who want to preserve and bolster democracy should be concerned about populist movements and leaders on the rise. This conception of populism is well-within the mainstream understanding of the phenomenon.

The way that Mueller defines populism synthesizes the best of the various other definitions and provides a succinct way to identify the phenomenon. Mueller writes that populism is a “particular *moralistic imagination of politics*” (emphasis his), and that it provides a way of perceiving the world. He also gives clear benchmarks for labeling movements and people as populists with his anti-elite and anti-pluralist thresholds.

Mueller’s description of anti-elitism does not go much beyond being “critical of elites.” Some definitions of anti-elitism align closely with Barr when he describes “the rhetorical appeal used in opposition to elites.”⁵ This conception of anti-elitism is quite broad, however, and would encompass *anyone* opposed to elites. Defining it in this way fails to capture the crucial element of this phenomenon of anti-elitism that is grounded in democratic appeals on behalf of a “people” who have the right to be more involved in democratic decision-making. Anti-elitism can be understood here to mean the antagonism between “the elite” and “the people,” but this need not *necessarily* frame the whole of the phenomenon. Often, anti-elitism is complex and involves more than two homogenous and opposed groups. Lowndes is helpful here in breaking free of this strictly dualistic conception of the anti-elitist and populist relationship between “the people” and “the elite.”⁶ Lowndes describes a conception of “the people” which rests in the middle between exploitative elites above and parasitic dependents below.

I adopt Mueller’s formulation of anti-pluralism. Critics argue that Mueller’s definition of populism creates too high a threshold, excluding movements and people that should be

³ Nadia Urbinati, *Me the People: How Populism Transforms Democracy* (Cambridge: Harvard University Press, 2019).

⁴ Jan-Werner Mueller, *What is Populism?* (London: Penguin UK, 2017).

⁵ Robert R Barr, “Populists, Outsiders and Anti-establishment Politics,” *Party Politics* 15, no. 1 (2009): 29–48.

⁶ Joseph Lowndes, “Populism in the United States,” *The Oxford Handbook of Populism* (Oxford: Oxford University Press, 2017).

considered populist under less stringent conceptions of the term. Grattan, for example, maintains a looser notion of the phenomenon in which myriad actors have democratized populism. Grattan writes that populism retains “resources that sustain a sharper disposition toward democratic hope amid conditions that daily threaten to reinforce despair.”⁷ Grattan’s conception of populism here focuses on the potential democratic upsides of populist movements, and she cautions against discarding these merits in an effort to hedge against the demagoguery often associated with populism. On Grattan’s account, populists can indeed be good for democracy and it is erroneous to assume that populists are necessarily bad actors. On my account, some of the populists who Grattan discusses in her book—those who work toward aspirational senses of democracy—are not actually populists. Rather, they are better categorized as *anti-elitists*.

One of the advantages of Mueller’s definition is that it offers a fairly simple benchmark to evaluate the differences between anti-elitism and populism. While populism can be quite confusing to identify, utilizing the anti-pluralist threshold provides a helpful standard. Anti-elitism can and does manifest itself in a variety of ways that have little to do with national homogeneity. Anti-elitism tends to leave room for liberal freedoms and democracy—indeed it often aims to promote them. Drawing on Robert Dahl, I argue that anti-elitism improves democracy by aspiring to standards that ensure political equality. Dahl argues that one of the standards necessary for political equality is effective participation—making sure that all members of a society have an equal opportunity to have their voices heard.⁸ I conceive of anti-elitism as an opposition to elites having an undue influence on salient decisions within a society. This conception places anti-elitists in a position of safeguarding a Dahlian standard of political equality necessary for modern democracies. In this way, anti-elitism aims to foster better democracy.

Precision here matters. One can err by downplaying anti-elitism as nothing more than a basic distinguishing feature between one political actor trying to beat another. For example, conflating anti-elitism with the notion—popularized by Fenno—that “everyone is running

⁷ Laura Grattan, *Populism's Power: Radical Grassroots Democracy in America* (Oxford: Oxford University Press, 2016).

⁸ Robert A. Dahl, *On Democracy* (New Haven: Yale University Press, 2008).

against Washington” misses the point.⁹ Rather than leveling too strong a charge against anti-elite actors, this second error empties the concept of content by making everyone anti-elitist. As I am using it, anti-elitism intentionally rejects a system that serves the wealthy and inordinately powerful. One can run “against Washington” for many reasons, and this common posturing does not necessarily indicate anti-elitism. The fact that Congress appears exceedingly slow to pass legislation, that it is polarized to a dismaying degree, and perhaps even that the democratic process itself can seem unnecessarily complex are just a few of the many reasons people dislike—and run against—Washington in ways that are not anti-elite in the way that I describe it. So, while separating anti-elitism from populism is the main distinction I want to draw here, we must also be careful to not relegate anti-elitism to being merely a campaign trope.

AMERICAN ANTI-ELITISM

Given the myriad ways anti-elitism manifests in the United States, it is worth considering the different ways we might expect to see anti-elitism in practice. Anti-elitism is deeply embedded in American political thought. It rejects the notion of political rule by a “superior” class, usually wealthy individuals who wield extraordinary political influence. The Federalist Papers, for example, stipulate that instead of government being formed from an upper class of elites, it was to be “derived from the great body of society.” The American legislature was intended to be “open to merit of every description.” Speaking directly to an objection that elites would be the lone victors of a republican system, James Madison mused, “Who are to be the objects of popular choice? Every citizen ... No qualification of wealth, of birth ... is permitted to fetter the judgement or disappoint the inclination of the people.”¹⁰ This sentiment was evident to early observers of the American republic as well. In *Democracy in America*, Alexis de Tocqueville remarked, “In America... the people are apt to mistrust the wealthy.” Beyond this, Tocqueville observed that Americans held the view that “the supreme power ought to emanate from the people.”¹¹ In modern times, anti-elitism in the United States is grounded in basic justifications for democracy among a set of unfairly resourced actors. As Niko Kolodny writes, “the core of the concern about

⁹ Richard F Fenno, “If, as Ralph Nader says, Congress is ‘the broken branch,’ how come we love our congressmen so much,” In *Congress in Change: Evolution and Reform* (New York: Praeger, 1975), 277-278.

¹⁰ Hamilton, Alexander, James Madison, & John Jay, *The Federalist Papers* (Oxford: Oxford University Press, 2008).

¹¹ Alexis De Tocqueville, *Democracy in America* (Vol. 10) (Washington, D.C.: Regnery Publishing, 2003).

the effect of the disparities of wealth on our politics is a concern about a few wielding inordinate power with respect to the many, in a way that seems simply incompatible with a society of equals, a society in which none rules over any other.”¹² Anti-elitism is often invoked by candidates in their campaigns when they frame themselves as being people “just like you” who should be sent to Washington D.C. to represent “the people” and restore that redemptive face of democracy.¹³ Take for example, Zoe Midyett, a Democratic candidate who ran for a U.S. Representative seat in OK-3. Midyett described herself to potential voters: “Listen, I know all politicians say they will never lie to you... but I’m not a politician. I’m a regular everyday American just like you, who is looking for a way out of this mess.” Anti-elitism is a familiar phenomenon that is displayed openly in every modern election cycle. These candidates make consistent appeals in favor of everyday Americans and against an entrenched elite who work against common people.

While some anti-elitism focuses on the undeserved political privilege afforded to well-positioned *individuals*, other variations of the phenomenon decry the political privilege afforded to well-resourced *groups* or *collectives*. This strand of anti-elitism holds a particular disdain for the alleged outsize influence that unelected and non-public entities hold in the American political system. Often, this disgust is laid out in terms of the rejection of “corporate influence,” “special interests,” and lobbyists. On a policy level, this may also include preferences for things such as term limits that reflect an aversion to “career politicians.” Examples of this kind of anti-elitism are plentiful. Candidates will frequently mix together the rejection of elites with the embrace of average citizens. Democratic challenger for OH-9, Marcy Kaptur, explains this on her candidate website clearly:

Marcy has dedicated her career in public service to fighting for workers and businesses that are trying to get a leg up. That includes fighting the special interests in Washington to make sure the federal government is working for the American people, not wealthy donors and lobbyists.

While examples like the ones above are familiar to those who have encountered American politics, the root of the anti-elite spirit in the United States is theoretically bound to the various observable

¹² Niko Kolodny, “Rule Over None II: Social Equality and the Justification of Democracy,” *Philosophy & Public Affairs* 42, no. 4 (2014): 287-336.

¹³ Margaret Canovan, “Trust the People! Populism and the Two Faces of Democracy,” *Political Studies* 47, no. 1 (1999): 2-16.

characteristics that can predict anti-elite rhetoric. Or, at least, these characteristics should be able to demonstrate a relationship with anti-elite rhetoric that we can use to better understand the phenomenon. The next section introduces my hypotheses about these relationships, and it is followed by my empirical strategy for testing these hypotheses.

ESTABLISHING ANTI-ELITISM IN THE UNITED STATES

Anti-elitism is usually identified by the rhetoric or sentiment espoused by a group or people. Although it will always be oriented against the elite—in a Manichean duality between “the people” and “the elite”—it matters who is constituted in the people and the elite. The difference in composition of these two groups fundamentally changes the way in which anti-elitism manifests within any given society. In American society, for example, it is quite difficult to separate cultural elites from economic elites, and American conceptions of “the people” are necessarily unique given the inherent diversity of American identity. For this reason, while my focus is on politics, I do not restrict my study of anti-elitism to rhetoric against “political elites.” Instead, I consider elites of all kinds since this is more reflective of the reality of the American electoral spirit.

Given anti-elitism’s centrality to U.S. politics and the psychology upon which it draws, I expect that it will be an observable element of U.S. federal elections. For this, I look to candidate biographies to examine the strength of anti-elite framing as well as the various factors associated with varying levels of anti-elitism. I expect the desire of the American electorate to have members of Congress represent them in Washington, D.C. to be reflected in the way that candidates frame themselves and their campaigns. This reflection should look different as candidates compete in distinct voting districts since myriad types of people with varying preferences exist in this country. From the theory described above, I develop several testable hypotheses that will shed light on the state of anti-elitism in U.S. elections.

H1: *The level of anti-elitism among candidates in wealthier districts will be lower than those in less-wealthy districts.*

H2: *The level of anti-elitism will increase among candidates as the proportion of blue-collar jobs in the district increases.*

H3: *Candidates who are challenging an incumbent or those vying for an open seat will display higher levels of anti-elitism than incumbent candidates.*

H4: *Candidates running as Democrats will display higher levels of anti-elitism than candidates running as Republicans.*

H5: *Candidates running in majority minority districts will display higher levels of anti-elitism than candidates in majority White districts.*

While each of these hypotheses draws from a slightly different background, they are all derived from the same logic. I define anti-elitism as the antagonism between “the people” and “the elite” in which “the people” perceive their position within democratic politics to be at a disadvantage to the unfairly resourced elite. Importantly, more groups can exist within this anti-elite structure than just “the people” and “the elite.” There is also room for groups who are not constituted in the people and are often construed as being the other beneficiaries of social economic, political, or cultural goods produced by an illegitimate elite. Anti-elitism is understood broadly in theoretical terms because it is *employed* broadly in practical terms that cover all of the possible “systems” of power, and this is especially true in the American context that frequently blends these various systems without clear distinctions.

METHODS

The methods portion for this research rests upon a dictionary-based approach to text analysis. This method of text analysis has been used to code sentiment in political texts. Further, this method retains the flexibility of human intuition while harnessing the speed of automated processing. Especially considering the deeply human element of anti-elite sentiment that relies upon an intuitive understanding of particular phrasing within specific contexts in the English language, this method is better equipped for this analysis than competing methods, such as an unsupervised learning approach. As an example, the trigram “not a politician,” despite only being three words, carries substantial weight in the anti-elite lexicon. It relies both on a negative assertion—to *not* be something—as well as the implicit pejorative valence to the term “politician.”

For this study, and for future studies on anti-elitism, I created the Anti-Elite Dictionary (AED) to capture the reservoir of anti-elite language used on candidate websites to frame their campaigns. This dictionary was created based on extensive immersion in these candidate websites and a careful evaluation of the relationship between particular terms and my anti-elite

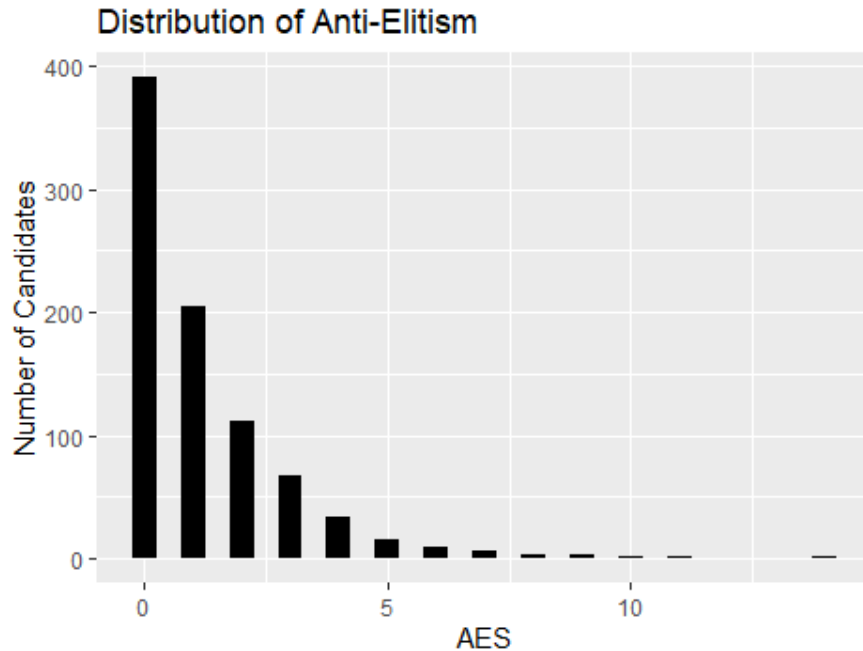
theory. The AED contains a description of each term for its content and how it fits in the anti-elite framework described previously. Using a relatively straightforward programming script in R, I use the AED keywords to return a simple count from individual candidate biographies. This returned count is the Anti-Elite Score, or the AES. The AES is therefore a count outcome used as a proxy for the strength of anti-elitism in a particular candidate biography.

The AES is a positive and unbounded count outcome. I scraped the “About Me”, “Bio” or other similarly intentioned parts of candidate websites to create a full dataset of candidate biographies from which analysis could be performed. Using the AED as my dictionary and the AES as my count outcome, I can produce a count for the strength of anti-elite sentiment in candidates. I employ this method to derive an AES for every Democrat and Republican candidate running for U.S. House in the 2020 General Election. This pool of observations gives me a convincing handle on the state of anti-elite rhetoric at the federal level in the contemporary United States. For each candidate, I also record their name, district, challenger status, party, district median household income, district education, proportion of blue-collar workers, candidate racial identity, electorate racial makeup, candidate gender, and the margin of victory in the previous (2018) House race for that district.¹⁴ The following section includes an analysis and presentation of the results from the methodology described above.

RESULTS

The distribution of the AES shows that the variation is apparent enough to ward off criticism that the anti-elite phenomenon I argue for is overly broad. And despite the large number of candidates who declined to frame themselves and their campaigns as anti-elite, the *majority* of candidates who ran for House Representative in 2020 retained an AES of at least one. Both the mean (1.24) and the median (1) of the measure show that, on average, candidates employed at least one marker of anti-elite rhetoric in their campaign biographies. The trend increases once I subset for anti-elite candidates (candidates who use one or more marker of anti-elite rhetoric in their candidate biographies). Here, the AES mean for anti-elite candidates is 2.3, and the median is 2. This indicates that among candidates who are anti-elite, they are likely, on average, to employ at least two anti-elite terms or phrases in the framing of their candidacy and campaign.

¹⁴ See appendix for details on variable measurement.



Having established some of the features of this new measure, I can now examine the ways in which a range of covariates are associated with the AES and the subsequent implications for my hypotheses. **Table 1** on the following page provides the results from various regression models that each used the AES as the outcome variable. I ran several variations of the core model which included the variables described in the methodology section, and this is responsible for the myriad columns in the regression output table.

The first thing to notice is that the variable for party. Holding everything else in the model constant, being a Democratic candidate for House Representative was associated with an increase in the Anti-Elite Score. Speculation as to why this is the case will follow in the discussion section. Next, the variable for challenger status is also positive and significant in the various model specifications. This is rather unsurprising and is interpreted to mean that being a challenger is associated with an increase in the AES, all else held equal in the model. These data provide support for *H3* and *H4*.

Another major set of findings for this study is concerned with the association of district characteristics with levels of anti-elitism. None of the models provided support for *H1* or *H2*. This means that theoretically important anti-elite indicators such as income, education, or type of occupation in a district had did not have any significant association with whether a candidate running in that district was likely to brand themselves and their campaigns as anti-elite in some way. Candidates across these varied districts, with no apparent pattern related to these

characteristics, utilized anti-elite branding. Further, the racial composition of a district was irrelevant in determining this type of campaign rhetoric regarding anti-elitism. There was no difference between men and women candidates, nor did it matter *generally* if candidates were white or racial minorities. However, I also included a separate variable to track the difference between Black and non-Black candidates specifically. Here, I found statistically significant *negative* associations for Black candidates and anti-elite rhetoric. The negative sign on this coefficient indicates that Black candidates were associated with lower levels of anti-elite rhetoric than their non-Black counterparts, all else held equal in the models for which Black candidates were measured separately.

Table 1

	<i>Dependent variable:</i>					
	Anti-Elite Score					
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Party	0.502*** (0.101)	0.529*** (0.100)	0.499*** (0.100)	0.534*** (0.097)	0.538*** (0.097)	0.531*** (0.097)
Challenger	0.180* (0.098)	0.192** (0.098)	0.180* (0.098)	0.197** (0.095)	0.201** (0.095)	0.198** (0.094)
log(MHI)	-0.037 (0.331)	-0.172 (0.336)	-0.043 (0.331)	-0.228 (0.205)	-0.231 (0.204)	—
Education	0.372 (0.855)	0.184 (0.855)	0.299 (0.871)	—	—	—
Race (candidate)	-0.031 (0.117)	—	—	—	—	—
Black	—	-0.322** (0.159)	—	-0.324** (0.158)	-0.351** (0.152)	-0.310** (0.149)
Latino	—	—	0.063 (0.173)	—	—	—
Race (district)	-0.439 (0.378)	-0.237 (0.373)	-0.472 (0.360)	-0.226 (0.366)	—	—
Gender	0.006 (0.102)	0.016 (0.101)	0.002 (0.101)	—	—	—
BCP	-1.273 (1.161)	-1.190 (1.149)	-1.207 (1.165)	-1.095 (1.016)	-0.869 (0.946)	—
Electoral Margin	-0.0041* (0.0023)	-0.0038* (0.0023)	-0.0041* (0.0023)	-0.0038* (0.0023)	-0.0043** (0.0021)	-0.0037* (0.0021)
Constant	0.473 (4.106)	2.025 (4.162)	0.574 (4.121)	2.761 (2.363)	2.697 (2.354)	-0.044 (0.114)
Observations	853	853	853	853	853	853

Note:

*p<0.1; **p<0.05; ***p<0.01

The last variable worth mentioning in this section is the measurement for electoral margins. While not explicitly stated in my hypotheses, it was plausible that candidates would employ anti-elite rhetoric strategically. Not just as a reflection of their districts, which turns out not to be true anyway given the data, but as a *general* competitive advantage. For this reason, I also measured the margin of electoral victory from the previous House elections in 2018. If my intuition was correct, I would expect to see a negative and significant coefficient for the electoral margins variable, which would indicate that as the electoral margin increases (meaning a larger victory), then the AES would go down (meaning weaker anti-elitism). The opposite is also true with tighter margins of victory being associated with a higher AES. Indeed, I do find support for this intuition. Across all models, the measure for previous electoral margin is negative and significant. However, the effect size is notably small. This is unsurprising, however, as changes in rhetoric are likely a minor part of a campaign in a tightly contested district given a menu of other options available to candidates to increase their chances of winning. Still, however small, the data do support this trend. Combined with the null findings on district characteristics affecting the AES, the electoral margins finding crafts a story of broad anti-elite appeals, irrespective of district characteristics or need, and strategic utilization of anti-elite rhetoric to increase the chances of electoral victory in close districts.

DISCUSSION

There are several findings from this data that deserve further treatment beyond a description of what they show statistically. My results showed that Democratic candidates for U.S. House in 2020, on average, displayed higher levels of anti-elite rhetoric than Republican candidates. This was the most consistent finding among the various models that I ran, and it had the most substantive association with my outcome variable (the AES). When subsetting the data by party and re-running a model with the relevant theoretical variables, both Democrats and Republicans appear similarly unreflective of these anti-elite markers. The only difference is that Democratic candidates behave strategically in their anti-elite rhetoric in districts with tighter 2018 electoral margins. One potential explanation is that Democrats, as a party, have a base *generally* that is more responsive to anti-elite appeals than Republicans. From this, it would

make sense that Democratic candidates *generally* employ stronger anti-elite rhetoric than Republican candidates.

One commonality between Democratic candidates and Republican candidates is that candidates from both parties are similarly unresponsive to their district's characteristics when it comes to their decisions to employ anti-elite rhetoric in their candidate biographies. The null relationship here suggests a gulf between anti-elite rhetoric and the political subjects to whom this rhetoric should ostensibly be targeted: low-income folks, racial minorities, those without college degrees, and those working blue-collar jobs. Normatively, this is quite concerning. This rhetoric is employed regardless of constituency simply because it *sounds good* to be anti-elite in the United States.

As I argue, it *is* good to be anti-elite in democracy, so why is this normatively concerning? Representation matters in a representative democracy. Part of *good* representation should be *descriptive* representation. That is, if we seek to have good representatives, we should expect that those representatives reflect those whom they represent. This argument bleeds over into discourse about what makes a representative a good one.¹⁵ While outside the scope of this paper, it suffices to say that—unless we want to trend toward technocracy—the honest reflection of constituent interests should be an ideal for representation in the United States. By eschewing the reality of their district and employing rhetoric for purely political purposes—simply because it sounds good to be anti-elite even if those who they represent belong to the elite—candidates degrade the utility of anti-elitism. When employed responsibly it becomes a tool to expand democracy; when employed flippantly it becomes an empty political trope. This latter point, the content-emptying consequence of ungrounded anti-elite appeals, is why the null finding between district characteristics and anti-elite rhetoric in candidate biographies is normatively concerning.

CONCLUSION

In this paper, I have developed space between the concepts of anti-elitism and populism when populism is best understood as anti-pluralist endeavor. While there are many different formulations of populism, the most parsimonious and empirically useful way to understand populism is as an anti-elitist, anti-pluralist “moralistic imagination of politics.” Conceiving of

¹⁵ Suzanne Dovi, *The Good Representative* (Hoboken: John Wiley and Sons, 2020).

populism in this way allows us to clearly define movements and actors who subvert democracy by exploiting it both institutionally and rhetorically. We should be concerned about threats that take this form, but we should not conflate them with the related—but distinct—anti-elitists who retain pluralism to democratize politics for those excluded or inactivated. These anti-elitists ideally bolster democracy by being the watchdogs of democracy, sounding the alarm when democratic politics strays too far from its idealistic promises and toward consolidation of power and influence for the few.

Next, I offered a description for anti-elitism in the American context. I explained how anti-elitism a concept is not simply doomed to live in political theory. Instead, it is a living sentiment and ideology that has its origins in the very founding of the United States and continues to be a central element of American politics today.

Further, I proposed and analyzed an empirical strategy using a dictionary-based method of text analysis. This led to the creation of a new measure for anti-elite rhetoric, the Anti-Elite Score, and allowed for an empirical analysis of anti-elitism in the United States. Not only does this grant the possibility of examining anti-elitism as a general trend, but it also grants a candidate-to-candidate comparison where judgment of “whose rhetoric is more anti-elite” than someone else can be discerned. I showed that district and candidate characteristics were not significantly associated with variation in anti-elite sentiment, with the exception of Black candidates. This indicated that anti-elitism was likely to be employed for general political gain rather than targeted and responsive representation. Conversely, I discovered that party, challenger status, and previous electoral margin were significantly associated with the AES. I took this to indicate that while not specifically targeted, anti-elite framing among political candidates was still strategic on the basis of broad appeals likely to “sound good” in competitive districts, and this is especially so among Democratic candidates who have a base likely to be particularly receptive to this messaging.

Last, I described the implications of the findings as they relate to American democracy and concepts of good representation. I argue that the null relationship between district characteristics and anti-elitism among that district’s candidate is concerning because it risks emptying anti-elitism of its idealistic content. In doing so, anti-elitism becomes blunted with the charge of being a generalized political trope, and it loses its edge to credibly convince citizens of bona fide democratic aspirations that we should expect from democratic representatives.

Regarding the significant relationship between party and the AES, I argued that there may be something unique about the Democratic base that makes them more receptive to anti-elite messaging, and Democratic candidates employ this rhetoric accordingly in framing their candidacy and campaign.

In closing, the work presented in this paper shows a promising new line of research that should be explored extensively. Not only does it pair well with the uptick in interest with populism and populist movements, but it also presents a unique and valuable perspective from which to evaluate candidate behavior during elections.

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APPENDIX: VARIABLE MEASUREMENT

Challenger Status: Observations are coded 0 if an incumbent, and 1 if a challenger *or* vying for an open seat.

District Median Household Income (MHI): Information for this was derived from the United States Census Bureau for 2019.

Education: To delineate between blue-collar and working-class, I include education to proxy working-class. This method has been used in other work as a proxy for working class (Yadon and Ostfeld 2020).

Blue-Collar Proportion (BCP): Drawing on district-level data from the USCB, BCP was obtained by taking the employment estimates for the occupation categories of construction; manufacturing; and agriculture, forest, fishing and hunting, and mining. These are the categories defined as blue-collar by bluecollarjobs.us, a website that tracks the number of blue-collar jobs at the state and national levels. The proportion was obtained by taking the sum of those job categories divided by the total.

Race of Candidate (ROC): Using data obtained from UC-San Diego professor Gary Jacobson, who uses a combination of several different measures to code candidate race, I re-scaled the measure to be a simple binary measure for Whites and racial minorities. White candidates are coded as 0, minority candidates are coded as 1.

Race of Electorate (ROE): ROE is coded as a proportion between 0 and 1 of the racial makeup of a particular district, obtained from USCB data. So, a district that is 33% racial minority is coded as 0.33, and so on for each observation.

Candidate Gender: Drawn again from data from Gary Jacobson, candidates are coded as 0 for men, and 1 for women.

Previous Electoral Margin (EM): Used a combination of www.ballotpedia.com for quick reference and the *New York Times* for unknown cases.

WATCHDOGS OR WARDOGS? THE CHANGING PATTERNS OF CONGRESSIONAL OVERSIGHT IN MILITARY AFFAIRS

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The views reflected here are those of the author and do not represent the official position of the United States Military Academy, United States Army, or the Department of Defense.

Complaints about congressional inactivity in defense policy have become common place in recent years. Scholarship since the Cold War captures a broad trend of Congress taking a backseat to executive defense initiatives and only asserting itself when public support for these engagements decreases. However, I suggest that Congress remains a steadfast partner in defense policy decisions but through less prominent avenues such as oversight and investigations of the military. To measure this, I review all congressional investigations and commissions of the military from 1980 to 2008 and construct a novel typology of oversight based on the dimensions of military performance in operations and the changing security environment. I find that in times of high threat, Congress carefully scrutinizes military activities through hearings in order to advance institutional reforms, but in times of relative peace, congressional oversight is used to criticize executive decisions. These findings indicate that while Congress as an institution appears to be deferential to the executive in wartime, individual members still remain active in military affairs by using oversight to control the bureaucracy and affect meaningful changes.

INTRODUCTION

In recent years, complaints about congressional inactivity over defense policy have become commonplace.¹ According to conventional wisdom, members of Congress (MC) examine the defense budget through parochial interests and use oversight of military events for credit claiming opportunities. Since annual debates offer MCs opportunities to “pork barrel” appropriations for their home districts and “grandstand” their personal policy agendas, most observers argue they provide little reasoned consideration for American defense needs as a whole. Most of these accounts dismally conclude that Congress contributes little to America’s national security debate.

¹ Ugboaja Ohaegbulam, *A Culture of Deference: Congress, the President, and the Course of the U.S.-Led Invasion and Occupation of Iraq* (New York: International Academic Publishers, 2007); Robert J. Art, “Congress and the Defense Budget: Enhancing Policy Oversight,” *Political Science Quarterly* 100, no. 2 (1985): 227–48.

Although this popular narrative certainly fits within the larger dissatisfaction toward the legislative branch (public trust in the institution has regularly floated around 20 percent in the past two decades),² interpretations of the ways and means in which Congress oversees the Department of Defense (DoD) are misleading. First, critics typically sideline Congress as a deferential and inactive partner in defense policies, focusing almost exclusively on the decisions made by the president and his administration.³ While Congress does initially comply with executive foreign policy goals during times of crisis, simply assigning the legislative branch the role of a silent partner does not capture the full picture.⁴

Second, most accounts of congressional oversight use the wrong standard for assessing it, believing Congress should act like a bureaucracy. However, Congress is a *political* institution, not a bureaucratic one.⁵ This means it lacks the resources and structure needed to effectively oversee and monitor the affairs of the Defense Department. Furthermore, because legislators need to win reelection to remain in office, they often pursue oversight activities that maximize their electoral profit. Rather than regularly conducting hearings of the DoD and investigating its procedures, MCs instead rely on triggering events that lead to a cascade of oversight. Understanding the influences on congressional oversight of the DoD is valuable since it challenges the assumption of the “do-nothing” Congress in defense policy and also uncovers how MCs use hearings of the DoD to advance their personal agendas while also remaining an active participant in defense policy.

Currently, no substantive research exists in the field of civil-military relations that quantitatively measures the frequency of Congressional oversight of the DoD as a function of military events. Military operations are an excellent independent variable for two reasons: first, they occur infrequently enough so that they provide distinct and measurable periods in time, and two, they draw sufficient public salience thereby incentivizing MCs to investigate. To fill this gap, in this article I offer a novel typology that relates the international security environment and

² Gallup, “Congress and the Public,” Gallup.com, October 12, 2007, <https://news.gallup.com/poll/1600/Congress-Public.aspx>.

³ Morton Halperin, *Bureaucratic Politics and Foreign Policy* (Washington DC: Brookings Institution Press, 1974); Allison Graham and Zelikow Philip, *Essence of Decision: Explaining the Cuban Missile Crisis* (New York: Longman, 1999); Andrew Rudalevige, “The Executive Branch and the Legislative Process,” in *The Executive Branch*, ed. Joel Aberbach and Mark Peterson (New York: Oxford University Press, 2005).

⁴ James M. Scott and Ralph G. Carter, “The Not-So-Silent Partner: Patterns of Legislative-Executive Interaction in the War on Terror, 2001-2009,” *International Studies Perspectives* 15, no. 2 (May 2014): 186–208.

⁵ James M. Lindsay, “Congressional Oversight of the Department of Defense: Reconsidering the Conventional Wisdom,” *Armed Forces & Society* 17, no. 1 (October 1, 1990): 7–33.

the performances of the military in these operations to explain the changing frequency of congressional oversight. In the remainder of this paper, I will first introduce my theory of congressional oversight in defense policy and explain how both performance of the military and the perceived threat to the United States affect its activity. Next, I conduct a quantitative analysis of congressional defense oversight in response to military events through the period of 1980-2008, showing that poor military performance leads to increased hearings in both high and low threat security environments. Finally, I conclude this article with a case study of the U.S. invasion of Grenada of 1983 in order to provide a deeper understanding of the content of these hearings and how they led to the passing of the Goldwater-Nichols Department of Defense Reorganization Act of 1986.

A THEORY ON CONGRESSIONAL DEFENSE OVERSIGHT

While Congress has many direct legislative avenues of influence, the changing combination of cues and conditions forces them to employ indirect and nonlegislative methods to accomplish policy objectives.⁶ Oversight is powerful direct-nonlegislative tool MCs to investigate the policies of bureaucracies and influence their internal processes and procedures. This ability to affect change, which can be done through hearings, investigations, and other forms, is the subject of this article because it offers MCs valuable information which can shape their opinions and uncover challenges that impeded the organization of interest.⁷

Using this framework, I contend that MCs also employ oversight as a valuable technique to monitor and influence the workings of the Department of Defense (DoD). The incentive structure facing MC encourages them to deploy non-systemic forms of oversight, in what Mathew McCubbins and Thomas Schwartz label as “fire-alarm” oversight. Members have an incentive to look for electoral profit in their oversight activities and looking for problems no one is complaining about is likely to generate little or no credit. By contrast, investigating policies salient to constituents—which includes high-profile military operations—is far more likely to be politically profitable: “time spent putting out visible fires gains one more credit than the same

⁶ James M. Scott, “In the Loop: Congressional Influence in American Foreign Policy,” *Journal of Political and Military Sociology* 25, no. 1 (Summer 1997): 47–75.

⁷ James M. Lindsay, “Congress, Foreign Policy, and the New Institutionalism,” *International Studies Quarterly* 38, no. 2 (1994): 281–304.

time spent sniffing for smoke.”⁸ Because oversight is the most direct and reactive avenue of influence available to MCs, they are more likely to conduct hearings and investigations of the DoD whenever there are military operations or during periods when the country perceives itself as threatened by external forces.

From this, I theorize that in times of high external threat—which I define as periods when there is potential for a homeland attack by external actors—Congress is more likely to conduct oversight of the military after operations than in times of low external threat that occurred after the collapse of the Soviet Union and before the September 11 terrorist attacks. In these high-threat periods, MCs are more sensitive to uses of military force and want to remain engaged since public salience is high. Heightened security concerns create sufficient concern among MC’s voter bases and make oversight a valuable political tool. Similarly, individual motivation among foreign policy entrepreneurs to remain engaged and informed means they use oversight to gather information and form opinions.⁹

In contrast, military operations that occur during low-threat environments are seen to have little consequences on domestic security which leaves few political incentives for MCs to respond. Conventional wisdom argues that throughout US history, domestic affairs have generally taken priority over foreign and security policy.¹⁰ Therefore, during the post-Cold War period, congressional responsiveness through oversight is expected to be lower when compared to higher perceived threat periods.

The performance of the military is also expected to affect the frequency of oversight. Traditional approaches to American civil-military relations conceptualize the purpose of the military is to fulfill certain political objectives and secure desired end states for policymakers.¹¹ The accomplishment of these objectives, and the manner in which they are accomplished, is likely to influence Congress’s and the public’s reaction. For my analysis, I define bad military performance as instances when the military fails to accomplish its mission objectives or displays

⁸ Mathew D. McCubbins and Thomas Schwartz, “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms,” *American Journal of Political Science* 28, no. 1 (1984): 165–79.

⁹ Ralph G. Carter and James M. Scott, *Choosing to Lead: Understanding Congressional Foreign Policy Entrepreneurs* (Duke University Press, 2009).

¹⁰ Michael Messe, Suzanne Nielsen, and Rachel Sondheimer, *American National Security*, 7th ed. (Baltimore: Johns Hopkins University Press, 2018), pp 33.

¹¹ The best articulation of this idea is provided Samuel Huntington in *The Soldier and the State* (Belknap Press, 1957) and his theory of objective military control. For a more thorough discussion on the influences of Huntington in civil-military relations, see William Rapp, “Civil-Military Relations: The Role of Military Leaders in Strategy Making,” *The US Army War College Quarterly: Parameters* 45, no 3 (2015).

unprofessional behavior (e.g. the torturing of prisoners or capture of U.S. personnel in an operation). In these cases, oversight is expected to increase. As previously stated, oversight is an investigative tool; MCs wish to uncover details that explain why the operation failed or why the military acted in a manner incongruent with the nation’s values. Conversely, when the military meets the political objectives during its operations, oversight is reduced (but still occurs). MCs do not feel the need to investigate an organization that is already fulfilling its purpose and does it without scandal.

I combine these two frameworks in a novel typology located below in Table 1.

		Security Environment	
Military Performance	High Threat / Good Performance (Q1)	Low Threat / Good Performance (Q2)	
	High Threat / Bad Performance (Q3)	Low Threat / Bad Performance (Q4)	

Table 1 – Typology of Security Environment and Military Performance

Differentiating between these four combinations is useful because it enables me to measure the varying nature of congressional oversight across the changing strategic environment and in relation to the military’s performance. While previous literature already establishes the influence of perceived threat on congressional behavior, there is no significant research that relates it to military operations.¹² I theorize that Congress does not react uniformly to good or bad performances so by presenting four contextual variations in the above typology, scholars can better understand the changing frequency of oversight.

To measure these effects, in the following section I will employ a quantitative research method for each quadrant of my typology to measure the frequency of congressional oversight as a function of military events. Using this model, I present three hypotheses:

H1: Poor military performance has a positive relationship with congressional oversight.

H2: Military oversight increases in times of high external threat.

¹² James M. Lindsay, “Deference and Defiance: The Shifting Rhythms of Executive-Legislative Relations in Foreign Policy,” *Presidential Studies Quarterly* 33, no. 3 (2003): 530–46, <https://doi.org/10.1111/1741-5705.00005>.

H3: Hearings in response to military performance are used to advance the personal policy preferences of members.

To quantitatively measure the responsiveness of Congress to military operations, I integrate two independent data sources. To account for military events ranging from 1981 through 2008, I use the *American Military History* Volume II edited by Richard Stewart and published in 2010 by the U.S. Army Center of Military History.¹³ This text is organized into fourteen chronological chapters based on conflicts ranging from World War I through the ongoing Global War on Terror and provides in-depth commentary on the Army's activities throughout. Using this data source, I classified performance for each military operation as either good or bad and the security environment they occurred in using the criterion established previously. A table of these events can be found in Appendix A. The dependent variable for this analysis is provided by the *Comparative Agenda Project*, which contains a dataset of all congressional defense hearings taking place from 1947 to the present. Due to the routine nature of annual budget, appropriations, and acquisitions hearings, these instances were removed from the dataset. A graph showing the frequency of the remain congressional defense policy hearings is shown in Appendix B.

QUANTITATIVE ANALYSIS

Because military events are distinct occurrences that trigger congressional oversight, the analysis in this paper uses an interrupted time series method to test H1 and H2. Instances of congressional hearings are measured for three 30-day periods before and after each military event in the model presented below.

$$\begin{aligned} Oversight = & \beta_0 + \beta_1 (post_highPerformance) + \beta_2 (post) + \beta_3 (high_performance) \\ & + \beta_4 (PresApproval) \end{aligned}$$

There are four coefficients of interest in this model, each providing insight on the reactivity of congressional oversight to military performance events. β_1 is an interaction variable that estimates the effect of high-performance events after the military performs well in an

¹³ Richard Stewart, ed., *American Military History*, vol. 2 (Washington DC: U.S. Army Center of Military History, 2010).

operation or event. β_2 estimates the effect of the post-event regardless of the military's performance. This indicates whether there is any congressional reactivity to military events. β_3 estimates the effect of high-performance events regardless of the security environment and speaks to whether Congress reacts differently to good military performance specifically. Finally, β_4 estimates the effect of presidential approval on congressional oversight since MCs are less likely to engage in foreign policy when support for the executive's policies is high.¹⁴

The results of this model for high and low threat environments are presented in Appendices C and D. These results indicate that, on average, defense-related hearings increase by four in the 90 days following military operations occurring in high threat environments. Furthermore, positive performance of the military during high threat environments leads to an average three hearing decrease when compared to poor performance events. These findings support both H1 and H2 since, in times of high threat, MCs are more sensitive to military operations. In all six models, the interaction variable *post_highPerformance* is negative but not statistically significant. So while this does support H1, the regression fails to reject the null hypothesis that argued poor military performance in high threat environments increases congressional oversight.

From these results, it is evident that during these high threat environments, regardless of whether the military performed good or bad, Congress is more responsive to military affairs. Also, as expected, presidential approval rating has a negative effect on instances of hearings and supports the notion that MCs are less likely to challenge executive authority during high threat moments. This effect is only statistically significant in model 4 but deserves attention since it helps explain factors affecting MC decisions when to conduct oversight.

During low threat environments, the effect of military operations on congressional hearings is much harder to interpret simply due to the small number of operations available from the time period (eight total). On average, there is no noticeable change in oversight before and after military operations. Similar to high threat environments, good military performance leads to a decrease in congressional oversight, but this effect is only statistically significant in the Senate. Because this trend is consistent in both high and low threat security environments, the results of this quantitative analysis support Mathew McCubbins and Thomas Schwartz's theory of "police-patrol" oversight. Due to the additional responsibilities MCs must fulfill, and their desire to

¹⁴ Scott and Carter, "The Not-So-Silent Partner."

maximize electoral profit, legislators rely on triggering events to conduct hearings and investigations. As such, there are much less likely to oversee the military when it performs well since that is the expectation of the armed forces.

Given the infrequent nature of congressional hearings and the fact these hearings can vary widely in content and tone, this paper will use a case study method to qualitatively analyze an instance in which congressional hearings led to meaningful reform in the military. Selection bias is a natural consequence of only selecting one case. However, the purpose of this qualitative analysis is not to establish an overall trend of congressional activity, but rather to highlight an example in which oversight resulted in significant changes to defense policy.

CASE STUDY: OPERATION *URGENT FURY*, 1983

The invasion of Grenada in 1983 was the first direct U.S. military operation taken since the end of the Vietnam War a decade earlier. Codenamed Operation *Urgent Fury* due to its rapid planning process, the invasion was authorized by President Reagan in reaction to the internal strife within the communist-backed People's Revolutionary Government and the execution of Prime Minister Maurice Bishop by Grenadian military forces. Fearing the capture of American medical students on the island, the invasion was planned in under 48-hours and was an overall success by both rescuing the students and reestablishing order within the country.

In the background of this operation were many factors that contributed to the perception of a high threat security environment. The most pressing issue was the possibility of American citizens being captured and held hostage. Only three years prior, fifty-two Americans were held hostage by a group of militarized Iranian college students who took over the U.S. embassy in Tehran. Also fueling urgency in the region was that Bishop and his communist New Jewel movement were backed by Cuba and the Soviet Union, triggering fears of Cold War tensions spreading into the Western hemisphere. Thirdly, three days before Operation *Urgent Fury*, two truck bombs struck Marine Corps barracks in Beirut, Lebanon, killing 241 U.S. military personnel. Therefore, much attention was given to the invasion of Grenada in part due to the concerns listed above and also whether President Reagan had the constitutional authority to authorize such an operation.

Fearing the “current anarchic conditions, the serious violations of human rights and bloodshed...by the vacuum of authority in Grenada,” the Organization of Eastern Caribbean States formally requested that the United States help re-establish stability in the region.¹⁵ On the morning of October 25, 1983, President Ronald Reagan announced United States forces would be landing on the island for three purposes: (1) to protect the lives of 1,000 American citizens whose safety seemed to be in jeopardy; (2) to forestall further chaos; and (3) to assist in the restoration of law and order.¹⁶ The proximity of a pro-communist nation in South America and the possibility of a second Iran hostage crisis contributed to feelings that an urgent military response from the United States was necessary.

Codenamed Operation *Urgent Fury*, approximately 7,600 U.S. troops from the 75th Ranger Regiment, 82nd Airborne Division, and two Marine Corps companies deployed in under 48 hours.¹⁷ To secure the objectives in Grenada, the island was operationally split in half, with the Marines covering the northern half while Army Rangers covered the south. In total, the invasion force accomplished all three of its main objectives within three days, encountering marginal resistance from the Grenadian and Cuban fighters. Five hundred ninety-nine Americans were evacuated, and U.S. forces were eventually successful in reestablishing a representative form of government in Grenada.

While the invasion accomplished its objectives of securing the airfield and rescuing the American medical students, it did not go smoothly. The first challenge the military faced was the lack of good intelligence data of the island. Instead of using accurate grid maps, American invaders were forced to use tourist maps a staff officer procured from downtown Fayetteville. Senior leaders also relied on articles copied out of *The Economist* for the most up-to-date intelligence on the island.¹⁸ The most obvious challenge, and what would later be the subject of much congressional scrutiny afterward, was the lack of a fully integrated, interoperable communication and planning system between the services.

¹⁵ Philip Kukielski, *The U.S. Invasion of Grenada: Legacy of a Flawed Victory* (Jefferson: McFarland, 2019).

¹⁶ Stephen Anno and William Einspahr, “Command and Control Lesson Learned: Iranian Rescue, Falklands Conflict, Grenada Invasion, Libya Raid,” (1988).

¹⁷ *Ibid.*

¹⁸ Sharon Lacey, “How the Invasion of Grenada Was Planned with a Tourist Map and a Copy of ‘The Economist’” (Military Times, October 25, 2018), <https://www.militarytimes.com/veterans/military-history/2018/10/25/how-the-invasion-of-grenada-was-planned-with-a-tourist-map-and-a-copy-of-the-economist/>.

Initial planning for the invasion began four days before on October 21, 1983. Noncombatant evacuation of the Americans from Grenada was planned after Bishop's arrest, it was not until late October 22 that Presidential confirmation was given to the Commander-in-Chief, Atlantic Command (CINCLANT), Admiral Wesley McDonald, through the Joint Chiefs of Staff (JCS), to plan for the expanded mission.¹⁹ During the mission's execution, the command and control structure operated with simplicity and was designed to employ forces in a manner consistent with their training.²⁰ To allow this, two ground commanders were used, one for the Marines in the north and another for the Army units in the south. The motivation to do this was to ensure that differences in operating styles between the services did not hamper operations.²¹

Because of the four independent military service elements involved, and the many moving parts during the invasion, communications support would be the glue that kept them all together. During the operation, though, the systems failed to meet certain aspects of the mission requirements and hindered the military's performance. One cited reason for this was shortages of communications. As Admiral Metcalf, Commander of the Joint Task Force noted, there was only one secure voice channel for the entire JTF, which had to be cleared anytime he or the CINCLANT commander needed to use it.²² Similar challenges existed due to the lack of interoperability capabilities between the Army and Marine units, who used uncoordinated radio frequencies and had incompatible equipment. The services relied on using offshore relay stations which caused Marine commanders to be unaware that Army Rangers were pinned down without adequate armor in the south.²³ At one point, a soldier had to place a long-distance, commercial telephone call to Fort Bragg, North Carolina in order to request C-130 gunship support for his unit under fire.²⁴

In the aftermath of Operation *Urgent Fury*, congressional leaders recognized the need for a unified military organization to overcome the coordination challenges shown in Grenada. Through a series of hearings before the Senate Armed Services Committee (SASC) in November 1983, senior civilian and military officials were called to testify on the joint-operational

¹⁹ Anno and Einspahr, "Command and Control Lesson Learned: Iranian Rescue, Falklands Conflict, Grenada Invasion, Libya Raid."

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

capabilities of the military. First in the chute were James Schlesinger, the former secretary of defense, and current Secretary of the Navy John Lehman. Highlighting the deficiencies of the current JCS structure, Schlesinger testified that, “the recommendations of the plans of the chiefs must pass through a screen designed to protect the institutional interests of each of the separate services. The general rule is that no service ox may be gored.” Because of these institutional rules internal to the JCS structure, Schlesinger found that the “proffered advice is generally irrelevant, normally unread, and almost always disregarded.”²⁵

Secretary Lehman, on the other hand, rebuked Schlesinger and professed a “strong personal bias toward judging individual performance rather than organizational structure” and blamed the lack of coordination within the military on government. “I think that it has been a fault of government over the last 30 years to concentrate too much on organization, charts, and structure rather than improving accountability and responsibility.”²⁶ Making the case that civilian control of the military is best preserved by having a variety of views, Lehman rejected any efforts to restructure organizational charts and instead argued for the status quo.

Later that month, the four service chiefs were called before the SASC and maintained the same party line as Secretary Lehman. Admiral James Watkins, Chief of Naval Operations, endorsed the DoD’s position and also went on to critique Congress for its over-management of the military. “Good people overcome the shortfalls of any organization.” The Chief of Staff of the Air Force, General Charles Gabriel, echoed these sentiments and noted that “the existing JCS structure is basically sound” and personalities mattered more than organization.²⁷

As the debate for joint-service reform moved into 1984, congressional leaders realized the necessary reforms would not come from the services themselves. Instead, only through the direct engagement of Congress could they alter the processes and procedures of how the military operates. To accomplish this, a critical change in leadership on the SASC came at the end of 1984 when Senator Barry Goldwater replaced Senator John Tower as chairman of the committee

²⁵ *Organization, Structure and Decisionmaking Procedures of the Department of Defense, Hearings before the Senate Armed Services Committee, Part 5, 98th Congress 187 (1983)* (statement of James Schlesinger, former Secretary of Defense).

²⁶ *Organization, Structure and Decisionmaking Procedures of the Department of Defense, Hearings before the Senate Armed Services Committee, Part 5, 98th Congress 187 (1983)* (statement of John Lehman, Secretary of the Navy).

²⁷ *Organization, Structure and Decisionmaking Procedures of the Department of Defense, Hearings before the Senate Armed Services Committee, Part 8, 98th Congress 187 (1983)* (statements of the JCS).

in. Entering his final term, Goldwater joined forces with ranking member Senator Sam Nunn to make defense reform his top legislative priority.²⁸

As Senators Goldwater and Nunn began mobilizing support for defense reorganization, staffer James Locher compiled a detailed 645-page report that highlighted the history and shortcomings of the US military organizational structure, making 91 specific recommendations to make the armed forces more effective.²⁹ In one section of the report, he wrote, “under current arrangements, the Military Departments and Services exercise power and influence which is completely out of proportion to their statutorily assigned duties.”³⁰ After being released a few months later, the report triggered further SASC hearings this time focusing on implementing the reforms he offered. By fall of 1985, momentum for reform was also building considerably in the House of Representatives which resulted in the passage of H.R. 3622 under Representative Les Aspin’s leadership.³¹ This major JCS reform bill, with more than 115 sponsors and significant support signaled a strong legislative achievement and included nearly all the major JCS-related provisions that ultimately led to the Goldwater-Nichols Department of Defense Reorganization Act of 1986.

The signing of the Goldwater-Nichols Act by President Ronald Reagan represents a textbook example of congressional activism in defense policy as a result of military performance in Grenada. While Operation *Urgent Fury* itself was not the sole justification for this major military restructuring, it played a key triggering event in the four-and-a-half-year legislative battle. The Goldwater-Nichols Act implemented two key changes to the processes and procedures internal to the DoD that align with my theory. First, it strengthened the Chairman of the Joint Chiefs of Staff by designating him “the principal military adviser to the President, National Security Council, and the Secretary of Defense.” In doing so, MCs could ensure unilateral uses of military force by the president were more unlikely, or at least constrained by the Chairman’s advice, and would hopefully give Congress more time to influence the decisions. Unlike the conventional narrative of Congress being deferential to the executive, this legislation shows Congress takes a vested interest in defense policy, although not in the immediate sense.

²⁸ Jeffrey Donnithorne, *Four Guardians: A Principled Agent View of American Civil-Military Relations* (Baltimore: Johns Hopkins University Press, 2018).

²⁹ Donnithorne, *Four Guardian*, 199.

³⁰ *Defense Organization: The Need for Change, Staff Report to the Committee on Armed Services, United States Senate* (Washington DC: Government Printing Office, 1985).

³¹ Donnithorne, *Four Guardians: A Principled Agent View of American Civil-Military Relations*, pp 202.

Second, the act sought to remedy the shortcomings demonstrated in Grenada by attempting to increase the effectiveness of the military. In bolstering the authorities granted to the CINCs, Congress allowed them to “employ forces within that command as he considers necessary to carry out missions assigned to the command.” The effect of these changes made the armed forces a much more efficient joint force thanks to Congress’s engagement and persistence.

CONCLUSION

Since 1980, the United States military has been used for a variety of purposes, ranging from humanitarian relief efforts in the post-Cold War period to the invasion of Iraq and Afghanistan following the September 11 terrorist attacks. Across these changing strategic environments, congressional responsiveness to military operations remains remarkably consistent. Using an interrupted time series method to measure the effect of these military operations, statistical analysis found that in times of high threat, congressional hearings increased on average by four hearings in the ninety days after the operation. These results are statistically significant using a one-tailed test of significance and support H2 of this paper. In addition, during times of low threat, positive performance of the military led to a statistically significant decrease in defense policy hearings in the Senate.

The lack of statistical significance in the majority of the results requires further research and is likely due to the few cases of military operations occurring in low-threat environments. Improvements to this research design would be to either use stricter criteria for military events or expand them to include operations conducted solely by the U.S. Air Force and Navy. Also, future research would benefit by measuring the resulting hearings on the dimensions of tone and resulting reforms from those hearings. This would provide better insight into the quality of the hearings since frequency alone does not indicate the purpose of these hearings.

The qualitative case study on the U.S. invasion of Grenada in 1983 shows that congressional hearings after military events can lead to significant changes in Department of Defense policy. Motivated by the performance of the military in Operation *Urgent Fury*, members of Congress continued their investigations into the military and published a report detailing many failures undermining the effectiveness of the armed forces. These efforts

eventually led to the passage of the Goldwater-Nichols Act in 1986—the largest restructuring of the military since the National Security Act in 1947.

Appendix A

Table 2 - Summary of Military Events (1980-2008)

Name of Event	Date	Performance	Security Environment
Operation <i>Eagle Claw</i>	4/24/1980	N	H
Marine Barracks Bombing	10/23/1983	N	H
Operation <i>Urgent Fury</i>	10/25/1983	P	H
Attack on U.S. Soldiers in El Salvador	3/31/1987	N	H
Operation <i>Just Cause</i>	12/20/1989	P	H
Operation <i>Desert Shield</i>	8/8/1990	P	H
Operation <i>Desert Storm</i>	1/17/1991	P	H
Operation <i>Provide Comfort</i>	4/7/1991	P	H
Operation <i>Provide Promise</i>	7/2/1992	P	L
Operation <i>Provide Relief</i>	8/15/1992	P	L
Operation <i>Restore Hope</i>	12/8/1992	P	L
Operation <i>Gothic Serpent</i>	10/3/1993	N	L
Operation <i>Uphold Democracy</i>	9/19/1994	P	L
Operation <i>Joint Endeavour</i>	10/20/1995	P	L
Operation <i>Desert Fox</i>	12/16/1998	P	L
Task Force Hawk	4/5/1999	N	L
Operation <i>Enduring Freedom</i>	10/7/2001	P	H
Operation <i>Anaconda</i>	3/2/2002	P	H
Hamid Karzai Sworn In	12/11/2002	P	H
Operation <i>Iraqi Freedom</i>	3/20/2003	P	H
507th Maintenance Company	3/24/2003	N	H
Capture of Saddam Hussein	12/14/2003	P	H
Fallujah Ambush of US Contractors	3/21/2004	N	H
Operation <i>Vigilant Resolve</i>	4/4/2004	N	H
Abu Ghraib Torture Scandal	5/23/2004	N	H
Operation <i>Baton Rouge</i>	10/1/2004	P	H
Operation <i>Phantom Fury</i>	11/7/2004	P	H
Iraqi Government Established	5/20/2006	P	H
Killing of Abu Zarqawi	6/7/2006	P	H
The Iraq Surge	1/10/2007	P	H

Total: 30

Source: *History of the Army*, Vol II by Richard Stewart

Appendix B

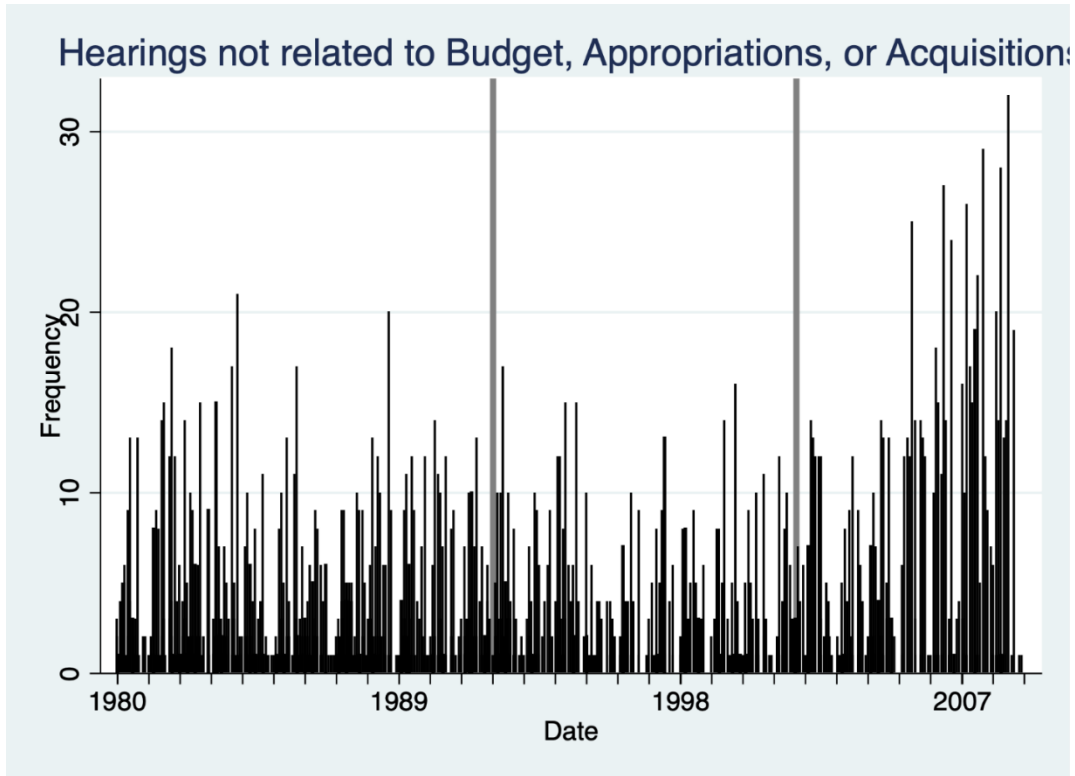


Figure 1 – Congressional Hearings on Defense from 1981-2008

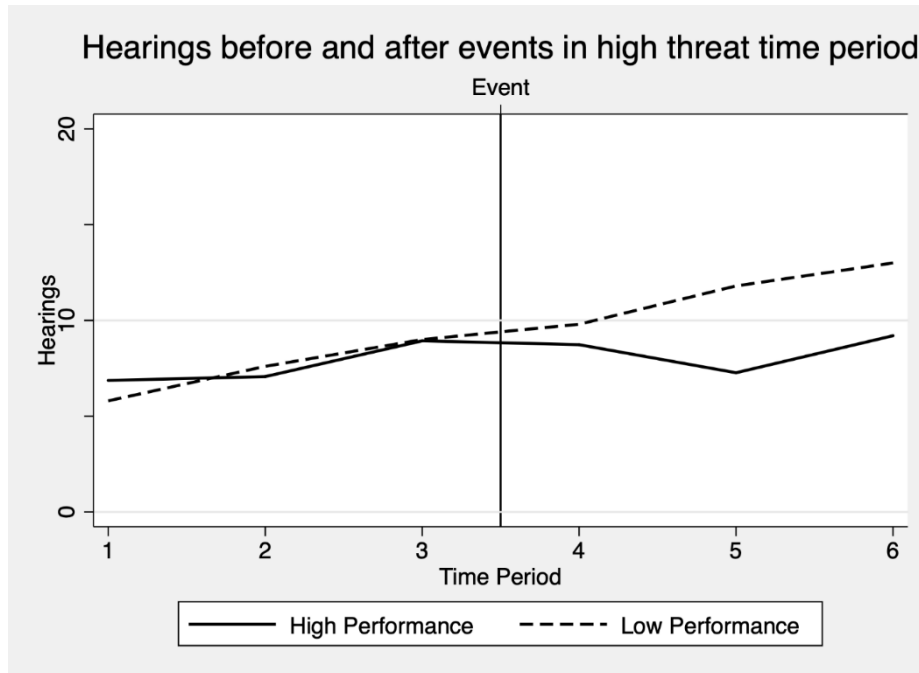
Appendix C

Table 3. Army Events in High Threat Time Periods

VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)
	#_Hearing	#_Hearing	#_Hearing	#_Hearing	#_House_Hearings	#_Senate_Hearings
post_highPerformance	-3.2889 (2.8647)	-3.2889 (2.4589)	-3.2889 (2.4684)	-3.2889 (2.6873)	-3.0444 (1.8754)	-0.2222 (1.0037)
post	4.0667 (2.4809)	4.0667* (2.1294)	4.0667* (2.1377)	4.0667* (2.3272)	3.3333** (1.6241)	0.6667 (0.8692)
high_performance	0.1556 (2.0257)	-2.9806 (2.0846)	-2.9360 (2.0959)	0.1341 (1.9550)	-2.1572 (1.5923)	-0.6172 (0.8522)
PresApproval			0.0297 (0.0765)	-0.1706*** (0.0425)	0.0193 (0.0581)	0.0144 (0.0311)
Constant	7.4667*** (1.7543)	9.8188*** (1.7353)	8.0853* (4.7954)	17.2516*** (2.9575)	5.6297 (3.6433)	2.0028 (1.9499)
Observations	120	120	120	120	120	120
R-squared	0.0338	0.3250	0.3259	0.1718	0.3184	0.1812
Congress FE	No	Yes	Yes	Yes	Yes	Yes
President FE	Yes	No	No	No	No	No

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1



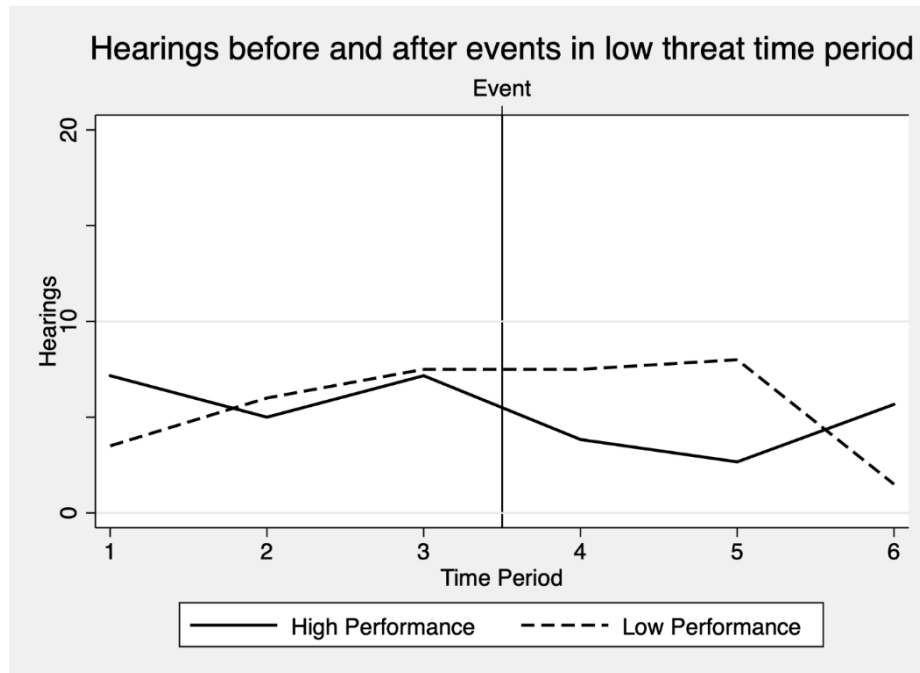
Appendix D

Table 4. Army Events in Low Threat Time Periods

VARIABLES	(1) #_Hearings	(2) #_Hearings	(3) #_Hearings	(4) #_Hearings	(5) #_House_Hearings	(6) #_Senate_Hearings
post_highPerformance	-1.4667 (3.1370)	-1.4667 (2.9692)	-1.4667 (2.9010)	-1.4667 (3.0187)	0.1667 (2.5169)	-1.5667* (0.8354)
post	-0.0000 (2.6513)	-0.0000 (2.5094)	-0.0000 (2.4518)	-0.0000 (2.5513)	-0.1667 (2.1272)	0.1667 (0.7060)
high_performance	0.2667 (2.2182)			-2.0646 (2.3981)		
o.high_performance		-	-		-	-
PresApproval			-0.2715 (0.1663)	-0.0328 (0.1168)	-0.1984 (0.1443)	-0.0644 (0.0479)
Constant	5.6667*** (1.8747)	5.8571*** (0.9485)	19.5859** (8.4615)	8.9917 (6.5330)	13.8411* (7.3412)	5.2577** (2.4366)
Observations	42	42	42	42	42	42
R-squared	0.0220	0.1930	0.2516	0.1420	0.1374	0.4837
Congress FE	No	Yes	Yes	Yes	Yes	Yes
President FE	Yes	No	No	No	No	No

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1



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PREDICTING PRESIDENTIAL POLICY THROUGH TONE

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The views reflected here are those of the author and do not represent the official position of the United States Air Force Academy, United States Air Force, or the Department of Defense.

Research Question and Hypothesis: How does the tone of the Obama and Trump administrations' National Security Strategies determine their respective counterterrorism operations? I hypothesize that tone is predictive of the methods used to counter terrorist operations by the respective administrations. Methods: I will compare the tone of the 2010, 2015 and 2017 National Security Strategies to identify similarities and differences. I will then compare the subsequent presidential actions in order to determine a relationship. Results: The tone of each National Security Strategy is predicative of measures taken by the president in their counterterrorism efforts.

INTRODUCTION

What follows is an analysis of how the language of the most relevant National Security Strategies (NSS) of the Trump and Obama administrations effected their actions against terrorism in the Middle East. I will establish a relationship between the tone of each administrations NSS and the manner in which they conducted counterterrorism in the Middle East using a model of terrorism that it is an interplay between the dynamics of conducive environment, opportunity, ideology and group dynamics. I will argue that a president's NSS is predictive of their policy actions through a comparative analysis of language and subsequent presidential actions regarding each aspect of terrorism. Assessing the tone of the NSS can help identify how future presidents view the issues at hand and potentially identify blind spots in administrations' policy.

METHODOLOGY

The National Security Strategies regarding counterterrorism from the Obama and Trump administrations have the same goal: defeat the threat of terrorism. Both strategy documents are telling the same story: generally, how the United States is going to do that. Tone is the aspect of

literature that indicates a writer's attitude about the subject and the writer's relationship to the subject.¹ In literature, word choice, arrangement and context express this attitude. The context of the National Security Strategy document within the United States has been consistent since its mandated creation in 1986 by the Goldwater – Nicholas Act.² It is a formal document mandated by congress to help congressional appropriators, most importantly the Department of Defense, align to the administration's goals and review United States objectives, identify uses of power and asses capabilities to realize proposed strategy.³ Therefore, this comparison will focus on word choice and arrangement, specifically the choice of words used to describe the terrorist group, the ideology, the environment and the opportunity of terrorism in the Middle East. Each section will answer the question of how the administration described the respective terrorist dynamic.

CONDUCTIVE ENVIRONMENT

The first necessary ingredient for terrorist organization to grow is an environment that allows them to grow. This environment consists of many factors and Martha Crenshaw makes a distinction between passive factors and direct factors.⁴ A conducive environment is both. She says, "Perhaps terrorism is most likely to occur precisely where mass passivity and elite dissatisfaction coincide."⁵ The background causes, as she calls them, consist of "concrete grievances among an identifiable subgroup of a larger population," "lack of opportunity for political participation" and "situational factors" such as "precipitating event that immediately precedes the outbreak of terrorism."⁶ These factors combine to form the receptive environment. Members of terrorists groups have the means for their action through the presence of a situation that will allow for their actions. Members of terrorist groups have reasons for these actions through circumstances and an event can serve as their trigger. A triggering event cannot have

¹ Laurence Perrine, "The Importance of Tone in the Interpretation of Literature," *College English* 24, no. 5 (1963): 389, accessed March 5, 2021, <https://doi.org/10.2307/373555>.

² Rebecca Friedman Lissner, "The National Security Strategy Is Not a Strategy," *Foreign Affairs*, (December 2017), 1, <https://www.foreignaffairs.com/articles/united-states/2017-12-19/national-security-strategy-not-strategy>.

³ Lissner, "The National Security Strategy Is Not a Strategy."

⁴ Martha Crenshaw, *Explaining Terrorism: Causes, Processes, and Consequences*, (New York: Routledge, 2011), 37.

⁵ *Ibid*, 39.

⁶ *Ibid*, 38-39.

traction without the environment and circumstance. A conducive environment is necessary for a terrorist organization to sustain itself and is a feasible target for counter terrorism strategy.

Both President Obama and President Trump aimed to target the conducive opportunity in their NSS. The tone in which they described the conducive opportunity in their respective NSS reveals their understanding of how environment is manifested and their attitudes towards how to make the environments less conducive. In his 2010 NSS, President Obama put forth the goal of building “positive partnerships with Muslim communities.”⁷ He said the United States will “strengthen our network of partners,” and “help states avoid becoming terrorist *safe havens* by helping them build their capacity for responsible governance.”⁸ These at risk locations are what Crenshaw refers to as the environment. President Obama’s phrasing of the ‘at risk locations’ as being ‘safe havens’ expressed that he understood that in order to combat terrorism, these environments needed to cease being conducive. In his 2017 NSS, President Trump referred to the entire Middle East as a potential “breeding ground” for terrorism.⁹ Both President Obama and President Trump’s NSS are discussing to the same problem: conducive factors consisting of weak governments coupled with grievances and lack of citizen power to address grievances. However, President Obama described this environment as a *safe haven* and President Trump described it as a *breeding ground*. What are the consequences of the different word choice used to describe the same phenomena? One distinct difference is that safe havens are places people go *to* while people emerge *from* breeding grounds. Safe havens are destinations while breeding grounds are origin points.

This concept of ‘at risk communities’ drawing terrorist groups towards them as opposed to places groups emerge from is evident in President Obama’s reaction and understanding of the Arab Spring in 2011. After his successful elimination of the leader of al-Qa’ida, Osama bin Laden, President Obama’s outlook on the Middle East was that success in the people’s struggle in nations in transition, (the term he used to describe the nations experiencing the Arab Spring), “will bring about a world that is more peaceful, more stable, and more just.”¹⁰ Though President

⁷ President of the United States, *The National Security Strategy of the United States of America*, (Washington, 2010): 19, https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

⁸ Ibid, 21.

⁹ President of the United States, *The National Security Strategy of the United States of America*, (Washington, 2017): 48, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

¹⁰ Barack Obama, “Remarks by the President on the Middle East and North Africa” (speech in Washington D.C, May 19, 2011), *The White House*, <https://obamawhitehouse.archives.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa>

Obama succeeded in defeating al-Qa’ida, he failed to recognize the rise of the Islamic State for what it was. From President Obama’s perspective the Islamic State was restricted to being a regional issue because the organization did not have global ambitions. He refused to acknowledge their growing and global influence for three years.¹¹ In an interview with David Remnick, President Obama referred to the organization as a JV team.¹² In his 2015 NSS, he emphasized the switch to a “limited counterterrorism mission against the remnants of the core al-Qa’ida.”¹³ One of the policy measures that followed was a withdrawal of U.S. forces in Iraq.¹⁴ The withdrawal of U.S. forces from Iraq allowed the remnants of al-Qa’ida to strengthen and merge into the Islamic State, another radical Islamic terrorist organization.¹⁵ From the perspective that al-Qa’ida merely took advantage of a safe haven, it makes sense that one would not expect that situation to create another organization. The situation was something that drew al-Qa’ida because leadership understood that terrorist ideology would survive there, not something that created al-Qa’ida.

President Obama also refused to “do more than the bare minimum in Syria” which is where the world has seen the emergence of a physical Islamic State controlled by terrorists.¹⁶ The thought of this happening might not have even occurred to President Obama because he had eliminated the group using the environment as a safe haven, and in his perspective, the Arab Spring was a manifestation of people reaching out from under oppressive regimes for democracy. The idea that something would ‘emerge’ from this situation is not compatible with the idea of the environment as a simple safe haven. President Obama’s use of *safe haven* to describe the conducive environment revealed his perspective that a terrorist organization must precede their presence in a conducive environment in order to be a threat. This means that he was not looking for organizations to grow out of the environment, which unfortunately is what happened.

¹¹ Peter Neumann, *Bluster: Donald Trump's War on Terror* (New York, NY: Oxford University Press, 2019), 95.

¹² Steve Contorno, “What Obama Said about Islamic State as a 'JV' Team.” *PolitiFact*, September 7, 2014. <https://www.politifact.com/factchecks/2014/sep/07/barack-obama/what-obama-said-about-islamic-state-jv-team/>.

¹³ President of the United States, *The National Security Strategy of the United States of America*, Washington, (2015):10, https://obamawhitehouse.archives.gov/sites/default/files/docs/2015_national_security_strategy_2.pdf.

¹⁴ Neumann, 96.

¹⁵ Alice Fordham, “Fact Check: Did Obama Withdraw From Iraq Too Soon, Allowing ISIS To Grow?” NPR, December 19, 2015. <https://www.npr.org/2015/12/19/459850716/fact-check-did-obama-withdraw-from-iraq-too-soon-allowing-isis-to-grow>.

¹⁶ Neumann, 96.

OPPORTUNITY

Terrorism does not automatically follow the presence of conducive environment.¹⁷ There must also be opportunity, or a pull factor. “Why was Daesh (ISIS) able to appeal to such a wide variety of individuals?”¹⁸ In his article *The causes of Daesh’s success-Martha Crenshaw revisited*, Rik Coolsaet argues that ISIS’s unprecedented success was due to its “unique asset among contemporary jihadi groups: its vast proto-state.”¹⁹ This concept of opportunity most visibly manifested itself in the Islamic State in Iraq and Syria but it was still present in al-Qa’ida’s operations. ISIS and al-Qa’ida have different enemies, strategies, and tactics. Al-Qa’ida’s primary enemy is the United States and aims to inspire U.S. withdrawal from the Middle East in support of al-Qa’ida’s ultimate goal of overthrowing apostate governments in the Middle East. ISIS’s primary enemies are apostate regimes within the Arab world and in an effort to fight this enemy, they have adopted a strategy of controlling territory in order to consolidate and expand their position.²⁰ Opportunity as physical capital was an important aspect in the success of both these terrorist organizations.

Based on the limited data available from individual terrorists, Crenshaw says that it appears the “outstanding common characteristic of terrorists is their normality” and, “terrorism often seems to be the connecting link between widely varying personalities.”²¹ Terrorist leaders’ apparent normalcy and ISIS’s ability to connect people from different backgrounds and demographics is what enabled the group to manifest opportunity in the possession of physical capital. This opportunity was not only for those wishing to channel violence, like members of street gangs dreaming of “status, brotherhood, thrill, adventure, respect, and an outlet for their anger.”²² The caliphate offered a new beginning and desired meaning, as well as material wealth. Most importantly, the Islamic State was not only a “warrior nation” and needed normal people to run everyday life: doctors, engineers, teachers, and women and henceforth provided opportunity

¹⁷ Rik Coolsaet, *Anticipating the Post-Daesh Landscape* (Brussels, Belgium: Egmont Institute, 2017): 22. Accessed January 8, 2021, <http://www.jstor.org/stable/resrep06692.8>.

¹⁸ Coolsaet., 22.

¹⁹ *Ibid*, 23.

²⁰ Daniel L. Byman, “Comparing Al Qaeda and ISIS: Different Goals, Different Targets,” *Brookings*, (July 2016). Accessed March 5, 2021, <https://www.brookings.edu/testimonies/comparing-al-qaeda-and-isis-different-goals-different-targets/>.

²¹ Crenshaw, *Explaining Terrorism*, 44.

²² Coolsaet, *Anticipating the Post-Daesh Landscape*, 23.

to those people as well.²³ The continued presence of the Taliban in Afghanistan supports this conception of opportunity.

The terrorist organization that President Obama began his administration fighting, al-Qa'ida, provided pull factors for individuals in a narrower sense than ISIS did. Due to the lack of structure proved by a physical state, there was more opportunity for members, or affiliates of al-Qa'ida to branch out and become their own, if not rival factions to al-Qa'ida.²⁴ Although al-Qa'ida did not seek to create a state, a system of organization involving control of land was still necessary. Al-Qa'ida's ability to provide pull factors at all was still due to their ownership of territory because capital enabled them to have a base of operations, a headquarters for the organizing structure that empowered their military success for as long as it did.²⁵ Opportunity, as the second critical aspect of terrorism, manifested itself in the occupation of land for ISIS and the organizing structure, which requires control of a least some land, for al-Qa'ida.

How does the 2017 NSS compare to President Obama's NSS documents when discussing the opportunity that terrorist groups provide? President Trump says that we will "eliminate terrorist's safe havens."²⁶ He says that "time and territory allow jihadist terrorist to plot."²⁷ President Obama says, "We must deny these groups the ability to conduct operational plotting from any locale, or to recruit, train, and position operatives."²⁸ Although he uses the words "eliminate safe havens" in his counterterrorism strategy, when he references the idea that he must eliminate the opportunity for terrorists to act, he says we must *Deny Al-Qa'ida*. Both strategy documents use the words deny, plot and reference the concept of territory as a means of operations. However, President Obama very specifically says that the objective is to deny *Al-Qa'ida* the ability to conduct operations, while President Trump implies that he aims to eliminate useful time and territory. The language used to describe territory represents what each president understood the role of territory to be in the fight against terrorism. President Obama says that we must deny the terrorist groups the ability to use the land. He places the emphasis on the groups using the territory, implying that the origin of the problem lies with the group. In line with the purpose of the NSS, to provide guidance to the administration, Obama is conveying that al-

²³ Ibid.

²⁴ Byman, "Comparing Al Qaeda and ISIS."

²⁵ Ibid.

²⁶ President of the United States, *The National Security Strategy*, 2017, 11.

²⁷ Ibid.

²⁸ President of the United States, *The National Security Strategy*, 2010, 20.

Qa'ida is the problem, not the presence of territory.²⁹ President Trump is doing the opposite, placing the emphasis on territory.

In his address to the nation after killing Osama bin Laden, President Obama said that shortly after taking office that he told “the director of the CIA, to make the killing or capture of bin laden the top priority of our war against al-Qa’ida.”³⁰ President Obama instituted a narrow focus on the specific group of Al-Qa’ida and this allowed for organized targeting of the group’s leadership. More than 70% of the drone strikes that he authorized were “in the years between 2009 and 2012, and nearly all targeted Pakistan’s tribal areas, where al-Qaeda’s leadership was hiding.”³¹ His campaign was so offensive that he authorized essential destruction of the area known as al-Qa’ida Central, in an attempt to zero in on Osama bin Laden.³² Documents found by SEALs at Osama bin-Laden’s compound reveal there was so much pressure on al-Qa’ida, mainly through the CIA drone program, that the group “couldn’t pull off any successful operation in the West for many years before the death of bin Laden.”³³ President Obama framed the issue of opportunity in his mind as being that al-Qa’ida was using land as opportunity, and so his policy focused on eliminating al-Qa’ida’s ability to use it.

President Trump’s grievances against the Obama Administration explain the difference between President Trump and President Obama’s methods of combating opportunity through eliminating the territory or headquarters of the terrorist organizations. President Trump described President Obama as having “micromanaged conflicts, impos[ing] politically correct rules and prevent[ing] the military from getting the job done.”³⁴ After President Obama’s secured killing Osama bin Laden, President Obama appeared to regulate the war, instead of actively fighting in it.³⁵ His Presidential Policy Guidance published in May 2013, described stricter regulations for assassinations than previously implemented.³⁶ The guidance specified that lethal action against a “high-value target (HVT) is authorized only when there is “near certainty” of the individual’s identity and “direct action will be taken only if there is near certainty that the action can be taken

²⁹ Lissner, “The National Security Strategy Is Not a Strategy.”

³⁰ Obama Barack, “Osama bin Laden Dead” (speech Washington D.C, May 2, 2011), *The White House*, <https://obamawhitehouse.archives.gov/blog/2011/05/02/osama-bin-laden-dead>

³¹ Neumann, 79.

³² Ibid.

³³ Peter Bergen, “A Gripping Glimpse into Bin Laden’s Decline and Fall,” *Cable News Network*, March 12, 2015, <https://www.cnn.com/2015/03/10/opinions/bergen-bin-laden-al-qaeda-decline-fall/index.html>.

³⁴ Neumann, 78.

³⁵ Ibid, 80.

³⁶ Ibid, 79.

without injuring or killing non-combatants.”³⁷ In “areas of active hostilities” or “hot battlefields, the commanders only had to be reasonably certain that non-combatants would be harmed, not near certain.”³⁸ The intentions of these designations and restrictions were to minimize noncombatant collateral damage so that civilian deaths would not be used as propaganda or motivation to recruit more terrorists. However, the near certainty designation and the requirement that zero non-combatants be harmed restricted military operations in their effort to fight members of terrorist organizations. President Obama’s attitude toward opportunity, expressed through his tone, conveyed that he thought al-Qa’ida was the root of the manifestation of terrorism, while the conducive environment was an impartial factor, and he his subsequent action was a precise and concentrated campaign against the specific group al-Qa’ida.

President Trump took a much more aggressive approach. In the first week of taking office, President Trump told the CIA leadership to defeat ISIS by “any means necessary.”³⁹ President Trump increased the number of areas in which the rules for using force were more lenient. He authorized the relaxation of requirements that the targets had to be imminent threats to American forces as well as the proximity requirements that said the American assets had to be a maximum distance between themselves and a target.⁴⁰ In 2017, the number of drone strikes in Yemen and Somalia tripled and doubled in Afghanistan.⁴¹ Through his word choice and arrangement, President Trump conveyed that he thought opportunity was allowing terrorist to manifest. His strategy was not restricted to action against the group of ISIS as is evident by his loosening of the reigns. He tone conveyed that he thought the initial factor was land and time and that is what he strategy focused on. If the terrorist group was a weed in a garden, President Obama wanted to spray the weed with weed killer making sure not to get any surrounding plants. President Trump wanted to turn off the sprinkler system to the whole garden.

³⁷ President of the United States, “Procedures for Approving Direct Action against Terrorist Targets Located Outside the United States and Areas of Active Hostilities,” (Office of the Press Secretary: Washington, 2010): 1, https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download.

³⁸ Neumann, 82.

³⁹ Ibid, 80.

⁴⁰ Ibid, 82.

⁴¹ Ibid, 88.

IDEOLOGY

The concept of radicalization of ideologies has been a source of controversy since the 1970's "debate about the role of revolutionary ideologies as drivers of radical left terrorism."⁴² However, terrorism is not a result of a particular ideology. Instead, "terrorists may first develop beliefs and then seek justification for them through the selection of fragments of compatible theories."⁴³ The use of ideology to compile and present these beliefs to convince an external audience is a common tactic by extremist groups.⁴⁴ Ideology is what convinces people that the methods of the terrorist organization are worth using in pursuit of their goals. Ideology is not theology and many testimonies confirm that ISIS admits its superficial religious knowledge.⁴⁵ In short, the purpose of an ideology is to give credibility to the narrative.

Language can shape perceptions about terrorism, Islam and the Middle East. Language can lead people to understand that Jihad means a holy war against infidels, or an internal battle against inherent sin. Terrorism in the Middle East is associated with Islam, specifically the radicalization of Islam. Misconceptions and misunderstandings have led people to conflate the two. Both the Obama and Trump Administration's specifically address counter ideology efforts as they relate to counterterrorism. In his 2011 strategy documents, President Obama says "this is not a global war against a tactic—terrorism or a religion—Islam."⁴⁶ He emphasized again that the war was against a specific network called al-Qa'ida. In his 2015 NSS Obama said, "We reject the lie that America and its allies are at war with Islam."⁴⁷ The 2015 NSS includes the word Islam two times, and one of those is in the direct quote above. The 2010 NSS includes the word Islam four times, once is referencing the Islamic Republic of Iran, once in reference to the Organization of the Islamic Conference and once in the quote: "Finally, we reject the notion that al-Qa'ida represents any religious authority. They are not religious leaders, they are killers; and neither Islam nor any other religion condones the slaughter of innocents."⁴⁸ The word Jihad is absent from both of President Obama's National Security Strategies. There is a clear distinction between the terrorist group al-Qa'ida and their ideology and the religion of Islam. The 2017 NSS

⁴² Rik Coolsaet, *Anticipating the Post-Daesh Landscape*, 24.

⁴³ Crenshaw, 99.

⁴⁴ Ibid.

⁴⁵ Coolsaet, 24.

⁴⁶ President of the United States, *The National Security Strategy*, 2010, 20.

⁴⁷ President of the United States, *The National Security Strategy*, 2015, 9.

⁴⁸ President of the United States, *The National Security Strategy*, 2010, 22.

from the Trump Administration uses the terms, “radical Islamic terror groups,” “radical Islamist ideology,” and “radical Islamist extremists,” a total of seven times when talking about terrorist groups. The document includes the word *Jihad* thirty one times. In its most basic conception, Jihad is holy war, but there are many different interpretations. Saddam Hussein called for Jihad against the United States in the 2003 Iraq war.⁴⁹ However, jihad is also, and more commonly understood by Muslim scholars to be an internal struggle against sin.⁵⁰ This choice and arrangement of words expresses a widening of the scope of the enemy from a single group to a way of war. By prefacing the object of the fight with radical Islamists to describe the terrorist organizations, President Trump’s NSS is acknowledging the religious aspect of the fight, something President Obama did not do. Terrorism is not a ‘cause,’ it is a way of living, construed by terrorists to be understood as holy. This threat is not restricted to a group of people, but is rather a way of thinking. The enemy is the bastardization of faith, the fact *Jihad* has come to include car bombs, hijacked planes and violence inflicted on Muslim civilians. The enemy is not the Taliban, not al-Qaida, not ISIS.

In his 2015 NSS, President Obama said that the United States would work with other countries to counter the ideology of violent extremism.⁵¹ Most potently, his affirmation that the United States was waging a global war on al-Qa’ida and its terrorist associates, not on a religion or ideology, colored his policy and attempted to avoid misunderstandings with Muslim countries.⁵² President Obama put forth the goal of building positive relationships with Muslim communities.⁵³ His withdrawal of American troops from Iraq can be interpreted as an effort to sustain a positive relationship with the Iraqis who viewed the Americans as occupiers and responsible for civilian deaths.⁵⁴ The 542 drone strikes that Obama authorized killed an estimated 3,797 people, including 324 civilians, (roughly 10% non-combatant casualties).⁵⁵ He restricted the use of force on any combatants other than al-Qa’ida, even their affiliates, because

⁴⁹ “Statement From Saddam Hussein Calls for Jihad,” *Public Broadcasting Service*, April 1, 2003, https://www.pbs.org/newshour/nation/middle_east-jan-june03-saddam_04-01.

⁵⁰ Huston Smith, “Islam,” in *The World’s Religions*, (New York: Harper Collins, 1958), 257.

⁵¹ President of the United States, *The National Security Strategy*, 2015, Introduction.

⁵² President of the United States, *The National Security Strategy*, 2010, 20.

⁵³ *Ibid*, 19.

⁵⁴ Fordham, “Fact Check.”

⁵⁵ Micah Zenko, “Obama’s Final Drone Strike Data,” *Council on Foreign Relations*, January 20, 2017, <https://www.cfr.org/blog/obamas-final-drone-strike-data>.

affiliates is too vague a term.⁵⁶ His Presidential Policy Guidance, described strict regulations for assassinations including the rule that targets had to be imminent threats to the United States.⁵⁷ President Obama did not want any confusion as to whom the United States was fighting. Whom the United States was waging war on did not relate to their ideology, as he said in his National Security Strategy. Rather, it was only a group of people. Our local allies resented the consequence of a distinction between “first-class” and “second-class” enemies.⁵⁸ According to a former deputy National Security Advisor, “Our allies were asking: ‘Why are you viewing this enemy differently? This is a common enemy!’”⁵⁹ President Obama worked to counter ideology by trying to limit the substance for propaganda. He said he we are not at war with an ideology, and he did not fight against an ideology. Even though some of al-Qa’ida’s affiliates may have partaken in the same ideology, they were not the enemy President Obama was fighting.

President Trump declared in his 2017 NSS strategy that the United States will work to discredit terrorists wicked ideology.⁶⁰ This distinction between classes of enemies was not a concern for President Trump. His NSS declared the enemy as being radical Islamic groups of no particular affiliation. This allowed him to have a much more general distinction between and definition of the enemy. In Afghanistan, the United Nations Assistance Mission recorded an 18 per cent rise in American linked non-combatant fatalities during Trumps first year in office.”⁶¹ Also during this time, the Director of National Intelligence stopped publishing annual reports on discrepancies between the casualty numbers of American government and other organizations. For example, the Syrian Observatory on Human Rights documented more the 3,300 non-combatant deaths while the United States acknowledged about 1,000.⁶² The difference in President Obama and President Trump’s understanding of ideology can be seen in the effort to recapture Raqqa from ISIS. Of the coalition’s 4,000 air strikes used in this operation, many of them relied on information from the Syrian Defense Force, which did not necessarily apply U.S. procedures for mitigating civilian casualties. Additionally, the U.S. Marine corps fired 35,000 artillery rounds from a position that only allowed an accuracy of 100 meters. The DOD

⁵⁶ President of the United States, *National Strategy for Counterterrorism*, Washington, D.C, Executive Office of the President, (2011):3 in footnotes.

⁵⁷ President of the United States, “Procedures for Approving Direct Action,” 17.

⁵⁸ Neumann, 82.

⁵⁹ Ibid.

⁶⁰ President of the United States, *The National Security Strategy*, 2017, 1.

⁶¹ Neumann, 90.

⁶² Ibid.

originally only admitted to twenty-three civilian deaths but after an investigation, Airwars, a transparency organization based in the United Kingdom aimed at archiving military action as it relates to civilian harm, identified 1,500 civilian deaths from Raqqa killed by coalition air strikes.⁶³ “When asked about the discrepancy, a Pentagon spokesman stated, “no one will ever know how many civilians died in Raqqa.”⁶⁴ The tone of President Trump’s NSS expressed a conception of the ideology as inherently wicked, regardless of United States action and President Trump waged a war that had much less concern for civilian casualties. The tone of President Trump’s NSS expressed a conception of the ideology as the real enemy, not a specific group and he waged a war against a much larger enemy than President Obama had previously.

GROUP DYNAMICS

Group dynamics describe socialization processes that lead individuals into terrorism, often called radicalization, and are the link between a conducive environment and opportunity.⁶⁵ “It has long been established in terrorism studies that group dynamics play a crucial role in making terrorist campaign come true, locally and transnationally.”⁶⁶ A member will rarely join a terrorist organization without a radicalization, socialization or mobilization hub.⁶⁷ Marc Sageman identifies kinship and friendship bonds as key aspect to group dynamics that often precede ideological commitment.⁶⁸ Group dynamics are so important because the group defines how the target individual perceives conflict. In the struggle between the government and terrorists, each side wants to interpret the issues in terms of its own values.⁶⁹

The 2010 National Security Strategy references radicalization twice. The first is a section addressing efforts to prevent radicalization domestically. The second is in a section titled “Invest in the Capacity of Strong and Capable Partners.” In this section, President Obama discusses efforts meant to mitigate environments that foster radicalization. The only reference to

⁶³ “At Least 1,600 Civilians Died in US-Led Coalition Actions at Raqqa, Major New Study Finds.” Airwars. Accessed March 15, 2021, <https://airwars.org/news-and-investigations/raqqa-amnesty-airwars/>.

⁶⁴ Neumann, 104.

⁶⁵ Coolsaet, 26.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Coolsaet, *Anticipating the Post-Daesh Landscape*, 27.

⁶⁹ Martha Crenshaw, “The Subjective Reality of the Terrorist: Ideological and Psychological Factors in Terrorism,” In *Current Perspectives on International Terrorism*, ed. Slater R.O, Stohl M. (London: Palgrave Macmillan, 2018), https://doi.org/10.1007/978-1-349-18989-2_2

radicalization in the 2015 NSS, says that we are now pursuing a more sustainable approach with “increased efforts to prevent the growth of violent extremism and radicalization.”⁷⁰ President Obama lists underlying conditions that foster violent extremism that his administration will work to address. President Trump discusses combating radicalization domestically and does not reference its development in the Middle East. The problem is that “no one has a magic formula for de-radicalization, like you might de-install dangerous software.”⁷¹ The efforts taken by the respective administrations to disrupt group dynamics are efforts to combat communication and organization.

The group dynamics of terrorist organizations are characterized by their violent, clandestine, and value-based nature. These characterizations intensify the importance of leaders. Replacing terrorist group leaders is more difficult than replacing leaders in other organizations because of the organization’s unique structure. There is no mold for a terrorist group leader. “In the past forty years, terrorist group leaders have included twelve-year-old boys and octogenarians, psychopaths and recipients of the Nobel Peace Prize, high school dropouts and college professors.”⁷² The leader must have a certain sway within the group and that often has nothing to do with good military or conventional leadership skills. Consequently, succession can improve or damage an organizations performance. The group dynamics of terrorist organizations revolve around the leader. Osama bin Laden’s death was a strategic blow at the terrorist center of gravity and disrupted the dynamics of the terrorist organization. The raid in Syria by United States Special Operations Forces that led to the death of Abu Bakr al-Baghdadi, the leader of the Islamic State in Iraq and Syria was another strategic effort to disrupt the group dynamics of a terrorist group. Both of these successful killings were the result of international manhunt that spanned two American presidential administrations.⁷³ Though not explicitly stated, the elimination of the head of a radical organization is an effort to combat radicalization. The decapitation of a terrorist group’s leader leads to an increase in mortality rate of the terrorist group. Studies have also shows that religious terrorist groups were less resilient and easier to

⁷⁰ President of the United States, *The National Security Strategy*, 2015, 9.

⁷¹ Obi Anyadike, “Can You Really ‘Deradicalize’ a Terrorist?” *MIT Technology Review*, April 2, 2020, <https://www.technologyreview.com/2019/10/24/102498/deradicalize-terrorist-boko-haram/>.

⁷² Bryan C. Price, “Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,” *International Security* 36, no. 4 (2012): 15.

⁷³ Rukmini Callimachi and Falih Hassan. “Abu Bakr Al-Baghdadi, ISIS Leader Known for His Brutality, Is Dead at 48,” *The New York Times*, October 27, 2019, <https://www.nytimes.com/2019/10/27/world/middleeast/al-baghdadi-dead.html>.

destroy following leadership decapitation.⁷⁴ Without a centerpiece, the organization will be less effective, less of a threat and easier to eliminate.

Another concept of radicalization is the importance of these family and kinship bonds.⁷⁵ The death of one terrorist or an innocent civilian can inspire the joining of another because of the nature the pull factors. President Obama's withdrawal of American troops from Iraq can be interpreted as an effort to counter radicalization as the Iraqis viewed the Americans as occupiers and responsible for civilian deaths because he was responding to the Iraqis perception that the United States was the problem. Though the United States' counterterrorism policy did not succeed in effectively combating all four aspects present in terrorist operations, the United States' counterterrorism operations were still successful in the Trump and Obama administrations. This success is because the propagation and emergence of terrorism needs all four aspects and the United States had the military capability to eliminate at least one. United States foreign policy might never be able to eliminate the ideology, as we set ourselves up to fail by calling it a War on Terror. The United States might never be able to eliminate a conducive environment, as regional instability is almost impossible to eradicate. The United States might never be able to eliminate radicalization, though programs and treatments will continue to try. However, the military was able to eliminate the opportunity because of the physicality of its nature. The United States can take back a territory and temporarily remove the center of gravity of an operation. The issue of terrorism will persist because that is only part of the problem.

In conclusion, there were many successes for counterterrorism operations under President Obama and President Trump. The successes under the Obama administration are due to his strict measures for use of force, his intense regulation of the war and his focused scope of his enemy. However, President Obama was so focused on the fact that the United States could not be at war with an ideology, terrorism, or a religion, Islam, that after al Qa'ida was all but defeated, the idea that another radical, terrorist group was rising from the ashes was inconceivable. His own view of the problem as a regional, isolated, issue blinded him to the reality of the Arab Spring. President Obama's miscalculation demonstrates the overarching effects of presidential perspective and the potential for inaccuracy of perspective. President Trump's perception of the Obama administration as being too narrowly focused, as having "prevented the military from

⁷⁴ Price, 44.

⁷⁵ Coolsaet, 26.

getting the job done” allowed him to be overly zealous in his use of force causing civilian casualties, but ultimately still diminishing the threat of ISIS.⁷⁶

The National Security Strategies are strategy documents, not operational or tactical documents, meant to articulate to enemies and allies the United States’ grand strategy. However, these strategy documents have become less helpful as the international landscape has become more dynamic with the increase in globalization and technology. Despite their diminishing reliability on substantive actions, this paper has shown that National Security Strategies can be used to understand how an administration is going to operate. The tone and syntax of administrations’ National Security Strategies can depict how an administration will view the enemy, what the administration understands as the context and, what the administration foresees as the potential goal. Most importantly, analyzing the tone of the National Security Strategy can help the administration and the President to identify potential weaknesses and strengths of their perspective.

⁷⁶ Neumann, 78.

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DOES PARTISANSHIP HAVE A PRAYER? EXAMINING DIFFERENCES IN PRESIDENTIAL DIPLOMACY WITH POPE JOHN PAUL II ALONG PARTY LINES

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As partisanship grows in the United States and impacts its leaders' ability to govern, one asks if partisanship has had a historical impact on diplomacy with the second largest diplomatic body in the world: the Vatican. The author used Pope John Paul II's papacy as a timeframe, and coded presidential documents from presidents Jimmy Carter to George W. Bush with several categories. The author found differences including Republicans' heavier use of religious imagery and Democrats' greater focus on humanitarian issues. Most notably, sources of conflict between presidents and the Vatican are partisan in nature. Despite this phenomenon, the importance of foreign relations, pushing policy objectives, and the types of historical references used by presidents is largely bipartisan.

METHODS

This paper's contents come from the coding of presidential documents. The documents were found using the University of California, Santa Barbara's American Presidency Project online database. The author searched the term "Vatican" from January 1, 1976 to December 31, 2008. The author chose this single term to cast a wide net while also avoiding documents that simply dealt with Catholic actors. The dates go through presidents Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush. This gives five total presidents with two Democratic presidents and three Republican presidents.

The documents focused on interactions with the Vatican and Pope John Paul II, so documents about other popes were not included. There were over 100 documents in the initial search but some were excluded due to being irrelevant or barely mentioning the Vatican at all. Other excluded documents include: public relations statements and announcements from the White House Press Corps; speeches made at Knights of Columbus and other campaign stumps; announcements of ambassadors to the Vatican; and party platforms.

Campaigns and elections are not the central question of this paper, which is why campaign stump speeches are excluded. The announcements did not include in-depth plans for diplomacy,

and were often statements about a nominated ambassador's background or were including an announcement of a visit among many other unrelated events. The only document not included in the UCSB's database was a statement from President George W. Bush upon the death of Pope John Paul II. A total of 42 documents were coded.

The following categories used in coding are: "Foreign;" "Religion;" "Party;" "Policy;" "Humanitarian;" "Negative;" and "References." "Foreign" is defined as foreign actors such as politicians, notables, alliances such as NATO or world organizations, peoples of foreign countries, and places including cities and countries. These definitions were used to gauge how much foreign relations played a role in the diplomatic relationship.

"Religion" refers to a president's references to religion or religious imagery. This includes references to faith, religious action such as seminarians taking vows, invoking God, and religious tradition. Phrases like "Judeo-Christian" were included but those referring to religious freedom were not because those can better fit in with either American constitutional law or humanitarianism, depending on the context. For example, a president discussing the importance of religious freedom in the domestic context usually refers to American constitutional tradition, but when discussing foreign countries and peoples' struggles to avoid religious persecution or fighting for the right of conscience, this is a humanitarian matter.

"Party" terms are explicit references to partisanship and political parties and obvious references such as "working across the aisle." Mere references to other politicians of other parties are not included because a mention does not automatically imply a partisan basis for that mention.

"Policy" refers to policies that the president and/or the United States supports. This includes references or explicit namings of treaties, actions, or inactions that the president and/or U.S. supported. This is a somewhat broad category but does not include mere references to political events. Many of these policies included nuclear arms reduction, negotiating peace treaties, and navigating Cold War realities and post-Soviet Union Europe.

"Humanitarian" terms are explicit references to humanitarian efforts such as providing aid and food to needy countries and peoples, human rights, dignity of the individual, and populations in need of humanitarian assistance such as refugees. Vague references to violence and desires for world peace are not included because they are too vague to conclude accurately how important humanitarian issues were for a given president.

"Negative" are words and phrases suggesting negative sentiments or sources of conflicts.

This can include disagreements between the president and the pope as well as pushback from other actors about an explicit policy taken by either the president or the pope. It was not expected for the documents to have many of these, and indeed they are few and far between, but are worth including to explore possible sources of conflict between the president and the pope and if there are partisan explanations.

“References” are mentions or allusions to broader events which can occur in the past, present, or near future. This includes historical allusion and statements about upcoming events such as visits. This was included to test if there is a difference between Democrats and Republicans’ use of references. Members of both parties used heavily historical allusions, especially describing Pope John Paul II’s Polish heritage and past.

The author highlighted each document with terms, and put each term into a Google Sheet for each president. Terms were also split between each president’s own term, for example presidents Reagan, Clinton, and W. Bush had two sets of terms because they won reelection and labelled Reagan 1, Reagan 2, and so on. Appendix 1 shows tallied terms, broken down by president and category, and the total terms are called “Gross Terms.” These results were also broken down into average per document for comparison to account for the varying number of documents per president in Appendix 2. Appendix 3 compares the gross and average results to compare political parties. The gross number results came from adding up each terms’ gross results for president in that party and dividing it by the total number of documents for presidents of each party. The average number results came from adding the averages of presidents in each party per category and dividing it by the total number of terms each party had; three for Democrats, five for Republicans. Appendix 4 ranks each category from greatest to least number of terms in both gross and average results.

For the gross number, the presidents of one party’s results in a given category were added and then divided by their total number of documents. The average comparison in the same table came by adding the average number per document for each president of a given party and dividing it by the total number of terms those presidents all had. For example, Democratic presidents’ average number per document would be divided by three and Republican presidents’ average would be divided by five. Each party’s results were added and the sums were subtracted to find the difference in each category and overall. This was used to find partisan difference and how strong this difference was.

FOREIGN, HUMANITARIAN, AND REFERENCES RESULTS

Although Democrats had more “Foreign” terms overall, presidents of both parties were heavily invested in foreign policy as part of their diplomatic relationship with the pope. The terms were often part of historical references, especially surrounding John Paul II’s Polish heritage and anti-communist actions. Democrats used more references but there does not appear to be any substantial or party-based difference in the substance of said references. References were also often used to refer to meetings, treaties, or summits that had either already occurred or were about to. Democrats were also more likely to reference humanitarian issues. The difference between Republicans’ and Democrats’ number of humanitarian terms is fairly large, with 2.44 difference in the gross number and 3.2 difference in the average results.

When comparing presidents in Appendix 4, H.W. Bush had the most “foreign” terms using the gross number, but it flips to Carter when using the average number per document results. Both of them were the top two in the gross and average results, so this difference alone may not be significant. When comparing the presidents at the whole with context, much of the foreign relations aspects become more individualized because each president faced varying challenges and circumstances.

President Carter’s foreign policy objectives revolved around the Middle East, including but not limited to the hostage crisis. The Soviet occupation of Afghanistan was a special concern for his administration.¹ Multiple Carter documents referenced Afghanistan, and considering Pope John Paul II’s concern surrounding communist tyranny and promoting Middle Eastern sovereignty, it was relevant in American discussions with the Vatican. The Camp David Accords were also an important foreign policy milestone under the Carter administration mentioned in these documents, and have become a key structure in Middle Eastern policy.² With the coding results, Carter leads the most humanitarian terms used in the gross number and Clinton leading in the average number per document. This is noteworthy because when ranking each category by the gross and averages, the Republican and Democratic presidents often switch for first place, or at least there is one party in either one as the lead; here Democrats take the lead in both results. For this category, these results may be attributed to Carter’s own personal and political focus on

¹ State Department, *Foreign Relations of the United States, 1977-1980, Volume XII, Afghanistan*, retrieved from <https://history.state.gov/historicaldocuments/frus1977-80v12/preface>.

² State Department, “Camp David Accords and the Arab-Israeli Peace Process,” *Milestones: 1977-1980*, retrieved from <https://history.state.gov/milestones/1977-1980/camp-david>.

human rights.³ But this leaves the question why Clinton took the first place spot in the average results, and a possible explanation will be discussed in the “Religion” section.

President Reagan’s anticommunist stance is well-documented, and this stance took shape in Latin America in particular. This is reflected in the documents coded, as Latin American countries are often referenced, including El Salvador, Cuba, and Nicaragua. Nicaragua is of special significance due to the Iran-Contra Affair, showing Reagan’s willingness to go beyond diplomatic channels to change foreign countries’ affairs in the name of stopping socialism and communism. He continued to implement the Camp David Accords, however.⁴ Unsurprisingly, many of his foreign terms refer to the Soviet Union. This was likely not just because of Reagan’s own personal goal of ending communism, but may have also been to gain rapport with the pope. John Paul II’s anti-communist and anti-authoritarian position came from a life under communist and Nazi rule in Poland. In addition to their similar worldviews they also faced assassination attempts by gunmen, with Pope John Paul II’s assassination orchestrated by the Soviet Union.⁵ Reagan’s focus on defeating communism when interacting with the pope seems to be a very effective strategy. Although Carter and Clinton lead in the Humanitarian results, Reagan was second and third in the gross number results. He was especially concerned with freedom of religion as a human right, a concern John Paul II shared.⁶ Many of his humanitarian terms relate to freedom of religion. Reagan’s “The Evil Empire” speech encapsulates his views as well as John Paul II’s. This worldview, the assassination attempt, and John Paul II’s view of communism will be covered again later in the “Religion” section of this paper.

H.W. Bush had a different set of circumstances. With the fall of the USSR and its fate unknown, he was in a brave new world of possibilities and new priorities. Latin America continued to be an important topic of international discussion and was also heavily referenced in the documents coded. Bush’s style in foreign policy differed from his predecessors in a number of ways. One, unlike Reagan, he did not provide briefings to Pope John Paul II or ask for advice.⁷

³ State Department, “Carter and Human Rights, 1977-1981,” *Milestones, 1977-1980*, retrieved from <https://history.state.gov/milestones/1977-1980/human-rights#:~:text=Jimmy%20Carter%20campaigned%20for%20the,the%20pursuit%20of%20human%20rights.&text=Carter%20further%20defined%20these%20efforts,addresses%20delivered%20in%20early%201977>.

⁴ Paul S. Rowe, *Religion and Global Politics* (Oxford: Oxford University Press, 2012).

⁵ “Italy: Soviets Tried to Kill Pope,” *CBS News*, March 2, 2006, retrieved from <https://www.cbsnews.com/news/italy-soviets-tried-to-kill-pope-02-03-2006/>.

⁶ Ronald Reagan, “The Evil Empire,” June 8, 1982, retrieved from <https://www.mtholyoke.edu/acad/intrel/evilemp.htm>.

⁷ James F. Garneu, “Presidents and Popes, Face to Face: From Benedict XV to John Paul II,” *U.S. Catholic*

This may be because as the former director of the Central Intelligence Agency, Bush may have believed, and likely correctly, that he knew more than John Paul II in intelligence matters, and his actions were not party or ideology related. Two, there was more conflict with the Vatican over Latin America: specifically over Manuel Noriega who had sought refuge from American prosecution at the Vatican Embassy.⁸ Several documents included in this analysis dealt with the Panama situation explicitly. This part of history will be explored more in the “Party, Policy, and Negative Results” section. His references included domestic issues such as drugs, the Cold War that had only just ended, recent or upcoming meetings, and John Paul II’s life. His mentions of humanitarian issues were sparse, with the focus either being “basic human rights” and food distribution. As seen on Appendix 4, he falls second to last in the gross number results and last in the average per document results. Considering that both Reagan and W. Bush rank higher than him, this does not appear to have a partisan basis.

During the Clinton years, the focus shifted back to Europe. The Bosnian War became the main concern in U.S.-Vatican diplomacy. The president and the pope discussed the war in their conversations.⁹ The 1995 Dayton Peace Agreement that ended the war was brokered by the United States after it led diplomatic efforts to end the war, and the U.S. continues to monitor its implementation.¹⁰ Clinton’s documents also mention North Korea multiple times, with the President and pope also discussing the hermit kingdom and its totalitarian government.¹¹ Clinton ranked fourth in both the gross and average per document results in the foreign terms category. It is worth noting that Clinton only had one document that met the criteria set for his second term, as many of the other documents on the UCSB’s database were press releases and broad announcements that were not included in the criteria set for this research. This is why he ranks first in the reference section on the average number per document in Appendix 4. His second term

Historian, vol. 16 no. 5, Politics, retrieved from <https://www.jstor.org/stable/25156687>.

⁸ Library of Congress, “Crime, Corruption, and Cover-Ups: Manuel Noriega on Trial,” retrieved from <https://www.loc.gov/exhibitions/drawing-justice-courtroom-illustrations/about-this-exhibition/crime-corrupti-on-and-cover-ups/manuel-noriega-on-trial/>.

⁹ William J. Clinton, “Remarks Following Discussions with Pope John Paul II in Denver,” Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, retrieved from <https://www.presidency.ucsb.edu/node/217750>.

¹⁰ Bureau of European and Eurasian Affairs, “U.S. Relations with Bosnia and Herzegovina: Bilateral Relations Fact Sheet,” November 7, 2019, retrieved from <https://www.state.gov/u-s-relations-with-bosnia-and-herzegovina/>.

¹¹ William J. Clinton, “The President’s News Conference with Prime Minister Silvio Berlusconi of Italy in Rome,” Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, retrieved from <https://www.presidency.ucsb.edu/node/219140>.

is marked with an asterisk and may not be fully representative of his diplomatic work during his second term. In the gross number results, Clinton ranks fifth, and these results seem to be better representations of the relationship between President Clinton and Pope John Paul II. That being said, it is worth noting that one document from Clinton's second term has more humanitarian references than the two runner ups did combined. This suggests that some presidents, at least Clinton, used their time to discuss certain issues more in depth. This has support with the average per document results with Democratic presidents often taking the lead over Republican presidents compared to the gross number results.

W. Bush's time with Pope John Paul II was relatively short. John Paul II died during Bush's second term; for this reason his second term is listed with an asterisk in the appendices. The focus shifted back to the Middle East during W. Bush's first term. Following the terrorist attack on September 11, 2001, the United States launched on a new anti-terrorism path, which took up almost all of the oxygen in the room for the first couple of years. The war in Iraq was front and center in the documents coded. Almost all foreign terms were either about the Middle East, Iraq, or Poland-- the last of which was in reference to John Paul II's life rather than modern policy. As will be discussed in the "Party, Policy, and Negative Results" section, the Iraq War was a source of conflict between President George W. Bush and Pope John Paul II.

RELIGION RESULTS

Religious imagery use was an important divide between Republicans and Democrats, but not the greatest. Republicans led Democrats by 1.47 in the gross results but are barely behind by 0.077 in the average results in Appendix 3. Presidents George W. Bush and Ronald Reagan led in religious term use in the gross number results, but Clinton led in the average per document results; but as stated before, because it was his second term and only one document used, this may not be fully reflective of reality. In the average per document ranking, Reagan and W. Bush followed Clinton, showing further consistency with the gross results. Presidents overall made Christian references, as well as references to other religions such as Judaism, Islam, and common presidential phrases such as "God bless America."

W. Bush's use of religion focused heavily on his descriptions of Pope John Paul II, and

eventually he presented him with the Presidential Medal of Freedom.¹² This was especially true in the statement following John Paul II's death, calling him a shepherd in multiple ways.¹³ It is reasonable to think that this trend would have continued had Pope John Paul II had lived for both of Bush's terms, so it is possible that this divide between Democrats and Republicans would have grown.

President Reagan's focus on religion is more interesting. Reagan's use of religion coincides with evangelicals becoming a vital voting bloc in the Republican party. Providentialism, the belief that America in particular was ordained by God to be the light of the world, was present from the very beginning and was invoked during his inaugural address.¹⁴

Pope John Paul II had a very similar view; that time is linear and historical events are part of divine plan, but that humans must make the right decisions for the betterment of mankind.¹⁵ His view that the USSR was an "Evil Empire" was very similar to Reagan's. The pope's belief in Three Secrets of Fatima, the prophecies given from the Virgin Mary to three young Portuguese shepherds, affirmed his view of communism as the looming threat of the twentieth century. His assassination attempt reinforced his existing worldview and in 2000 his assassination attempt was revealed to be the third secret.¹⁶ Considering that the CIA knew in 1982 that the Soviet Union was behind the attempt, he was vindicated.¹⁷ He lived through communism and Nazism, saw the horror it wrought, rose to become pope, heard the prophecies from the Virgin Mary, and then at a festival celebrating the Virgin Mary he is shot but survives, and in his view due to the Virgin Mary's intervention. For the pope, anti-communism, Catholicism, and the fate of the world, were all intertwined. As for what this means for the partisanship question, the results show that Republicans are much more comfortable using religious language, although Democrats are no strangers to using it either.

The exception to Republican trends was H.W. Bush; he was second to last in the gross

¹² George W. Bush, "Remarks on Presenting the Presidential Medal of Freedom," Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, retrieved from <https://www.presidency.ucsb.edu/node/215132>.

¹³ George W. Bush, "Remarks on the Death of Pope John Paul II," April 2, 2005, retrieved from <https://www.govinfo.gov/content/pkg/PPP-2005-book1/pdf/PPP-2005-book1-doc-pg550.pdf>.

¹⁴ Ronald Reagan, "First Inaugural Address of Ronald Reagan," January 20, 1981, Yale Law School, retrieved from https://avalon.law.yale.edu/20th_century/reagan1.asp.

¹⁵ Paul S. Rowe, *Religion and Global Politics*.

¹⁶ It should be noted that there is controversy over the revealing of the Third Secret within the Catholic Church, as many have speculated that the assassination attempt was not the Third Secret due to its change and mismatch to the contents of the prophecy because the pope in the original prophecy is killed.

¹⁷ "The Plot to Kill Pope John Paul II," Central Intelligence Agency, 1982, retrieved from <https://www.cia.gov/library/readingroom/docs/CIA-RDP90-00552R000505130058-6.pdf>.

results, but only ahead of his son's second term who had to contend with a pope that had just passed away, and was last in the average per document results. This may also reflect his focus on foreign relations in his speeches. It is important to keep in mind his conflict with the Vatican and how Bush appeared to be less invested in forming a strong relationship with the Vatican compared to his predecessor.

Clinton and Carter were in the middle when it came to using religious terms in the gross results, and neared the bottom of the average per document results. This may reflect the Democrats' more secular focus, but because they used more foreign terms, it may also be a matter of time allocated to certain topics, and that they chose to focus on foreign relations more in speeches compared to Republicans.

PARTY, POLICY, AND NEGATIVE RESULTS

Mentions of party and partisanship were quite scarce overall. Presidents H.W. Bush, Clinton, and W. Bush did not mention partisanship at all. Carter mentioned it three times, usually in the context of pushing for bipartisanship, and Reagan only once in two terms. This strongly suggests that when engaging in diplomacy with the Vatican, Democrats and Republicans alike leave partisan issues at home and focus on policy goals. While these goals are shaped by their ideological worldview, which is tied to partisanship, there are not dominant differences between administrations that are based in party affiliation.

Policy trends found in this analysis also seem to be rooted in non-party related phenomena. While Carter led in both the gross and average per document results in Appendix 4, Presidents Reagan and H.W. Bush followed in both sets of results, then by Clinton. When looking at the presidents chronologically, the gross number of policy terms decreases over time across Republicans and Democrats. Beginning with Clinton's first term the number of foreign terms also decreased across administrations, so diplomacy with the Vatican focusing less on foreign relations became a trend. One possible explanation is that both the Clinton and W. Bush administrations had sources of conflict with Pope John Paul II.

In the Negative results, Democrats used more negative terms; 0.99 more in the gross results and 1.81 more in the average results. This difference between the parties is smaller than other categories, and considering that Pope John Paul II had issues with members from both

parties, this does not seem to stem from this pope disliking presidents exclusively from one party. All presidents had four or more negative terms in at least one of their terms. Sources of conflict on the Republican side dealt with America's approach to war and the death penalty. For Democrats, it varied.

As previously mentioned, H.W. Bush's administration conflicted with the Vatican over Noriega's status. The Bush administration was quite forward in pushing the envelope, and accomplished its goal of getting Noriega to leave the Vatican Embassy by blasting aptly named loud rock tracks for hours and hours. Not only was the Vatican housing Noriega at its embassy, it also hoped to transfer him to a friendly nation, away from American prosecution.¹⁸ Bush's relationship with the Vatican was relatively fraught compared to other Republicans and even Democrats, showing that while Republicans were more likely to use religious references to gain rapport with the pope, it was not always enough.

President George W. Bush faced pushback from the Vatican over the Iraq War, with the "Negative" terms coming from this conflict. Even as Bush presented him with the Presidential Medal of Freedom, Pope John Paul II still pushed him on the Iraq War and restoring Iraqi sovereignty.¹⁹ Additionally, the pope heartily disagreed with the death penalty which caused some friction.²⁰ Even though George W. Bush heavily referenced religion in his speeches and time with him, it was not enough on its own to create a close and smooth relationship between the two.

President Bill Clinton also faced pushback from the Vatican: this time on abortion. At the Cairo Conference, the Clinton administration pushed for abortion as a human right, which the Catholic Church is staunchly against. This became a contentious topic, but it appears that Clinton was able to smooth things over. He had a "frank discussion" and confronted the disagreement head on.²¹ The two appeared to be quite friendly with each other afterwards and were on good

¹⁸ "Intelligence update in the aftermath of the 12/20/1989 U.S. invasion of Panama undertaken to Depose de facto Military Leader Manuel Noriega," Central Intelligence Agency, December 24, 1989, U.S. Declassified Documents Online, retrieved from <https://link.gale.com/apps/doc/CK2349680781/USDD?u=>.

¹⁹ John Paul II, "Address of Pope John Paul II to the Honorable George W. Bush, President of the United States of America," June 4, 2004, retrieved from http://www.vatican.va/content/john-paul-ii/en/speeches/2004/june/documents/hf_jp-ii_spe_20040604_president-usa.html.

²⁰ Garneau, "Presidents and Popes."

²¹ William J. Clinton, "The President's News Conference With Prime Minister Silvio Berlusconi of Italy in Rome," Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, retrieved from <https://www.presidency.ucsb.edu/node/219140>.

terms following this discussion.²²

While both parties had conflicts with the Vatican on at least one occasion, the sources of said conflict can be partisan in nature, especially as the two parties became more polarized with time. The death penalty, war, and abortion are such sources. Because Republicans continued to support the death penalty after the Church altered its stance under Pope John Paul II, this conflict seems inevitable.²³ With the Church taking a greater pro-life approach in the twentieth century, both war and abortion were contentious, although with differing consequences for each party. For the presidents in this timeframe, Democrats were more likely to use diplomatic channels in attempts to create treaties such as the Camp David Accords and the Dayton Peace Agreement; Republicans meanwhile were more willing to be aggressive as seen by the Iran-Contra Affair, the U.S. Invasion of Panama, and the Iraq War. The Church's stance on abortion was something Republicans shared, while Democrats had to confront this irreconcilable difference.

CONCLUSION

Although there are some substantial differences between the Republican and Democratic parties in their focuses, there are also similarities. All presidents heavily referenced the pope's Polish heritage, world events, and history. Foreign relations was an integral part in what issues they discussed, their common goals of promoting democracy and undermining the Soviet Union, as well as sources for new conflict. Overall Democrats used more terms in every category except Religion, despite being underrepresented compared to Republicans. This suggests that Democrats are packing more content into their discussions and speeches, although presidents of both parties had positive policy outcomes. Policy itself was determined by both a president's ideology but more importantly by the challenges of the time.

Religion, humanitarian issues, and conflicts were the greatest categories with partisan explanations. Religion was used more by Republicans and was especially crucial during the Reagan administration in the administration's and the Pope's shared goal of ending communism. However, other Republican presidents who also used religion heavily did not have the same kind

²² Garneu, "Presidents and Popes."

²³ United States Conference of Catholic Bishops, "The Church's Anti-Death Penalty Position," retrieved from <https://www.usccb.org/resources/churchs-anti-death-penalty-position>.

of close relationship that Reagan had with John Paul II, showing that religious imagery alone is not enough to build and sustain a smooth diplomatic relationship. President George H.W. Bush used less religious imagery, less humanitarian references, and tied for the most “Negative” terms in Appendix 1. With the fall of the USSR, Bush did not have the same common enemy as prior presidents did. He did not build on what he had in common with the Pope as successfully as other presidents, and it showed. His son President George W. Bush appeared to be more invested and used more religious imagery and “Humanitarian” terms, but conflicts over war and the Middle East complicated his relationship with Pope John Paul II. Religion alone is not enough to sustain this relationship. President Ronald Reagan, however, was able to connect with the pope in a meaningful way that stressed what they had in common rather than their splits.

Humanitarian issues were discussed more by Democrats. This largely stems from President Carter’s focus on human rights, but Democrats may have used more of these terms because they talked about religion less often than Republicans. This may also reflect the Democratic Party’s increasing secular focus. President Clinton attempted to expand human rights to abortion rights, which caused deep friction temporarily. As policy around human population management, women’s health, and science evolved, the Church pushed back on the White House’s attempt to expand the definition of human rights. For Republicans, human rights issues focused on religious freedom, a topic that the modern Church is deeply concerned with. This also leaned into their religious emphasis. Both parties mentioned refugees, a key group in any human rights discussion.

While both parties had challenges and problems during diplomatic discussions with the Vatican, the sources of conflict: war, the death penalty, and abortion are often along party lines. Each president’s success in overcoming these challenges varied, and some relationships fared better than others for other, nonpartisan reasons. It is the author’s hope that these findings will create new discussions and research into the United States’ and the Catholic Church’s soft power and its role in promoting democracy and human rights, while critically examining the role of partisanship in this diplomatic relationship. Partisanship is becoming more important to our understanding of American politics and government, and similar research into how this impacts diplomatic relationships in the modern era with new presidents facing new challenges should be conducted. Examining the role of evangelicals, Catholics, and how each forms the ideology in each party would be helpful for figuring out the “why” of these differences.

Pope John Paul II was uniquely popular and had moral authority unlike most leaders of his lifetime. This moral authority factor has been greatly undermined in both the United States and within the Catholic Church. The idea that America is a beacon of a free and fair democracy seems farfetched. In just the past decade alone, scandals surrounding elections, policing, immigration, and sexual misconduct have rocked the American political world, culminating at the attempted insurrection of January 6 of this year. The Church is no stranger to scandal either, facing its own financial and sexual abuse claims time and time again. Both groups have lost face at the international stage. All the while the threats of climate change grow ever closer, and will certainly exacerbate the refugee crisis that is already occurring.

The good news is that this provides an opportunity for the United States and the Catholic Church to create a united front. The current President and future administrations can work with the Vatican on pushing for greater action on climate change while also affirming and demanding help for refugees and migrants. This will require American presidents to emphasize human rights and religion on a deeper level than a simple passing reference. Caution should be heeded, however, because as partisanship increases the risk of politicization of religion does also. Superficial nods to doctrine or Biblical verses do not a good policy make. Additionally, this would affirm to some observers that the United States is a cynical actor hoping for pure political gain rather than forming meaningful policy and relationships with important spiritual figures. As the political parties win the presidency, they will have to grapple with certain areas of conflict: war, abortion, and the death penalty, and will have to prepare to smooth over tensions that will arise when they conflict with the Church's teachings. In the modern day, these conflicts can be expanded to action or inaction on climate change and the rights of LGBT+ individuals. The author believes that climate change will become a contentious issue with Republican presidents and that LGBT+ rights will be for Democratic presidents. Like any good diplomat, ideally one focuses on what one has in common and works from there.

Appendix

Appendix 1											
Gross Number of Terms											
President	References	Foreign	Religion	Party	Policy	Humanitarian	Negative	Total	No. of Documents	Total Average	
Carter		73	174	17	3	52	27	7	353	6	179.5
Reagan 1		54	129	35	0	46	13	4	281	6	143.5
Reagan 2		49	43	53	1	36	15	0	197	5	101
HW Bush		42	185	9	0	43	5	7	291	10	150.5
Clinton 1		39	53	12	0	23	9	6	142	4	73
Clinton 2		13	15	14	0	5	8	0	55	1	28
W Bush 1		39	45	60	0	20	14	6	184	8	96
W Bush 2*		5	4	7	0	0	3	0	19	1	10
Total		314	648	207	4	225	94	30	1522	41	781.5

Appendix 2									
Average Number per Document									
President	References	Foreign	Religion	Party	Policy	Humanitarian	Negative	Total	
Carter	12.16666667	29	2.833333333	0.5	8.666666667	4.5	1.166666667	58.83333333	
Reagan 1	9	21.5	5.833333333	0	7.666666667	2.166666667	0.666666667	46.83333333	
Reagan 2	9.8	8.6	10.6	0.2	7.2	3	0	39.4	
HW Bush	4.2	18.5	0.9	0	4.3	0.5	0.7	29.1	
Clinton 1	9.75	13.25	3	0	5.75	2.25	1.5	35.5	
Clinton 2*	13	15	14	0	5	8	0	55	
W Bush 1	4.875	5.625	7.5	0	2.5	1.75	0.75	23	
W Bush 2*	5	4	7	0	0	3	0	19	
Gross Average	7.658536585	15.80487905	5.048780488	5.487804878	5.487804878	2.292682927	0.7317073171	306.6666667	

Appendix 3								
Average By Party								
Category	Gross Number				Average Number			
	Democrat	Republican	Difference	Pos Party	Democrat	Republican	Difference	Pos Party
References	11.36363636	6.3	5.063636364	D	11.63888889	6.575	5.063888889	D
Foreign	22	13.53333333	8.466666667	D	19.08333333	11.645	7.438333333	D
Religion	3.909090909	5.466666667	-1.557575758	R	6.611111111	6.366666667	0.2444444444	D
Party	0.2727272727	0.03333333333	0.2393939394	D	0.1666666667	0.04	0.1266666667	D
Policy	7.272727273	4.833333333	2.439393939	D	6.472222222	4.333333333	2.138888889	D
Humanitarian	4	1.666666667	2.333333333	D	4.916666667	2.083333333	2.833333333	D
Negative	1.181818182	0.5666666667	0.6151515152	D	0.8888888889	0.4233333333	0.4655555556	D
Total	50	32.4	17.6	D5, R1	49.77777778	31.46666667	18.31111111	D7, R0

Appendix 4						
Highest to Lowest Rate by Term						
Category	Gross Number			Average Number		
	Party	President	Gross Number	Party	President	Average No.
References	D	Carter	73	D	Clinton 2*	13
	R	Reagan 1	54	D	Carter	12.16666667
	R	Reagan 2	49	R	Reagan 2	9.8
	R	HW Bush	42	D	Clinton 1	9.75
	D	Clinton 1	39	R	Reagan 1	7.714285714
	R	W Bush 1	39	R	W Bush 2*	5
	D	Clinton 2*	13	R	W Bush 1	4.875
	R	W Bush 2*	5	R	HW Bush	4.2
Foreign	R	HW Bush	185	D	Carter	29
	D	Carter	174	R	HW Bush	18.5
	R	Reagan 1	129	R	Reagan 1	18.42857143
	D	Clinton 1	53	D	Clinton 2*	15
	R	W Bush 1	45	D	Clinton 1	13.25
	R	Reagan 2	43	R	Reagan 2	8.6
	D	Clinton 2*	15	R	W Bush 1	5.625
	R	W Bush 2*	4	R	W Bush 2*	4
Religion	R	W Bush 1	60	D	Clinton 2*	14
	R	Reagan 2	53	R	Reagan 2	10.6
	R	Reagan 1	35	R	W Bush 1	7.5
	D	Carter	17	R	W Bush 2*	7
	D	Clinton 2*	14	R	Reagan 1	5
	D	Clinton 1	12	D	Clinton 1	3
	R	HW Bush	9	D	Carter	2.833333333
	R	W Bush 2*	7	R	HW Bush	0.9
Party	D	Carter	3	D	Carter	0.5
	R	Reagan 2	1	R	Reagan 2	0.2
	R	Reagan 1	0	R	Reagan 1	0
	R	HW Bush	0	R	HW Bush	0
	D	Clinton 1	0	D	Clinton 1	0
	D	Clinton 2*	0	D	Clinton 2*	0
	R	W Bush 1	0	R	W Bush 1	0
	R	W Bush 2*	0	R	W Bush 2*	0
Policy	D	Carter	52	D	Carter	8.666666667
	R	Reagan 1	46	R	Reagan 2	7.2
	R	HW Bush	43	R	Reagan 1	6.571428571
	R	Reagan 2	36	D	Clinton 1	5.75
	D	Clinton 1	23	R	HW Bush	4.3
	R	W Bush 1	20	R	W Bush 1	2.5
	D	Clinton 2*	5	D	Clinton 2*	0
	R	W Bush 2*	0	R	W Bush 2*	0
Humanitarian	D	Carter	27	D	Clinton 2*	8
	R	Reagan 2	15	D	Carter	4.5
	R	Reagan 1	14	R	Reagan 2	3
	R	W Bush 1	14	R	W Bush 2*	3
	D	Clinton 1	9	D	Clinton 1	2.25
	D	Clinton 2*	8	R	Reagan 1	2
	R	HW Bush	5	R	W Bush 1	1.75
	R	W Bush 2*	3	R	HW Bush	0.5
Negative	D	Carter	7	D	Clinton 1	1.5
	R	HW Bush	7	D	Carter	1.166666667
	D	Clinton 1	6	R	W Bush 1	0.75
	R	W Bush 1	6	R	HW Bush	0.7
	R	Reagan 1	4	R	Reagan 1	0.5714285714
	D	Clinton 2*	0	D	Clinton 2*	0
	R	Reagan 2	0	R	Reagan 2	0
	R	W Bush 2*	0	R	W Bush 2*	0

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INJUSTICE: THE DEPARTMENT OF JUSTICE UNDER BARR

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The views reflected here are those of the author and do not represent the official position of the United States Military Academy, United States Army, or the Department of Defense.

Under Attorney General William Barr, the Department of Justice became increasingly partisan and divided. Barr routinely overrode line prosecutor sentencing recommendations to favor allies of President Donald Trump, and allowed the department to be used as a political tool. Fifty years after Watergate, the American public and our elected leaders have forgotten the lessons and costs of partisan manipulation in justice. To address these issues and prevent the Department from being politicized in the future, structural change must be introduced to the Department that will increase its autonomy from the executive.

Liberal institutions and norm construction are widely regarded as key components of peace on the international stage. Moreover, these institutions and norms are key components of internal stability within Western democratic countries.¹ Of course, both of these structures are imperfect, and former U.S. President Donald Trump won the 2016 election on a campaign that, in part, focused on flouting the traditional systems and practices of the existing political elite. Coming at a time of increased partisanship in the American electorate, Trump secured support for his plans to bring about significant change to our political system.

The merits or lack thereof in former President Trump's campaign are not the focus of this essay—rather this paper focuses on the real effects of Trump's inconsistent commitment to the orthodox values within American government. Specifically, I will analyze the Trump administration's effect on the U.S. Department of Justice (DOJ). Charged with the "fair and impartial" adjudication and implementation of the law, the DOJ is arguably the most integral executive department to democratic strength and resiliency.² The DOJ's partisanship has in recent years, however, become the subject of frequent debate within mainstream media spheres, and the DOJ has experienced a partisan flip in support. Whether legitimate or not, the perceived politicization of the DOJ carries with it implications of trust breakdown between law

¹ Josh Chafetz and David E. Pozen, "How Constitutional Norms Break Down," *U.C.L.A. Law Review*, vol. 64 (2018), 1450, <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2733&context=facpub>.

² Department of Justice, "Mission Statement," <https://www.justice.gov/about>.

enforcement and the public. This paper reviews and analyzes the effects of partisanship and norm erosion within one of our country's most essential institutions, examines the real consequences thereof, and offers recommendations for reform with an eye toward restoring transparency and public trust. Many of the key concerns in the DOJ stem from Trump's politically appointed attorney generals who conceded power and much of the department's integrity-based independence to the President. In particular, this paper will focus primarily on Attorney General William Barr and the DOJ underneath him.

In the halls of the Senate Chamber on a cold February day, Senator Mark R. Warner spoke to his fellow policymakers: "I have serious doubts about this nominee's independence and willingness to stand up for the rule of law."³ The president's main concern, he went on, was to find an Attorney General who would shield him from political threats. The prospective Attorney General Senator Warner referred to was William Barr. Barr was nominated on December 7, 2018, to succeed the previous Attorney General, Jeff Sessions, and was confirmed by a 54 – 45 Senate vote on February 14, 2019, just days after Warner gave his judicious remarks.⁴ The new Attorney General was clear and vocal about his commitment to unitary executive theory, and his commitment to Trump.⁵ At a speech given to the Federalist Society's 2019 National Lawyers Convention, Barr remarked:

While there may have been some differences among the Framers as to the precise scope of Executive power in particular areas, there was general agreement about its nature. Just as the great separation-of-powers theorists— Polybius, Montesquieu, Locke – had, the Framers thought of Executive power as a distinct specie of power. To be sure, Executive power includes the responsibility for carrying into effect the laws passed by the Legislature – that is, applying the general rules to a

³ Karoun Demirjian, "Barr's Nomination to Be Attorney General Advances in Senate after Clearing Procedural Hurdle" (The Washington Post, February 12, 2019), https://www.washingtonpost.com/powerpost/barrs-nomination-to-be-attorney-general-advances-in-senate-after-clearing-procedural-hurdle/2019/02/12/831b1110-2f0d-11e9-813a-0ab2f17e305b_story.html.

⁴ Katherine Faulders, Jonathan Karl, and Trish Turner, "Trump Announces He'll Nominated William Barr as next Attorney General," (ABC News Network, December 7, 2018), <https://abcnews.go.com/Politics/trump-nominate-william-barr-attorney-general-sources/story?id=59660201>; "Roll Call Vote 116th Congress - 1st Session," U.S. Senate: U.S. Senate Roll Call Votes 116th Congress - 1st Session, January 16, 2020, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=116&session=1&vote=00024.

⁵ In this context, unitary executive theory refers to an interpretation that the Constitution "[guarantees] the President plenary authorities, which Congress may not limit, both to discharge unelected executive administrators at will and to direct how they shall exercise any and all discretionary authority that those officials possess under law." Peter M. Shane, "The Originalist Myth of the Unitary Executive," *University of Pennsylvania Journal of Constitutional Law* 19, no. 332 (2016): 324, <https://dx.doi.org/10.2139/ssrn.2735094>.

particular situation. But the Framers understood that Executive power meant more than this.

It also entailed the power to handle essential sovereign functions – such as the conduct of foreign relations and the prosecution of war – which by their very nature cannot be directed by a pre-existing legal regime but rather demand speed, secrecy, unity of purpose, and prudent judgment to meet contingent circumstances. They agreed that – due to the very nature of the activities involved, and the kind of decision-making they require – the Constitution generally vested authority over these spheres in the Executive. For example, Jefferson, our first Secretary of State, described the conduct of foreign relations as ‘Executive altogether,’ subject only to the explicit exceptions defined in the Constitution, such as the Senate’s power to ratify Treaties.⁶

Barr’s primary reasoning here is a strict adherence to Unitary Executive Theory, in that there ought to be no limit to the President’s exercise of control within the Executive Branch. While this view on the president’s influence is effective in policy determination and spurring the cumbersome federal bureaucracy to action, it comes at a cost of independence in the federal department, which should be largely independent and impartial. Contemporary constitutional scholars like Peter Shane dispute Barr’s perspective on unitary power, but Barr’s conception of his relationship as Attorney General with the presidency was nonetheless predicated upon the foundation of absolute executive power within the executive branch.⁷ The DOJ’s dedication to an impartial administration of law was put at odds under Barr’s tenure with Trump’s frequent politically-motivated demands. Deferring largely to Trump’s interests, Barr positioned the DOJ to become in many ways an extension of the President’s political agenda, and thereby became the focus of several high-profile scandals.

Strict and absolute adherence to Unitary Executive Theory, especially within the DOJ, comes as a shock in a post-Watergate institution. After former President Richard Nixon’s use of the Federal Bureau of Investigation for his own personal gain, the Attorney General appointed in the aftermath of Watergate faced a significant challenge in restoring the DOJ’s independence.

⁶ William Barr, “19th Annual Barbara K. Olson Memorial Lecture at the Federalist Society’s 2019 National Lawyers Convention,” speech, (Washington, DC, November 15, 2019), Department of Justice, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-19th-annual-barbara-k-olson-memorial-lecture>.

⁷ “Originalist defenders of a unitary executive reading of the federal constitution nonetheless dismiss the interpretative significance of the pre-1787 state constitutions... Close study of the state constitutions and state administrative practice under them thus belie any ‘unitary executive’ reading of Article II that purports to be based on ‘original public meaning.’” Shane, “The Originalist Myth,” 325.

Attorney General Edward Levi, a Republican under former President Gerald Ford, reformed guidelines for FBI surveillance and other activities, reinforced professionalism and adherence to separation of powers and the rule of law and set new rules and structures to ensure the DOJ's integrity.⁸ Paramount to Levi's vision was that "our law is not an instrument of partisan purpose."⁹ Watergate spurred the American public and our elected leaders to enshrine the DOJ as a semi-autonomous branch capable of enforcing apolitical justice. Fifty years after Watergate, the American public and our elected leaders have forgotten the lessons and costs of partisan manipulation in justice.

Under Barr, career and expert opinion within his department was frequently overridden to support President Trump's political allies. Notably, Barr directly intervened in the sentencing of Trump's longtime confidant, Roger Stone. In November 2019, Stone was convicted and found guilty of making false statements and obstruction of justice.¹⁰ In between conviction and sentencing, DOJ prosecutors aimed to pursue and recommended standard punishment for Stone, amounting to between seven and nine years in prison. Barr personally overruled the sentencing recommendation, and ordered the U.S. Attorney's Office for Washington, D.C. to file a lower prison sentence.¹¹ Stone was sentenced to more than three years in prison and ordered to pay a fine.¹² This case is, however, significant in that the Attorney General directly stepped in to direct the sentencing of the President's personal friend.

The perception in this instance is that the President asked Barr to aid Stone, to which Barr responded by overruling his prosecutors and calling for half the prison sentence that federal

⁸ Levi, and his successor Attorney General Griffin Bell, led the reforms following Watergate. David Leonhardt's article provides a strong overview of the Levi-Bell initiative. David Leonhardt, "The Sense of Justice That We're Losing" (The New York Times, April 29, 2018), <https://www.nytimes.com/2018/04/29/opinion/the-sense-of-justice-that-were-losing.html>; For an exploration of Levi's philosophies and initiatives, please reference Jack Fuller's book: Edward H. Levi and Jack Fuller, *Restoring Justice: The Speeches of Attorney General Edward H. Levi*, (Chicago: The University of Chicago Press, 2013).

⁹ Ibid.

¹⁰ Ryan Lucas, "Roger Stone, Political Operative And Trump Aide, Guilty In False-Statements Trial," NPR (NPR, November 15, 2019), <https://www.npr.org/2019/11/15/779353180/roger-stone-political-operative-and-trump-aide-guilty-in-false-statements-trial>.

¹¹ Matt Zapotosky, "Justice Dept. Watchdog to Review Handling of Roger Stone Sentencing Recommendation" (The Washington Post, September 14, 2020), https://www.washingtonpost.com/national-security/roger-stone-inspector-general/2020/09/14/39306d92-f6d6-11ea-be57-d00bb9bc632d_story.html.

¹² Ryan Lucas and Philip Ewing, "Roger Stone Sentenced To More Than 3 Years Amid Furor Over Trump And DOJ" (NPR, February 20, 2020), <https://www.npr.org/2020/02/20/807099176/roger-stone-sentenced-to-3-years-amid-furor-over-trump-involvement-in-doj-cases>.

guidelines dictate. Several thousand DOJ employees and alumni subsequently wrote an open letter denouncing Barr's interference in the Stone case, which in part argued:

And yet, President Trump and Attorney General Barr have openly and repeatedly flouted [impartiality], most recently in connection with the sentencing of President Trump's close associate, Roger Stone, who was convicted of serious crimes. The Department has a long-standing practice in which political appointees set broad policies that line prosecutors apply to individual cases. That practice exists to animate the constitutional principles regarding the even-handed application of the law. Although there are times when political leadership appropriately weighs in on individual prosecutions, it is unheard of for the Department's top leaders to overrule line prosecutors, who are following established policies, in order to give preferential treatment to a close associate of the President, as Attorney General Barr did in the Stone case. It is even more outrageous for the Attorney General to intervene as he did here — after the President publicly condemned the sentencing recommendation that line prosecutors had already filed in court.¹³

These service members and alumni called on Barr to resign his post and viewed the interference in Stone's case as a gross overstep of political influence into impartial justice. This open letter would, however, not be their last.

Shortly after the controversy surrounding Stone, additional controversy emerged in the DOJ's handling of the Michael Flynn case. Flynn, another close confidant of Trump, and his former National Security Advisor, pleaded guilty to lying to the FBI regarding the probe into Russian election interference.¹⁴ While federal prosecutors moved to sentence Flynn according to typical guidelines, Barr directly intervened as he did in the Stone case and ordered his prosecutors to drop the charges against Flynn.¹⁵ U.S. District Court Judge Emmet Sullivan appointed another federal judge to investigate the alleged abuse of power, but before proceeding with the case, Flynn was pardoned by President Trump.¹⁶

¹³ Department of Justice Alumni, "DOJ Alumni Statement on the Events Surrounding the Sentencing of Roger Stone," (Medium, February 16, 2020), <https://medium.com/@dojalumni/doj-alumni-statement-on-the-events-surrounding-the-sentencing-of-roger-stone-c2cb75ae4937>.

¹⁴ "DoJ Push to Dismiss Michael Flynn Case a 'Gross Abuse of Power', Ex-Judge Finds" (Guardian News and Media, June 10, 2020), <https://www.theguardian.com/us-news/2020/jun/10/michael-flynn-department-of-justice-trump>.

¹⁵ Ibid.

¹⁶ Eric Tucker, "Judge Dismisses Flynn Case Following Pardon from Trump" (Associated Press, December 9, 2020), <https://apnews.com/article/donald-trump-michael-flynn-russia-courts-national-security-c4a4cdf07648104ed0bb45d352afe94b>.

In both Stone and Flynn's cases, political allies and personal friends to the President were shown exceptionally generous treatment directly by the Attorney General. Career prosecutors were overruled, and their recommendations were discarded in favor of lighter punishments, or outright acquittal. While the President has the ability to issue pardons, the DOJ ostensibly still has the obligation to pursue impartial justice until such a pardon is granted. Under Barr, the President's personal relations have, in very high-profile cases, enjoyed a degree of leniency which ordinary citizens do not have.

While the President's friends are rewarded, his opponents are targeted, to include civil servants who are pursuing justice contrary to the President's interests. The U.S. attorney for the Southern District of New York, Geoffrey Berman, was removed from his post after an impromptu press release from Barr claiming that Berman resigned.¹⁷ Berman immediately contradicted Barr, claiming that he had no intention of stepping down and learned of his voluntary resignation through the press release. Instead, it appears that Berman was removed after his inquiries into Trump's personal associates, to include spearheading the prosecution of Trump's former attorney, Michael Cohen, and brought indictments against friends of Trump's longtime personal attorney, Rudy Giuliani.¹⁸ Barr removed Berman from his post with the intention of preventing further prosecution of Trump's personal associates.

The overall indication is that treading the party line has become increasingly more important for job security in Barr's DOJ. The prosecutors in both the Stone and Flynn cases were ignored or overruled, and Berman was outright dismissed for leveling charges against associates of the President. The distinction between protecting the institution of the presidency and protecting the president as a person has become increasingly blurred under Barr. This distinction includes his redaction and dismissal of the Mueller report and his protection of the president's ability to receive money and gifts from foreign governments, contrary to one hundred and fifty years of legal opinion against emoluments.¹⁹

¹⁷ Department of Justice. "Attorney General William P. Barr on the Nomination of Jay Clayton to Serve as U.S. Attorney for the Southern District of New York." News release, June 19, 2020. No. 20-570. <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-nomination-jay-clayton-serve-us-attorney-southern-district>.

¹⁸ Barbara Campbell et al., "President Trump Fires Top U.S. Prosecutor Who Investigated His Allies, Barr Says" (NPR, June 20, 2020), <https://www.npr.org/2020/06/20/881148365/geoffrey-berman-u-s-attorney-who-prosecuted-trump-allies-says-he-wont-quit>.

¹⁹ Carrie Johnson, "How The Justice Department Has Changed Under Trump's Presidency," *NPR*, October 25, 2020, <https://www.npr.org/2020/10/25/927564343/how-the-justice-department-has-changed-under-trumps->

Barr's politicized use of the DOJ has affected a complete shift in party-identified, public trust in the department. Despite Barr's overt politicization, DOJ public opinion approval ratings have not changed significantly since 2010 as of 2020. However, Democrat-identifying adults' trust in the Department sunk to about 50% from a high of around 70%. Meanwhile, Republican-identifying adults' trust rose to 76% from a low of approximately 40%.²⁰ This data indicates that the DOJ's actions have not effectively increased trust in the eye of the American public, but have instead been interpreted as political opportunism. Further, the gap in partisan approval of the department has widened from 18 points in 2010 to 26 points in 2020.²¹ It is hard to disagree with a perceived erosion of trust between the DOJ and American public after due regard to the outright partisanship shown by Barr towards Trump's allies and interests. While the DOJ's mission may be to remain impartial, it has been perceived as increasingly partisan. An area for expanded study could be the long-term partisanship perception of the DOJ ranging before 2010. A limitation of this analysis is that partisan polling only covers the last two presidencies, and therefore may not cover the nuances between perception as related to which political party is in the executive. However, the essential impartiality required in law enforcement makes any shift in partisanship both disruptive and threatening to our democracy.

While the American public has become increasingly polarized towards the DOJ, many of the Department's own workers have become disillusioned and increasingly dissatisfied with their profession. After seeing the changes brought to the Department by Barr, thousands of DOJ alumni have signed open letters calling repeatedly for Barr's resignation and a return to transparency and impartiality within the Department.²² Their demands range from guarding against Barr's influence in the Stone and Flynn cases, to rescinding Barr's authorization to use

presidency; Kathleen Clark, "The Justice Department Flipped on Emoluments to Defend Trump" (Time, May 1, 2019), <https://time.com/5581308/trump-emoluments-justice-department/>.

²⁰ "Public Holds Broadly Favorable Views of Many Federal Agencies, Including CDC and HHS" (Pew Research Center, April 9, 2020), <https://www.pewresearch.org/politics/2020/04/09/public-holds-broadly-favorable-views-of-many-federal-agencies-including-cdc-and-hhs/>.

²¹ Ibid.

²² Department of Justice Alumni, "DOJ Alumni Statement Regarding Rod Rosenstein, Robert Mueller, and the Rule of Law," (Medium, April 13, 2018), <https://medium.com/@dojalumni/doj-alumni-statement-regarding-rod-rosenstein-robert-mueller-and-the-rule-of-law-dcf12d7bb3a6>; Department of Justice Alumni, "Statement on the Events Surrounding the Sentencing of Roger Stone," (Medium, February 16, 2020); Department of Justice Alumni, "DOJ Alumni Statement on Flynn Case," (Medium, May 11, 2020), <https://medium.com/@dojalumni/doj-alumni-statement-on-flynn-case-7c38a9a945b9>; Department of Justice Alumni, "DOJ Alumni Open Letter on Protecting Free and Fair Elections," (Medium, October 1, 2020), <https://medium.com/@dojalumni/doj-alumni-open-letter-on-protecting-free-and-fair-elections-78bea0575e1a>.

federal attorneys to investigate state election fraud allegations. Barr is central to each of their open letters, as Barr has been central to the partisan shift within the DOJ.

My analysis places the blame for the DOJ's discredit and partiality at the feet of Attorney General Barr; however, he is only a product of an administration which placed partisanship unusually high above process and justice. The post-Barr era provides the DOJ with ample opportunity and impetus to enact significant reform which can help secure our justice's independence from future highly politicized leaders and actors. Mentioned earlier, Edward Levi led reforms within the DOJ in the aftermath of the Watergate scandal, which helped protect the department's integrity and impartiality for decades after. In the aftermath of controversies surrounding the Stone and Flynn cases, the Russia Investigation, and other overreaches of Executive power the likes of which we have not seen since Nixon, there is opportunity for reform and development within the DOJ. President Joe Biden's newly nominated Attorney General Merrick Garland will have a daunting task ahead.

While Garland's task is great, Barr's actions in the DOJ have raised a fair amount of interest from leading academics and think tanks with regard to reform. Bruce Green and Rebecca Roiphe, in their paper "Who Should Police Politicization of the DOJ?" describe the dual problems in addressing DOJ partisanship. First, it is highly subjective whether partisan concerns have played into the prosecutors' decisions in individual cases, and to determine if and when corruption has occurred. Second, the public may only ascribe faith in high-profile cases if the outcome ties with their own political leanings.²³ Green and Roiphe suggest resolving these difficulties by strengthening the oversight capacity of one body: the Inspector General.²⁴ Their recommendation goes hand-in-hand with the recommendations from the Center for American Progress' Criminal Justice Team. Among the Center for American Progress' recommendations are codified limits on contacts and communications with the White House and policy regarding the DOJ's obligation to defend the federal government in litigation.²⁵ Fundamentally, these recommendations relate to the DOJ's charter, which was established in Congress' 1870 Act to

²³ Bruce A. Green and Rebecca Roiphe, "Who Should Police Politicization of the DOJ?", paper presented at *Notre Dame Journal of Law, Ethics & Public Policy Symposium: The Ethics of Government Service, Online, February 12, 2021*, https://law.nd.edu/assets/418753/politicizing_doj_green_and_roiphe.pdf, 1.

²⁴ *Ibid.*

²⁵ Criminal Justice Team, "Restoring Integrity and Independence at the U.S. Justice Department," *Center for American Progress*, August 13, 2020, <https://www.americanprogress.org/issues/criminal-justice/reports/2020/08/13/489387/restoring-integrity-independence-u-s-justice-department/>.

Establish the Department. To prevent abuse of the institution into the future, the department's very charter and congressional mandate must be tweaked to provide for structural distance between the DOJ and the president. Using Congress as a means to shape the DOJ's future will prevent different administrations from turning the institution on its head, or reversing apolitical structures. Further unprecedented steps to ensure the DOJ's impartiality could also be taken, to include appointing an additional Inspector General by and responsible to the Supreme Court, which would further entangle the department across all three government branches and diffuse partisanship.

Sitting before Garland is an opportunity to fortify the DOJ against further encroachments of partisanship. His task is essential to our very democracy, the core foundations of which appeal to the rights of each person to life, liberty, and the pursuit of happiness. Integral to these claims is the fair adjudication of justice, and the impartial application of our country's laws. Under Barr, this core foundation has become less stable and claims to justice have become more influenced by party lines and personal relations to people in power. For the health of America's democracy, and for these values, change must come to the DOJ.

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Part 2

Voting & Elections

21ST CENTURY MODERN DISENFRANCHISEMENT IN AMERICAN POLITICS

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During the 2020 General Election, Americans voted in record numbers casting nearly 158.4 million ballots.² Although, this is historical voting disenfranchisement is still an issue today. Voting is symbolic of power; it helps determine who gets to represent the people. Compared to other democracies, the right to vote in America is more limited and less exercised. The process of voting in the United States is decentralized, in which each state and county has a degree of autonomy and freedom to structure certain aspects of the process. Each state has some jurisdiction and can differ from other states - even within different regions within the same state. This change has occurred due to the nature of elections becoming more complex over time. Elections have become more frequent and have led to more safety concerns. The 2020 General Election - a unique electoral year - like many past elections, highlights how modern disenfranchisement can occur. Historically, this past election set a record voter turnout rate that had not been achieved in many years. Given the distinctive nature of the election - during the midst of a pandemic - many states quickly responded to ensure the process of voting was safe, secure, and accessible. However, other states utilized their power to enact laws and policies that can create voter suppression, especially within communities traditionally underrepresented. This paper attempts to demonstrate how voter disenfranchisement continues to play a role in American politics and has been an issue that persists using modern techniques and justification. Voter suppression is not an issue of the past, many are still struggling to exercise this constitutional right. Some states and policies indirectly make it harder for individuals to exercise their civic duty of voting. Further research in future elections will help evaluate whether or not the 2020 General Election will set a new precedent in America's voting trends and lead to a new era in American politics.

INTRODUCTION

Historically, expansion of suffrage rights in the United States has increased at an incremental rate. Although voter suppression is typically seen through historical examples such as slavery and women's suffrage, voting disenfranchisement persists in more discrete scenarios and continues to unfold within American politics today. This paper will provide a brief overview of voting rights and critical court cases to better understand the scope of the issue. The main

¹ B.A Candidate, Political Science, Masters in Public Administration, 2022. I am grateful for this opportunity and the support from CSPP. Thank you to my mentor Andrew Bellis, who volunteered his time and support to provide valuable recommendations. This paper stems from my interest in election law, my eye-opening experience being an Election Site Supervisor for California's 2018 Primary Elections, helping register and mobilize the Latinx community, and from my honor of being an Elections Commissioner for USC Undergraduate Student Government.

² Pew Research, 2021 Study found voter turnout increased in every U.S. state.

focus will be examining the current state of voting rights by analyzing states and their distinct election procedures. The COVID-19 pandemic has resurfaced and aggregated many structural inequalities, but it also allowed the opportunity to transform the election process. However, this was not the case in every region. Although the high turnout rate in the 2020 General Election has surpassed all of the recent elections in modern times, this research paper will highlight how voter disenfranchisement continues to pose challenges to the electorate within southern states. Since modern forms of voter disenfranchisement continue to pose a threat to our democracy, this paper will also provide recommendations on how to restore and strengthen the Voting Rights Act to commit towards fair, accessible, and secure elections.

This section will discuss the incremental expansion of voting rights. It will highlight the importance of preserving this fundamental right and be a starting point for the remainder of my research. The Founding Fathers created governing documents formed on the principles and democratic values of “freedom, equality, and liberty.” In theory, these were commonly held ideals, while in practice, these principles did not equally apply to everyone. Individuals have been discriminated against based on both ascribed and attributed characteristics, like socio-economic status, gender, or race. The first voters were only White men with property and the first major step to expand voting rights were the Reconstruction Amendments. In the late 1860s, the 13th Amendment abolished slavery, and the 15th Amendment allowed all citizens to vote regardless of race or skin color.³ Many legislators found loopholes within the law to ensure voting by certain ethnic minority groups became more challenging despite the Amendments. Popular tactics like the grandfather clause, poll tax, literacy test, as well as direct voter intimidation and violence were utilized to disqualify the purpose of the Reconstruction Amendments.⁴ Some groups were excluded on the basis of race or gender, while others were excluded for being systematically denied citizenship. This impacted African Americans, Native Americans, Asian Americans, and many more distinct groups. Groups portrayed as an “other” or an outsider struggled to gain suffrage and representation.

³ Ralph A. Rossum and Alan G. Tarr, *American Constitutional Law. Volume 2, The Bill of Rights and Subsequent Amendments Ninth edition* (Boulder, Colorado: Westview Press, 2014).

⁴ Marcia L. Fudge and Zoe Lofgren, *Report on Voting Rights and Election Administration in the United States of America* (Washington, D.C: U.S. House of Representatives, 2019), 2019-10-17.

Women also faced restrictions to their citizenship and voting rights. Until the 20th century, the right to vote based on gender was granted with the adoption of the 19th Amendment in 1920.⁵ In practice, for some women - like women of color or indigenous women - this was more challenging. The most recent federal voting change happened in 1971, allowing more youth to participate in the democratic process by lowering the minimum age to eighteen.⁶ This allowed for more individuals to vote, specifically from a group of electors with a large percentage of eligible voters. As of 2019, over 4.4 million residents of the U.S. Territories and the District of Columbia still lack full voting rights and representation equivalent to their counterparts living in the fifty U.S. states.⁷ Voting suffrage in America has been a gradual process to become more inclusive of the population. Although many changes have been made and the eligible electorate population has expanded since the country's inception, for some individuals, disenfranchisement persists.

Today, voter disenfranchisement is not as observable as it was in the past. New laws and policies have been implemented to ensure the protection of this democratic value. For example, Section 594 of the U.S. Code makes it illegal for individuals to directly intimidate, threaten, or coerce anyone attempting to exercise their right to vote.⁸ In the past, many Americans who had the federal right to vote were impeded by direct voter intimidation that made it dangerous to be politically active. Today, voter disenfranchisement persists in more discreet manners: using modern tactics that can help advance political agendas. The degree to which specific political tactics are utilized can also show voter disenfranchisement has become a partisan issue. In this paper, I will examine the degree to which the two main political parties use forms of voter disenfranchisement by analyzing various states with historical trends of being more accessible to voters. It is important to note that this is not a “one size fits all” scenario and cannot account for every region of the country or every elected representative and their political party affiliation.

⁵ Rossum & Tarr, *American Constitutional Law*.

⁶ Lucy Zhou, “Today in 1971, Sparkling the Youth Vote,” Brennan Center for Justice, 2013.

⁷ Fudge & Lofgren, *Report on Voting Rights*.

⁸ Legal Information Institute, n.d.

VOTING RIGHTS ACT (VRA) (1965) AND SHELBY COUNTY V. HOLDER (2013)

This section will introduce critical court cases that set precedent on voting in southern states historically known to suppress voting rights. This aims to show the importance of restoring or strengthening the Voting Rights Act (VRA). In 1965, Congress passed the Voting Rights Act that prohibited jurisdictions from implementing barriers to voting and protection to guarantee the Fourteenth and Fifteenth Amendment.⁹ Initially, this federal legislation lacked support and enforcement power, but over time it helped change the political landscape specifically in areas where segregation was deeply rooted. The Voting Right Act has been revised and adapted to mitigate issues where the law was not secured. The VRA sought to protect minority voting in the United States. For example, several states were blocked by the courts from implementing strict voter ID laws and cutting back early voting due to probable disproportionate impact on minority and elderly voters in the 2012 General Election.¹⁰ The act became a salient topic in 2013 when certain provisions of the law came under scrutiny in the U.S. Supreme Court. In *Shelby County v. Holder* (2013), the Justices evaluated whether specific required provisions of the VRA were still necessary in modern time.¹¹ Section 5 was meant to enforce a pre-clearance prior to making adjustments to state voting procedures in specific southern states, including the states of Alabama, Georgia, Mississippi, South Carolina, and Virginia, that had a history of discriminatory practices. Members of Congress representing jurisdictions subject to the preclearance were substantially less supportive of civil rights–related legislation compared to policymakers in jurisdictions not subject to the preclearance.¹² Ultimately, the Supreme Court removed the provision of Section 4 that determined what areas needed preclearance in Section 5 and weakened certain safeguard measurements within the Voting Rights Act.¹³ This judicial decision allows certain regions and policymakers more autonomy and discretion on electoral regulations, in predominantly communities where underrepresented groups may be more vulnerable to unequal treatment.

⁹ Sophie Schuit, and Jon C. Rogowski, “Race, Representation, and the Voting Rights Act,” *American Journal of Political Science* 61, no. 3 (2017): 513.

¹⁰ Thomas L. Brunell and Whitney Ross Manzo, “The Voting Rights Act After Shelby County V. Holder: A Potential Fix to Revive Section 5,” *Transatlantica* 1, no. 1 (2015): 6.

¹¹ Oyez, *Shelby County v. Holder* (2013).

¹² Schuit & Rogowski, “Race,” 519.

¹³ Oyez, *Shelby County v. Holder* (2013).

As mentioned, *Shelby County v. Holder* (2013) weakened provisions in the VRA and allowed for ambiguities and loopholes that could increase the likelihood of disenfranchisement occurring. There are many modern tactics that can disproportionately impact minorities, individuals with disabilities, or elders. Gerrymandering, the process of redistricting, strict voter ID laws, the frequency of polling localities, and voter purging, can all impact who is in the electorate. If not done carefully, the process of updating and cleaning up voter registrations rolls can lead to voter purging. The National Voter Registration Act Of 1993 (NVRA) holds that individuals cannot be removed from registration rolls simply for not actively voting in frequent elections.¹⁴ Another impact of the Supreme Court ruling in *Shelby County v. Holder* (2013) was the increasing rate of voter purging rates - between 1.5 and 4.5 points immediately - in jurisdictions formerly protected by the provisions.¹⁵ Other more direct forms of voter suppression occur through policy enacted. During 2017, 99 bills were introduced to limit access to the ballot and created new voting restrictions in 31 states, more than during both the 2015 and 2016 fiscal year.¹⁶ Following November's election, many states have issued voting bills with both expansive and restrictive voting rights. Currently, thirty-seven states have introduced or carried over 541 bills to expand voting access; 125 of these bills come from New York and New Jersey.¹⁷ Election security and accessibility is a salient topic, showing the interest and commitment to strengthening election legislation. However, thirty-three states have introduced or carried over 165 restrictive bills, showing an increase in over four times the number of voting bills introduced during the previous fiscal year *See Figure 2*.¹⁸ For example, in Georgia, a bill aimed to restrict ballot drop boxes, require more ID for absentee voting and limit early voting days passed on partisan lines.¹⁹ There has been a surge in restrictive voting bills following the election. The states introducing restrictive bills are not limited only to Southern states. A commonality among these states is that most have been introduced or supported by Republican

¹⁴ Carol Anderson and Senator Dick Durbin, *One Person, No Vote: How Voter Suppression Is Destroying Our Democracy* (New York, NY: Bloomsbury Publishing, 2018), 59..

¹⁵ Catalina Feder and Michael Miller, "Voter Purges After Shelby," *American Politics Research* 48 (SAGE Publications, 2020), 687. 1532673X2091642. 10.1177/1532673X20916426.

¹⁶ Anderson & Durbin, *One Person, No Vote*, 109.

¹⁷ Brennan Center for Justice, 2021 Provides both the stricter voter laws and the more expansive voter bills introduced.

¹⁸ Brennan Center for Justice, 2021 Map obtained from the latest update from the Brennan Center

¹⁹ Mark Niesse, "Voting Restrictions Bill Passes Georgia House over Strong Opposition," *Knight-Ridder/Tribune Business News* (Chicago: Tribune Content Agency LLC, 2021).

legislators. The following section will showcase various states' responses and how voter suppression tactics can be seen as a partisan issue.

HEALTH CRISIS IN AN ELECTORAL YEAR

My interest in analyzing voter disenfranchisement arose from an electoral year's occurrence within an unprecedented global health crisis. Although previous electoral years have occurred during economic recessions, health crises, or other national security issues, the 2020 general election was distinctive to past elections. It is essential to analyze the impact of COVID-19 on the election to determine the rate at which the pandemic may or may not have been utilized as an “excuse” or political cover-up to disenfranchise voters. I am particularly interested in examining southern states known for having more likelihood of disenfranchisement practices. Conducting an election during a global health crisis can bring many challenges and concerns. The information gathered during the primary elections and following the November election highlights the differences in response to each state's adaptations to conduct a safe election. About 16 states decided to postpone primary elections or change in-person voting to predominately vote-by-mail elections.²⁰ Some states also faced a lack of resources and time constraints to adjust. For example, after the Wisconsin primary election, officials struggled to process a surge of absentee ballots' applications, leaving thousands of requested absentee ballots undelivered in a timely manner.²¹ Not receiving an absentee ballot promptly due to administrative errors creates another complexity of finding an alternative, like in-person voting. In some places, poll sites were oversaturated, putting the health of the public at risk.

The resources and ability to respond to the pandemic's constraints quickly were problematic in some states and local cities. Another factor impacting the accessibility of voting was the availability of voting polls. Many polling localities were also significantly reduced to mitigate the spread of COVID-19. In September 2020, the Select Subcommittee on the Coronavirus Crisis Committee on Oversight and Reform held a hearing to provide recommendations following the Center for Disease Control and Prevention guidelines. The purpose of the hearing was to promote a free, fair, and secure election after many states faced

²⁰ Marc Berman, “Protecting the Right to Vote in California’s 2020 Election While Keeping Voters, Election Workers and the Public Safe,” *California Journal of Politics and Policy* 12, no. 1 (2020): 1.

²¹ *Ibid.*

constraints and a lack of accessible voting options during the primary elections. According to the Committee, some Georgian voters waited up to five hours to cast their ballots; Texas voters endured lines up to seven hours long; 97% of polling localities closed in Milwaukee, Wisconsin; and 112 polling places across Florida were closed or changed.²² Both Texas and Georgia are Southern states showing a consistency in certain practices that can decrease the rate of voting by making the voting process more time-consuming. Not only does this raise ethical issues, but it also brings health concerns. Fewer polling localities increase the likelihood of longer-wait lines.

Milwaukee is Wisconsin's largest city and projected more than 50,000 voters. However, the number of polling locations were drastically reduced from over 180 localities to only five.²³ Although Wisconsin is not a southern state, voter suppression is common in other states and is not solely limited to one geographic area. However, this does not discredit that southern states have historically struggled with this issue. Another commonality was the disproportionate rate of casting a vote, typically in more impoverished, racially minority neighborhoods compared to more affluent and predominantly white communities.²⁴ Many factors contribute to the ability to cast a ballot; for example, a state with strict ID laws can make it more challenging for low-income individuals who may lack the resources or means to obtain one. These factors were concerns before the 2020 election. After the election, legislators in eighteen states have introduced 40 bills to impose new or more stringent voter ID requirements for both in-person or mail voting.²⁵ COVID-19 impacted many aspects of daily activities, but it also provided states the ability to implement new strategies that could help ensure the right to vote. In other cases, the discretion to utilize the pandemic became a political tactic to suppress the right to vote.

COMPARATIVE ANALYSIS OF VOTING IN STATES

This research paper aims to evaluate and analyze what regions are more commonly associated with the practices of indirectly or directly causing voter disenfranchisement. The United States is a highly diverse country ranging from various geographic locations, ethnic

²² US Government Publishing Office, 2020.

²³ Brad Friedman, "Wisconsin, Georgia Still Hard at Work on Vote Suppression, Even During COVID-19 Crisis: BradCast 3/26/2020," *The Brad Blog* (Los Angeles: Newstex, 2020).

²⁴ Kevin Quealy & Alicia Parlapiano, "Election Day Voting in 2020 Took Longer in America's Poorest Neighborhoods," *The New York Times*, 2021.

²⁵ Brennan Center for Justice (2021) Provides restrictive and expansive voting legislation and the general topics the bills incorporate.

groups, socio-economic status, or education levels. For consistency, I will be examining California's election procedure as my main point of comparison. Some states enforce strict rules to determine who can vote, while others create mechanisms to allow voting to be more accessible and easier to navigate. Since there is not a “uniformed-consensuses” or formalized rules all state elections must follow, elections are decentralized and independently operated on a state-by-state basis. The tenth amendment grants states the powers not delegated or prohibited to the United States by the Constitution.²⁶ This explains the wide differences in the procedure routine of voting across the U.S and the freedom to self-regulate. As old tactics of voter disenfranchisement become outdated, states began implementing newer versions with similar purposes like: “voter caging,” strict voter identification laws, and more complex registration procedures.²⁷ The 2020 General Election was no exception to concerns about accessibility. Prior to the distribution and availability of vaccines, the United States experienced a continuous rise of Covid-19 cases. The pandemic created new challenges during the elections since traditional voting methods were not the most feasible or recommended given the health concerns. While in-person voting in many regions was considered high-risk, it also provided the opportunity for change, such as early voting or absentee ballots in states that traditionally did not promote this opportunity. The right to vote by nature is more accessible in certain U.S. states compared to others.

Some states actively make improvements to ensure voting is accessible. In contrast, other states tend to have more requirements that create more obstacles and limit the options available to cast a ballot. States like California have incorporated many improvements to make voting more accessible from its nearby states. For example, California adopted a similar model to Oregon’s automatic voter registration (AVR) to automatically preregister youth (ages 16/17) to vote once they turn eighteen or adopting same-day registration after examining the positive impact Colorado had during the 2014 election.²⁸ The right to vote in California has not always been accessible; like many other states, it has a history of discriminatory practices against minorities. Although I will be using California as a state constantly improving and aiming to make voting more accessible, it has not always been a prominent leader in the expansion of

²⁶ Rossum & Tarr, *American Constitutional Law*.

²⁷ Mario Q Fitzgerald, “A New Voting Rights Act for a New Century: How Liberalizing the Voting Rights Act’s Bailout Provisions Can Help Pass the Voting Rights Advancement Act of 2017,” *Brooklyn Law Review* 84, no. 1 (2018): 223.

²⁸ Anderson & Durbin, *One Person, No Vote*, 110.

voting rights. Some regions within the state, particularly in rural areas, are heavily impacted by racial gerrymandering and other factors that can suppress minority groups.

Overall, California has improved and created new techniques to make voting more accessible, which is why it can be a good model for other states. In 2012, California passed a law permitting online voter registration - encouraging more than 1 million people to join the electorate under the new system.²⁹ Budget concerns and costs associated with new improvements can often be an obstacle or rationale against challenging the status quo. However, this expansion of providing the option of online registration was attained through minimal administrative cost and positively increased the electorate's size. The 2020 General Election was the first election cycle since the 2015 California New Motor Voter Act (AB 1461, Gonzalez) which, if not opted out by an individual, automatically registers eligible citizens to vote during the application or renewal of a California driver's license.³⁰ This initiative helps eliminate the need to take extra steps to register to vote as it can be done automatically while obtaining a state drivers license. The recent election also incorporated the first extensive use of the 2016 California Voter's Choice Act (SB 450, Allen)³¹ allowing counties to conduct elections under a modernized system in which every registered voter is mailed a ballot, expansion of early voting, and the ability to cast a ballot at any voting center within one's county. The result of these measures is evident by the state's highest percentage of registered voters since the 1940s, estimated at more than 84% of Californians being registered to vote. Allowing more options can help increase voter turnout and decrease the threat of systematically disenfranchising individuals. Absentee ballots in many states helped increase the voter turnout rate. Examining places like California - that incorporated more voting options for voters prior to the election - can help address voter disenfranchisement. States that are constantly improving the ability to vote are important to analyze, in an effort to mitigate voter suppression in other regions.

Minority-voter suppression is not a new phenomenon; in the past, it has affected Native Americans, Asian Americans, and many other groups who continue to be affected today. Voter suppression is a method to help sway election results or limit certain groups from obtaining political power and representation. While some states quickly adjusted to allow for more safe

²⁹ Morley Winograd and Michael D. Hais, "Voting, California-Style," *The Los Angeles Times* (Los Angeles, Calif: Los Angeles Times Communications LLC, 2012).

³⁰ Berman, "Protecting the Right to Vote," 1.

³¹ Berman, "Protecting the Right to Vote."

and viable voting options, other states used the pandemic as a cover to continue or exacerbate the past behavior of voter suppression. One of the southern states I will be focusing on is Texas - which provides an example of constant attempts to utilize modern voter suppression tactics. A month before the November election, Texas governor Greg Abbott (R) restricted the number of drop boxes for completed ballots to one location per county. This decision presents a substantial threat in places like Harris County, with a population of 4.7 million residents, 70% of whom are non-white and likely to vote Democratic.³² Having only one voting locality can overburden the voting poll and discourage voters. The reasoning behind this action was the prevention of voter fraud. However, it is also possible that these actions stem from other political motives - the desire to remain in power and control among political parties. Since Harris County has a high percentage of Democrat voters, the threat of a close margin or losing power can cause Republican legislators to introduce changes that can have harmful consequences. Secure elections are a priority and essential; however, evidence to fully support allegations of fraud occurring—which many Republican lawmakers reference—typically are unfounded. Republican legislators in Wisconsin used similar “fraud” prevention rhetoric to justify similar actions. In North Carolina, enforcing the need for a witness signature on ballots posed many obstacles. A witness signature's requirement led to many ballots being set aside before being counted, which disproportionately affected Black voters in the state. State elections data showed that Black voters made up 16% of overall returned ballots during early voting, contributing to 43% of the ballots with incomplete witness information.³³ These extra procedures make voting a more complex process. Voting disenfranchisement is not limited to southern states, but there is a notable trend in it being more frequently seen in states or counties with Republican-leaning legislators. It is critical to acknowledge that not all Republicans support modern voter disenfranchisement tactics. Generalizing an entire group would bring bias. This paper aims to show that modern voter suppression occurs more often in Republican governed areas.

While many prominent political figures - particularly within the Republican party and notably in southern states - attempted to create obstacles to casting a ballot, some voting frontline workers, public servants, and volunteers ensured voting was accessible. For example, a federal judge in Harris County dismissed a lawsuit challenging the legality of drive-thru voting. The

³² “Don’t Rob Them, Count Them; American Democracy,” *The Economist* (London: 2020), 15.

³³ Gary Robertson and Scott Bauer, “Voters Struggling with witness rules in early voting,” *Associated Press*, 2020.

decision rejected a request by three Republican candidates to dismiss 127,000 votes casted through drive-thru polling sites in this populated county.³⁴ Although drive-thru localities were limited in Texas, eradicating this voting option can create extra burdens on voters, given the time-constraints and health concerns of being exposed in an in-person voting location versus a drive-thru polling site. Texas also has limitations on voter registration, making the procedure highly bureaucratic and intimidating to both voters and volunteers who devote time to distribute election information. Voter registration campaigns and grassroots movements can be a possible solution to alleviate this issue and ensure more eligible voters from all political party affiliations are a part of the demographics being registered and counted. Some states attempt to keep voters off of the rolls. For example, during 2018-2019, at least 160,000 voters - which were disproportionately people of color - in Georgia, Ohio, and Texas were wrongly removed or marked for removal from the electoral records.³⁵ This practice is referred to as voter purging. In 2018, Tennessee passed a law - supported by all but one Republican legislator and no Democrats legislators - that sanctions groups engaging in voter registration campaigns.³⁶ Activists acknowledge this as unfair, modern voter suppression policies. Similarly, Republican legislators in Tennessee have also effectively criminalized the legitimate process of registration drives conducted by nonprofits.³⁷ Penalizing registration drives makes it more challenging for volunteers, grassroots organizations, or nonprofits to help increase civic engagement and incorporate groups that are traditionally excluded from the political process.

Although there were attempts to suppress the right to vote, some individuals advocated a more accessible voting process. For example, Stacey Abrams played a critical role in the 2020 General Election, especially within the special Senate Runoff election in Georgia. Abrams is a prominent voter rights activist who has allocated many resources and time to dismantle oppression systems that impede voting rights. Her efforts were to mobilize voters, especially within the Black community. Abrams strategically raised money across the state and mitigated a large-scale attempt to register voters. She served ten years in the Georgia House and in 2018 lost

³⁴ "Texas 2020 Elections: Harris County Democrats' Headquarters Vandalized," *The Texas Tribune*, 2020.

³⁵ "Don't Rob Them," 15.

³⁶ Vanessa Williamson and Jackson Gode, "Red-Tape Voter Suppression: How New, Draconian Voter Registration Rules Undermine Voting Rights," (Washington: The Brookings Institution, 2019).

³⁷ Andrew Gillum, "We must Not Let Voter Suppression Win in 2020 another Viewpoint," *South Florida Sun - Sentinel*, Jan 16, 2020. Former Democratic Gubernatorial candidate in Florida expresses concern for voter suppression.

the Democratic gubernatorial nominee by a slight margin of 1.4% to her opponent.³⁸ As a public servant, she created the New Georgia Project - a mechanism to locate, register, and increase Democratic voters in overlooked communities - and Fair Fight and Fair Fight Action - a fundraising powerhouse that raised over \$32 million in the 2020 election cycle - to register voters.³⁹ Efforts like these helped turn Georgia, a state known for historically disenfranchising people of color, into a blue state after many years. Voter suppression - especially in communities that feel detached from the political sphere - is a challenge, showing the need to restore the Voting Rights Act and mobilize and incorporate vulnerable groups in the electorate.

POLARIZED POLITICS IN THE ELECTORATE

Previously, the difference in election procedure among states was shown using California and Texas as a point of comparison. Further research can be conducted on other states, but this paper does not analyze all fifty states due to limitations. Another factor to examine is the stark differences each political party takes in response to election integrity and security. The modern U.S. political environment has continued to become highly polarized and voting rights are no exception to the partisan divide.⁴⁰ Allegations about voter fraud are common justifications for imposing strict voter ID laws and policies that can create extra burdens. The Brennan Center's seminal report on voter fraud occurrences found that most reported incidents are attributed to other errors, like clerical errors or bad data matching practices, and revealed incident rates between 0.0003 percent and 0.0025 percent.⁴¹ However, voting fraud allegations are common and supported by Republican legislators at higher rates. Voter identification laws have become one of the most contested electoral administration aspects in contemporary politics deriving controversy. States like Mississippi and Missouri - both having higher Republican party affiliation - are ranked as having more Voter ID laws restrictions *See Figure 1*.⁴² Opponents of strict Voter ID laws reference the disproportionate effect on minority voters less likely to have the required form of identification. Obtaining the correct government issued document or address

³⁸ Henry Farrell, "There's a Long History Behind Stacey Abrams," *The Washington Post*, 2020.

³⁹ *Ibid.*

⁴⁰ Patrick R. Miller and Pamela Johnston Conover, "Red and Blue States of Mind: Partisan Hostility and Voting in the United States," *Political Research Quarterly* 68, no. 2 (2015): 225.

⁴¹ Brennan Center, (2017) Taken from an extensive research study analyzing the probability of voter fraud.

⁴² Lui, (2020) Obtained from a study evaluating the different voter suppression tactics.

requirements has the opportunity costs of time, money, and resources to ensure they will be accepted in a timely manner. One group affected by this is the homeless population; approximately 60% – or 2.1 million homeless individuals –are of age to vote, yet only one in every three homeless people are registered to vote.⁴³ Every state has a policy allowing the homeless to vote, but many still face obstacles to register such as residency or ID requirements. It is important to verify the identity of a voter, but there are less restrictive and more feasible manners to verify this process.

Individuals aspiring for a political position utilize social identities to form beliefs and behaviors to protect a group's positive image, leading to in-group favoritism and out-group derogation.⁴⁴ Like many election cycles, the media, campaigning, debates, and online social media can heighten social identities. The 2020 election was no outlier to this phenomenon. Research observing the average partisans in contemporary U.S. politics during elections explains how electoral competition promotes hostile attitudes and strengthens party loyalty and preservation.⁴⁵ The research for the psychology of partisan competition further shows that the competitiveness of the electoral environment is critical to explaining how partisan identities influence competition and hostility during an election; in addition, close elections directly increase the level of hostility toward the opponent. Contemporary elections are decided with increasing frequency by margins as small as 1%, showing every vote's significance.⁴⁶ Legislators and administrative responses and handling of economic assistance, health concerns, and other factors caused many Congressional seats and Presidential reelection to be at risk. A close margin among polls before the election can influence legislators to act in ways in which the outcome will be more favorable to their political party. This was notable in places like Harris County, Texas, where new rules were imposed in specific areas that disproportionately impacted minority voters more likely to vote against their political parties' interests.

Instead of playing a constructive role in encouraging voters to vote using safer options like early voting by mail, as recommended by the CDC, the Trump administration utilized

⁴³ Terrance, Ruth, Jonathan Matusitz, and Demi Simi, "Ethics of Disenfranchisement and Voting Rights in the U.S.: Convicted Felons, the Homeless, and Immigrants," *American Journal of Criminal Justice* 42, no. 1 (2017): 62.

⁴⁴ Rupert J. Brown, "Social Identity Theory: Past Achievements, Current Problems, and Future Challenges," *European Journal of Social Psychology* 30, (2000): 745.

⁴⁵ Miller & Johnston Conover, "Red and Blue States of Mind," 226.

⁴⁶ Andrew Gillum, "We must Not Let Voter Suppression Win in 2020 another Viewpoint."

rhetoric and claims that spread discord, fear, and antitrust in the democratic voting process.⁴⁷ Claims that questioned the practice and security of mail-in ballots were not the most practical, especially given an electoral year with unprecedented external circumstances. Although some legislators have expressed concerns and allegations of voter fraud, particularly in the Republican party and by former President Trump, there has been little to no evidence to support this common concern. Many courts have rejected the matter. The Trump campaign and Republican allies had a 1-50 record in their post-election lawsuits challenging the result of the 2020 election.⁴⁸ The president's statements about voting fraud before and after the election was an effort to subvert an unfavorable electoral outcome. Voter fraud allegations existed among the modern Republican Party - before the Trump administration - as a political tactic to create distrust in the political system.⁴⁹ Republican legislators are more likely to support mechanisms and regulations that make voter suppression more likely to occur to protect against fraudulent voter participation. Maintaining election security both from the interference of foreign governments and from domestic fraudulent behavior is essential. However, it should not be the basis used to support the possibility of voter disenfranchisement occurring. According to Attorney General William Barr, despite the constant claims of "electoral fraud," the Justice Department has found no evidence of widespread fraud in the 2020 elections.⁵⁰ These claims create distrust and, in this election, can lead to incite violence. The possibility of fraud in an election is very minimal. However, it continues to justify measurements that make voting more complex.

FUTURE IMPLICATIONS

Since the founding of our country, political tactics and regulations have been utilized to suppress certain eligible voters. In modern times, this has continued in less discrete, modern tactics with new justification for old habits. As mentioned, voter suppression political tactics have a higher probability within southern states or Republican-leaning legislators. Since the

⁴⁷ U.S. Government Publishing Office, 2020.

⁴⁸ Alison Durkee, "Trump And The GOP Have Now Lost More Than 50 Post-Election Lawsuits," *Forbes*, 2020.

⁴⁹ Amy Fried and Douglas B Harris, "In Suspense: Donald Trump's Efforts to Undermine Public Trust in Democracy," (Author Abstract), *Society* (New Brunswick) 57, no. 5 (2020): 528.

⁵⁰ Ryan, Lucas, "Barr: DOJ Has No Evidence Of Fraud Affecting 2020 Election Outcome," National Public Radio, 2020.

United States is highly diverse and demographics constantly change, a shift in the behavior of attempting to subvert certain voters, mainly from underrepresented communities, can benefit political support for either political affiliation.

Future research should build on trends of voter suppression as more data and information becomes available. Possible research includes, but is not limited to, examining modern disenfranchisement tactics and solutions to help alleviate these issues, specifically in communities most vulnerable to voter suppression. Gerrymandering, redistricting, and restricting voting directly through the process of laws and policy can have negative consequences. Whether done intentionally or not, these political tactics play a critical role in consolidating political power and diluting eligible voters' rights.

The United States has progressed to protect the constitutional right to vote, but this does not diminish the fact that more efforts are needed. The United States has had a long history of racially suppressive voting regulations that unevenly impact individuals, especially low-income, people-of-color, veterans, disabled individuals, formerly incarcerated individuals, or elders. It is vital to ensure every American has the opportunity to exercise their right to vote. Through legal action, mobilization, and grassroots support, improvement is possible to change the status quo in areas commonly associated with voter disenfranchisement. Voting should not be limited nor unappealing due to the constant enforcement of evolving, challenging voting restrictions. A consensus across political party affiliations is crucial in order to ensure every eligible American - especially the groups most vulnerable to voter disenfranchisement - has the right to exercise their constitutional voting right in practice, not simply in “theory.” The 117th Congress passed the H.R. 1 - For the People Act of 2021 in the House of Representatives on March 3, 2021.⁵¹ This bill is an important step in strengthening our democracy by providing more accessibility and accountability in elections. The bill discusses topics ranging from election integrity, campaign finances, ethics in each government branch, entailing the three branches of government, and independent redistricting committees. A crucial element of the bill also addresses voter accessibility by recommending same day registration, early voting, or limits removing voters from registration rolls. Supporting this bill would help increase the eligible electorate, especially

⁵¹ Congress, (117th CONGRESS First Session, 2021) Legislation concerning H.R.1 - For the People Act of 2021.

in states who do not incorporate these feasibilities to make voting more difficult. In 2019, the bill was initially introduced but blocked in the Senate. Reintroduced as H.R. 1 in 2021, legislators can help expand access to voting, but this will need to pass the Senate and reach the Executive office before becoming a law, leaving uncertainty to its resolution. Ultimately, the fate of this bill lies in the hands of the Senate.

The 2020 General Election will leave its historical imprint in American politics - being a divisive year, a struggling economy, and a global health crisis that has brought immense loss to our nation. It will also be remembered for the violence and loss of democratic values witnessed on January 6, 2021 - nearly two months after the Associated Press announced the election results. Many factors contributed to this insurrection at the Capitol building. One factor was the constant rhetoric of former President Trump and close members of the President's political party in creating division and distrust in the electoral process. Unfortunately, this government distrust led to the uprising of a violent mob of right-wing extremists citing a "stolen election." Due to the modern forms of voter disenfranchisement and the recent surge in more restrictive voting legislature, more efforts and restoration in the Voting Rights Act are essential to ensure the right to vote is protected. The 2020 general election will also be remembered positively for having the highest voter turnout in recent times. If a high voter turnout rate is the new norm, this election can help set a precedent to practices that helped make voting more accessible, especially in states who implemented recent changes for the first time. The more states protect the right to vote and mobilize individuals, particularly from underrepresented or overlooked communities, the more it can increase the electorate and turnout rate. In the 21st century, it is unacceptable to allow modern forms of voter disenfranchisement to continue to be a constant norm, especially in southern states and further aggregated among legislators associated with a Republican-leaning political affiliation. This research paper explains the need for more actions to strengthen the Voters Rights Act or any similar legislation that aims to protect the process of exercising this right. In order to be an inclusive and representative democracy we must guarantee the commitment to safe, accessible, and fair elections. This should not be a partisan issue. Ultimately, both political parties should share the consensus to protect the rights of Americans and strengthen our democracy. Every American deserves the right to partake in the democratic process of electing one's representatives. This right was long fought for in America - it is up to legislators from both aisles to safeguard this right.

APPENDIX

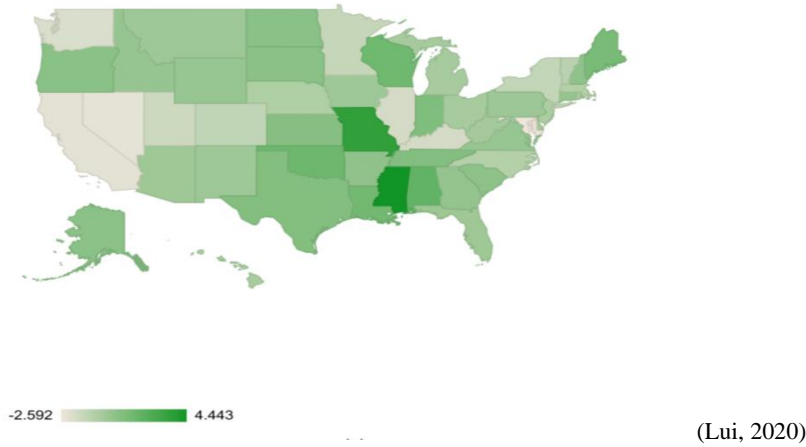
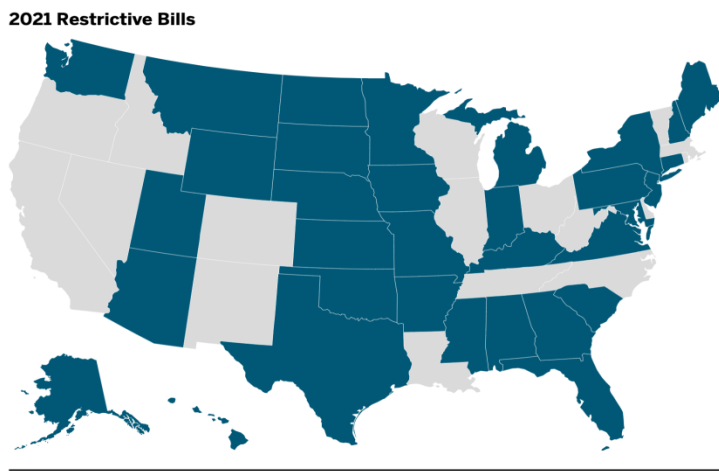


Figure 1. Retrieved from Professor Bodong Liu’s study creating a voting suppression index. The darker green states have more restrictions in terms of ballot counting, mail-in access, early voting and voter ID requirements. <https://attheu.utah.edu/facultystaff/liu-voting-rights/>



(Brennan Center, 2021)

Figure 2: Map created by the Brennan Center Justice showing the states that have introduced restrictive voting bills following the 2020 General Election. Last updated February 2021. <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2021>

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THE POLITICAL PARTICIPATION OF MUSLIM WOMEN AND THE PROCESS OF SOCIAL INTEGRATION: A CASE STUDY OF CONGRESSWOMEN ILHAN OMAR AND RASHIDA TLAIB

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As progressive members of religious and racial minorities, Ilhan Omar and Rashida Tlaib were successful elected to Congress. Though the journey to becoming a Member of Congress is usually difficult and demanding, the two Congresswomen overcame their respective challenges. I hypothesize that there are similarities in the characteristics of social integration in the state-level society where their elections took place. I will analyze the case of the 2018 election in Minnesota and Michigan, where there was a historic moment when two Muslim women were elected. This comparative study investigates the relationship between the social integration of a community and the election of political candidates who have intersecting social identities, which may yield key insights for American policymakers seeking to achieve integration that values diversity in society and bringing diverse candidates to political roles.

INTRODUCTION

The number of Muslims around the world has been increasing rapidly.¹ At the same time, prejudice and discrimination against them have increased dramatically in the last decade. Studies have shown that Muslim women in the West are more likely to be discriminated against, because of the Western orientalist discourse in politics and the Islamist political movements.² The United States is not an exception. Muslims are “often made to feel like second-class citizens.”³ While it is apparent from the recent studies that there is ongoing discrimination against Muslim American women in the Western world, we have also witnessed a historic moment with the first two Muslim women elected to the United States House of Representatives in 2018 as part of the

¹ Besheer Mohamed, “A New Estimate of U.S. Muslim Population.” Pew Research Center. Pew Research Center, May 30, 2020. <https://www.pewresearch.org/fact-tank/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow/>; Gordon Conwell, “How Many Muslims Are There in the United States?” October 26, 2019. <https://www.gordonconwell.edu/blog/how-many-muslims-are-there-in-the-united-states/>.

² Shahnaz Khan, “Muslim Women: Negotiations in the Third Space.” *Signs: Journal of Women in Culture and Society* 23, no. 2 (1998): 463–94. <https://doi.org/10.1086/495259>.

³ Robert Farley, “Fact Check: Rep. Ilhan Omar's 9/11 Comments in Context.” NBC Los Angeles. NBC Southern California, April 16, 2019. <https://www.nbclosangeles.com/news/national-international/fact-check-rep-ilhan-omars-911-comments-in-context/182245/>.

“squad”. Ilhan Omar won 78% of the vote in her race in Minnesota, where the majority of voters are white (84%) and Muslims account for only 1% of the population. Rashida Tlaib won 84% of the vote in her race in Michigan, though the residents of Michigan are 79% white and 1% of the population are Muslims. How were Ilhan Omar and Rashida Tlaib successfully elected to Congress when most of their voter base did not share the same religious, ethnic, or racial background? There are two approaches to answering this question. One is a bottom-up approach which is based on the hypothesis that social integration in the state-level society where the election of the House members took place was the key to winning. Another is a top-down approach, which presupposes that the political system in the United States at the federal level has prompted the election of minorities. This essay will focus on the former.

This research is essential for U.S. government policymaking. Muslim Americans are becoming a crucial part of American politics. This is apparent from how President Joe Biden sought out Muslim voters during the 2020 election, with the “Million Muslim Votes” campaign, which advocates for the importance of Muslim American voter participation.

Considerable support from citizens is necessary to become a representative in the federal government, as compared to the local government or the state government. For a citizen from a minority group, it is crucial to be accepted by both the community-level and state-level society. Thus, I hypothesize that the social integration of minority citizens is the key factor for the election of politicians with a minority background. This paper will analyze the case of the November 2018 mid-term Congressional elections, focusing on how the election of two Muslim Congresswomen Ilhan Omar and Rashida Tlaib was possible. To answer this question, the research will conduct a) a comparative study of the two states (Minnesota and Michigan) from the angle of diversity promotion and the process of social integration, and b) reveal the factors leading to the election of two Congresswomen in relation to the social integration of the local community.

ELECTING CANDIDATES WITH MULTIPLE SOCIAL IDENTITIES

This section will highlight the importance of electing candidates with intersecting identities (e.g., race, ethnicity, gender, etc.) as political representatives in the United States. It

will be followed by an examination of the current lack of representation of minorities in elected political office and an analysis of the cause of this phenomenon.

The “intersectional” approach is an important perspective to the study of the election and incorporation of minorities into political office.⁴ The concept of intersectionality describes the undefined area where existing social identities of race, gender, sexuality, and class overlap each other. The concept of “intersectionality” according to McCall, is considered the “most important theoretical contribution that women’s studies, in conjunction with related fields, has made so far.”⁵ Collins sees how several inequalities shaped the multidimensional oppression of a person of diverse social identities, viewing oppressions as not “added” but rather intersecting.⁶ The intersection can be “greater than the sum of racism and sexism.”⁷ The election of individuals who have intersecting social identities has a distinct and important impact on political outcomes. One study found that on the issue of welfare reform, female state legislators, regardless of race or ethnicity, will reduce the restrictive or demanding aspects of reform.⁸ The research also reveals that legislative women of color have the strongest countervailing effect on welfare reform in comparison to other women or men of color. Additionally, women of color were “the most effective advocates for poor women in the era of welfare reform.”⁹ This is why “more diverse states are more willing to elect women of color, and/or that those states contain a larger pool of potential candidates.”¹⁰ In short, a political representative with intersecting social identities has a

⁴ “Refers to both a normative theoretical argument and an approach to conducting empirical research that emphasizes the interaction of categories of difference (including but not limited to race, gender, class, and sexual orientation)” See Ange-Marie Hancock, “When Multiplication Doesn’t Equal Quick Addition: Examining Intersectionality as a Research Paradigm.” *Perspectives on Politics* 5, no. 01 (2007): 63. <https://doi.org/10.1017/s1537592707070065>.

⁵ Leslie McCall, “The Complexity of Intersectionality.” *Signs*, vol. 30, no. 3, 2005, pp. 1771–1800. JSTOR, www.jstor.org/stable/10.1086/426800.

⁶ Patricia Hill Collins, “Black Feminist Thought : Knowledge, Consciousness, and the Politics of Empowerment.” Vol. Rev. 10th anniversary ed, Routledge, 2000. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&site=eds-live&db=nlebk&AN=70795.

⁷ Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum*: Vol. 1989: Iss. 1, Article 8. Available at: <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>

⁸ Beth Reingold and Adrienne R. Smith, “Welfare Policymaking and Intersections of Race, Ethnicity, and Gender in U.S. State Legislatures.” *American Journal of Political Science* 56, no. 1 (2011): 131–47. <https://doi.org/10.1111/j.1540-5907.2011.00569.x>.

⁹ *Ibid*, p.143.

¹⁰ Kira Sanbonmatsu, “Why Not a Woman of Color?: The Candidacies of US Women of Color for Statewide Executive Office.” *Oxford Handbooks Online*, September 2015, 10 February 2021. <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935307.001.0001/oxfordhb-9780199935307-e-43>.

high possibility of giving positive effects on society. The political representation of Muslim women is also important as it could contribute to defeat the Islamophobia that is prevailing in the country.

Though the importance of diversity in politics is apparent from past studies, the number of women and minorities elected for office in the United States continues to be less than their share of the population. The current share of women in the United States is 51%, while 39% are non-White. In comparison, only 24% of the 116th Congress are women, and 22% are Black, Latino, Asian American, or Native American.¹¹ Studies have shown that compared to White men, women and African Americans consider running for office at lower rates.¹²

The disparities of political candidates can be explained through several theories. One is the existence of voter bias. This theory is based on the idea that strong biases operate within subgroups of voters during elections, and that similarity between candidate and voter in terms of race, sex, and age makes the candidate more attractive or unattractive.¹³ A study by Lee Sigelman and Carol Sigelman showed that male voters displayed a significant bias against Black female candidates. Because candidates of intersecting social identities are inevitably minorities within minorities, it is difficult for them to gain support from voters. Another recent study suggests that the underrepresentation of women and minorities could be explained by the “gendered pathways of candidate emergence.”¹⁴ According to the surveys of state legislators conducted from 1981 to 2008 by the Center for American Women and Politics, the pathways that women use to enter the political world are not revealed by the previous framework of explaining gender imbalance from the difference of political ambition. Their data indicate women legislators place greater weight on other people’s opinions when deciding to run for office than men, rather than being “ambitious” self-starters. The lack of party support could be a key factor for the underrepresentation of minorities and women in the political arena. Minority Democratic candidates have denounced the party for a perceived lack of financial support outside of

¹¹ CAWP, Center for American Women and Politics. “Women in Elected Office 2019.” <https://cawp.rutgers.edu/women-elective-office-2019>; Kristen Bialik, “For the fifth time in a row, the new Congress is the most racially and ethnically diverse ever.” Pew Research Center. Washington, DC.

¹² Richard Fox and Jennifer Lawless, “To Run or Not to Run for Office: Explaining Nascent Political Ambition.” *American Journal of Political Science* 49(3):642–659.

¹³ Lee Sigelman and Carol K. Sigelman, 1982. “Sexism, Racism, and Ageism in Voting Behavior: An Experimental Analysis.” *Social Psychology Quarterly* 45:263–269.

¹⁴ Susan J. Carroll and Kira Sanbonmatsu, *More Women Can Run: Gender and Pathways to the State Legislatures*. Oxford: Oxford University Press, 2013.

minority-majority districts.¹⁵ In terms of Latino candidates, there is data that they are reliant on local fundraising networks and other non-party supports at the primary stage.¹⁶ There is also data to suggest that local partisan candidate recruitment networks are often biased in favor of men and Whites.¹⁷

On the other hand, some studies show that intersectionality could be an advantage for political candidates. While one study shows that African American legislators have significant barriers to influence, another indicates that Latina state legislators are benefiting from “strategic intersectionality” due to their location at the intersection of multiple communities.¹⁸ The concept displays the possibility that women of color legislators may “utilize their intersectionality in ways that are likely to provide them with strategic advantage in the process of policy-making.”¹⁹ This is useful when analyzing the election of Ilhan Omar and Rashida Tlaib, who also have “multiple identity advantage” and a “gender inclusive advantage.”²⁰

It is important to note the difficulty for Muslims to be elected as political officials in the United States as compared to many other minority groups. As of 2020, only four Muslim Americans have ever been elected to Congress. Data shows that 172 Muslims across the United States ran for office during the 2018 midterm elections. Of those, 63 won their elections, but only 2 made it to the federal government. Compared to other religious minorities such as Mormon or Jewish members, this is a very small percentage. The reason for this, in addition to the previous three points mentioned about the election of minorities in general, is the religious discrimination that Muslims face in the United States. According to a 2020 study, Muslims and Jews are most likely to report experiencing any religious discrimination.²¹ Between 2015 and

¹⁵ Astead W. Herndon, “The Districts Are Mostly White. The Candidates Are Not.” *The New York Times*, July 19, 2018. <https://www.nytimes.com/2018/07/19/us/politics/minority-candidates.html>.

¹⁶ Angela X. Ocampo, “The Wielding Influence of Political Networks: Representation in Majority-Latino Districts.” *Political Research Quarterly* 71(1):184–198

¹⁷ Melody Crowder-Meyer, “Gendered Recruitment without Trying: Local Party Recruiters Affect Women’s Representation.” *Politics & Gender* 9(4):390–413.

¹⁸ Luis R. Fraga, “Strategic Intersectionality: Gender, Ethnicity, and Political Incorporation.” UC Berkeley: Institute of Governmental Studies, November 2005, 1–28. <https://escholarship.org/uc/item/5r92z54j>.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Mogahed and Ikramullah. “American Muslim Poll 2020.” Institute for Social Policy and Understanding, October 1, 2020. 7 February 2021. <https://www.ispu.org/american-muslim-poll-2020-amid-pandemic-and-protest/>.

2016, assaults against Muslims in the United States surpassed the number in 2001.²² In the political world, there are cases where Muslim American candidates face Islamophobic attacks, such as the harassment towards Democratic Senate candidate Deedra Abboud in 2017.²³ A 2015 Pew Research Center poll showed that 45% of Americans are less likely to vote for someone who is Muslim.²⁴ The discrimination against Muslims in the United States might be discouraging Muslim candidates to run for federal office.

The election of minority women is beneficial for societal outcomes. However, previous research shows that the share of women or minority populations in Congress remains low. The reason for it can be explained by voter bias, hurdles to run for office, and the lack of party support. The difficulty Muslims have in getting elected shows how extraordinary it was for Ilhan Omar and Rashida Tlaib, candidates of intersecting social identities, to get elected to Congress.

MINNESOTA AND MICHIGAN – COMPARING THE DIVERSITIES

The section will look at the demographics in both states and the history of social integration. Minnesota and Michigan both have a high population of immigrants and a high ratio of communities with diverse backgrounds. However, at the district level, Ilhan Omar's district is more racially diverse than Rashida Tlaib's district, where most of the minority is categorized as a Black population.

In Minnesota, 84% are Caucasians and minorities account for 15% of the population. Nearly one in ten of the residents are foreign-born individuals, while 7% of the residents are native-born Americans who have at least one immigrant parent. The origin of immigrants are mostly from Mexico (12%), followed by Somalia (8%), India (6%), Laos (5%), and Ethiopia (5%). In Minnesota, more than 64,000 U.S. citizens live with at least one family member who is undocumented and consists of 5180 active Deferred Action for Childhood Arrivals (DACA)

²² Katayoun Kishi, "Assaults against Muslims in U.S. Surpass 2001 Level." Pew Research Center. Pew Research Center, May 30, 2020. <https://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level/>.

²³ Laurie Roberts, "Roberts: Arizona Senate Candidate under Attack for Being Muslim." *The Arizona Republic*. July 24, 2017. <https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2017/07/18/senate-candidate-under-attack-being-muslim/489859001/>.

²⁴ Sam Sanders, "Ben Carson Wouldn't Vote For A Muslim President; He's Not Alone." NPR. NPR, September 21, 2015. <https://www.npr.org/sections/itsallpolitics/2015/09/21/442308328/republican-rhetoric-highlights-americas-negative-relationship-with-muslims>.

recipients as of March 2020. The 5th Congressional District represented by Ilhan Omar has a population ratio of 67.4% Caucasians and 33% minorities, which is the most racially diverse district in the state. It has more millennials than baby boomers, has a highly educated population, and the highest rates of poverty and unemployment in the state.²⁵

Michigan also has a growing immigrant community and local residents from diverse social groups. In Michigan, 79% of the population are Caucasians, and Muslims account for 1% of the state's population. The 13th Congressional District's population has 56% Black population, 39% Caucasians, and the remaining 5% are minority groups. Islam has a long history and presence in Michigan, having been first introduced at the turn of the 20th century.²⁶ In 2018, 7% of Michigan residents were foreign-born individuals, while another 7% of residents are native-born Americans with at least one immigrant parent.²⁷ All four metro Detroit counties have an 8 to 11% share of foreign-born residents out of the total population.²⁸ Almost 72,000 U.S. citizens in Michigan live with at least one undocumented family member between 2010 and 2014. Also, Michigan consists of 5240 active Deferred Action for Childhood Arrivals (DACA) recipients as of March 2020.

Minnesota and Michigan have varied histories of integrating residents of different communities. Minnesota is historically known for taking leadership in civil rights, particularly advancing racial integration in society.²⁹ At the state and local levels, Minnesota overcame even more barriers in the legal and political areas. For example, Minneapolis was the first city in the country to pass an enforceable Fair Employment Practices Commission and outlaw racial covenants. However, now Minnesota is one of the states with the biggest racial inequality in the country. The median Black family in the Twin Cities area earns \$38,178 a year, which is less than half of the median White family income of \$84,459 a year.³⁰ Minnesota has the second

²⁵ Maha Bashri, "Elections, Representations, and Journalistic Schemas: Local News Coverage of Ilhan Omar and Rashida Tlaib in the US Mid-term Elections/Elections " *ESSACHESS- Journal for Communication Studies* 12, no. 2 (2019): 129-146. Gale Academic OneFile (accessed December 1, 2020).

²⁶ Ibid.

²⁷ American Immigration Council. "Immigrants in Michigan." October 15, 2019. 7 February 2021.

https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_michigan.pdf

²⁸ Steve Tobocman, "Revitalizing Detroit: Is There a Role for Immigration?" *Transatlantic Council on Migration*, August 2014. 7 February 2021

https://www.migrationpolicy.org/sites/default/files/publications/TCM_CitiesDetroit.pdf.

²⁹ Myron Orfield, "Integration and Neo-Segregation in Minnesota." Institute of Metropolitan Opportunity, December 2018. https://www.law.umn.edu/sites/law.umn.edu/files/metro-files/orfield_neosegregation_draft.pdf.

³⁰ Christopher Ingraham, "Racial Inequality in Minneapolis Is among the Worst in the Nation." *The Washington Post*, May 31, 2020. <https://www.washingtonpost.com/business/2020/05/30/minneapolis-racial-inequality/>.

biggest income inequality gap between Blacks and Whites in the entire nation.³¹ There are gender gaps and discrimination complaints about religious minorities as well. The root of the racial disparity can be dated back to the first half of the 20th century when real estate transactions in many Minneapolis neighborhoods had limited ownership to White families. In 1910, the first racially restrictive deed appeared in Minneapolis, which specify that "premises shall not at any time be conveyed, mortgaged or leased to any person or persons of Chinese, Japanese, Moorish, Turkish, Negro, Mongolian or African blood or descent."³² One common provision shows that "The said premises shall not at any time be sold, conveyed, leased, or sublet, or occupied by any person or persons who are not full bloods of the so-called Caucasian or White race."³³ Before the covenants, Minneapolis was not a particularly segregated state. However, as the racially restrictive deeds spread in the state, racial minorities were pushed into a "few small areas of the city."³⁴ The covenants are no longer enforceable but continue to shape Minneapolis housing.³⁵ Though Minnesota has a history of advocating racial rights and social integration, the current situation belies that history.

Michigan, like many other states in the United States, has become increasingly diverse in the last decade, but the diversity is segregated. Data shows that only 23% of residents in Detroit live in integrated communities, while the national rate is 40% in the 50 largest U.S. metropolitan areas.³⁶ The roots can be traced back to the early 20th century, when Detroit faced rapid expansion and population growth due to the attraction of workers from other states. Because of its strength in automotive assembly and manufacturing plants, it grew to be the fourth-largest city in America, with one of the highest per capita incomes. However, in the past 50 years, racial tensions and the decline of the auto manufacturing industry has led to the decline of the city. The city has continued to be unattractive for immigrants, because of the existence of ethnic clusters

³¹Greg Rosalsky, "Minneapolis Ranks Near The Bottom For Racial Equality." NPR, June 2, 2020.

<https://www.npr.org/sections/money/2020/06/02/867195676/minneapolis-ranks-near-the-bottom-for-racial-equality>.

³² University of Minnesota. "What Are Covenants?" Mapping Prejudice. University of Minnesota. Accessed February 23, 2021. <https://mappingprejudice.umn.edu/what-are-covenants/>.

³³ Ibid.

³⁴ Ibid.

³⁵ Greta Kaul, "With Covenants, Racism Was Written into Minneapolis Housing. The Scars Are Still Visible." *MinnPost*, February 22, 2019. <https://www.minnpost.com/metro/2019/02/with-covenants-racism-was-written-into-minneapolis-housing-the-scars-are-still-visible/>.

³⁶ Patricia Montemurri and Kristi Tanner, "By 2060, a Much More Multiracial Michigan Will Emerge." *Detroit Free Press*. Michigan, October 24, 2014. <https://www.freep.com/story/news/local/michigan/2014/10/24/michigan-diversity-index-racial-demographics/17671861/>.

within it. Many new immigrant groups decide to live in suburban areas instead of the city. A history of discriminatory policies helps explain poor economic outcomes for minority communities. During the Great Migration in the early 20th century, the federal government used race as a criterion to ensure that the Black population was excluded from the housing market. As desegregation movements started, there was a shift in demographics in the predominantly White city. Detroit is still one of the most segregated cities in the country.³⁷ The decline of the auto industry contributed to unemployment among Black residents, and in 2013 Detroit declared bankruptcy. In 2019, nearly 37% of the population lived in poverty. The COVID-19 pandemic has also revealed the lack of social integration of all races in society. Data shows that though African Americans represent nearly 14% of the state's population, they represent 40% of the deaths from the virus.³⁸ This is the result of the low socio-economic position of minorities in the area.

Though the lack of social integration of minorities and existing inequalities in both Minnesota and Michigan is a problem that is rooted in history that requires a long-term strategic approach, there are also some positive aspects in both states. In Minnesota, the Somali community is more politically integrated compared to minority groups in other states. Research done by Stefanie Chambers shows that Somalis in the Twin Cities are very engaged and influential in their community. There is a demographic increase in the number of Somali-Americans in the Twin Cities, which is due to a “positive track with refugee resettlement” brought about by service programs created when the Hmong community arrived in the 1970s.

The electoral system in the Twin Cities allows underrepresented groups to win office. For example, the ward system is an electoral system that offers more racial and ethnic diversity in elective office. The ward-based election is a system where “candidates who receive the plurality of votes in an individual ward win a seat on an elective body,” which “allow groups that live in racially or ethnically concentrated areas the opportunity to compete in districts where they can influence outcomes.”³⁹ The racial or ethnic majority group are reluctant to vote for someone

³⁷ Khushbu Shah, “How Racism and Poverty Made Detroit a New Coronavirus Hot Spot.” *Vox*, April 10, 2020. <https://www.vox.com/identities/2020/4/10/21211920/detroit-coronavirus-racism-poverty-hot-spot>.

³⁸ Michigan Coronavirus Task Force on Racial Disparities. “Executive Order 2020-55 (COVID-19).” MDHHS - Coronavirus Task Force on Racial Disparities. Michigan Department of Health & Human Services, 2020. https://www.michigan.gov/mdhhs/0,5885,7-339-71551_5460_99929---,00.html.

³⁹ Stefanie Chambers, *Somalis in the Twin Cities and Columbus Immigrant Incorporation in New Destinations*. Philadelphia: Temple University Press, 2017.

from a minority group. However, the residential segregation of racial and ethnic minorities increases the possibility of minorities elected in a district-level race. This allows the minority elected officials to “substantively (through policy making) and descriptively (demographically) represent their constituents.”⁴⁰

In Minnesota, there has been an increase of people of color, particularly women, gaining statewide or federal elected offices, including Ilhan Omar, the first Somali-American woman to serve in Congress; Peggy Flanagan, the first Native American woman elected to statewide executive office as Lieutenant Governor; and Keith Ellison, the first American Muslim man to become Attorney General. The racial diversity in Minnesota can be seen in the state legislature as well. The 2018 Minnesota House has seven women of color and five men, which represents almost 10% of the whole.⁴¹

In Michigan, there have been attempts at further political representation of minorities. For example, Stephanie Chang, who previously served in the Michigan House of Representatives in the 6th district and now represents the 1st district of the Michigan Senate, has been working for community-centered activism in Detroit. She used the influence of former district representative Rashida Tlaib to help her make decisions and emphasizes engagement at a local level. Before Rashida Tlaib, the district was represented by Steve Tobocman, who is Jewish. The diversity in political representation in the 6th district is explained by Chang as “people just really want someone who they can trust and someone who shares their values. [That] has happened to be people who don’t necessarily reflect the demographics of the district.”⁴² Many services have been introduced during Chang’s time in office, such as having a “neighborhood service center” and helping people with their citizenship application. Additionally, in 2018 there was an increase in the diversity of political candidates who ran for office in southeastern Michigan.⁴³

The comparison of the two states displays several similarities and differences. Michigan and Minnesota have a predominantly Caucasian population where few Muslims reside, meaning

⁴⁰ Ibid.

⁴¹ Debra Fitzpatrick, “Rainbow Wave and Representation: The View from One Competitive Midwest State.” *The Gender Policy Report*. University of Minnesota, November 7, 2018. <https://genderpolicyreport.umn.edu/rainbow-wave-and-representation-the-view-from-one-competitive-midwest-state/>.

⁴² Kim Clowes, “A New Politics of Diversity in Detroit?” Detroit Journalism Cooperative. *The Michigan Korean Weekly*, New Michigan Media, The Intersection, February 25, 2016. <https://www.detroitjournalism.org/2016/02/25/a-new-politics-of-diversity-in-detroit-2/>.

⁴³ Niraj Warikoo, “Immigrant, Diverse Candidates in Michigan Want 'Voices Heard'.” *Detroit Free Press*, August 11, 2018. <https://www.freep.com/story/news/politics/2018/08/02/michigan-elections-immigrant-candidates/877600002/>.

both Omar and Tlaib did not run in districts where most people share their attributes, such as religion, ethnic background, and race. Moreover, both states are carrying out the difficult task of integrating immigrants from various backgrounds, but have made tangible progress. One difference that should be highlighted is that while the 5th Congressional District seat is the most racially diverse district in Minnesota, the Congressional seat for Michigan's 13th district is predominantly Black.

A COMPARISON OF THE TWO CONGRESSWOMEN

The section will focus on the factors leading to the election of two congresswomen in relation to the social integration of the community. First, it is important to note the differences in their backgrounds. Ilhan Omar is a naturalized American citizen, who arrived in the United States more than 20 years ago as a refugee from Somalia. Before winning the 5th Congressional District seat, she served as a Minneapolis City Council member, and then the director of Policy Initiatives of the Women Organizing Women Network.⁴⁴ Rashida Tlaib is not a refugee but is of Palestinian descent born in Detroit. She represented the 6th and 12th districts of the Michigan House of Representatives, before serving as the U.S. Representative for Michigan's 13th congressional district. Though they are frequently summarized as the nation's first two Muslim Congresswomen in the media, their nationality and careers are different.

Do the elections of Ilhan Omar and Rashida Tlaib in Minnesota and Michigan show that social integration is promoted in the areas they serve? This question will be answered from the perspective of the integration of diverse people, the effective use of media, and the impact of the grassroots movement.

Ilhan Omar won support from her voters through campaigns that were relatable to a majority of constituents including groups who did not necessarily share her religious or ethnic background, which was only possible because of her "co-governance model"⁴⁵. The integration of the community resulted in increased political participation of diverse people in Minnesota. Data shows that there was an increased civic engagement of the American Muslim community in Minnesota including the Somali population (more than 20 mosques involved in increasing voter

⁴⁴ Bashri, "Elections, Representations, and Journalistic Schemas."

⁴⁵ "Send Her Back." Ilhan Omar for Congress. Accessed February 28, 2021. <https://ilhanomar.com/>.

turnout from congregations and communities). One exit poll shows that 95% of eligible Muslim voters turned out at the polls. The voter turnout of East African and Muslim candidates has increased with her campaign tactics of “co-governance” which mainly focus on listening to the concerns of constituents rather than a top-down strategy. Ilhan Omar also worked with the Hmong people, another minority group in Minnesota. She fought against the former Trump Administration’s efforts to deport Hmong-Americans from the United States. Though different groups have different barriers and threats, Ilhan Omar was able to approach the “core needs as humans” which are universal.⁴⁶ The combination of the successful integration of diversity in the society and Omar’s “co-governance” model was the key to her election.

Rashida Tlaib also won support from her voters by focusing on traditionally marginalized populations who did not necessarily identify with her racial or religious identity. She was successful in inspiring voters both within and beyond religious and ethnic communities. Though Metro Detroit has a large Muslim and Arab-American population, her district mostly constitutes Black-Americans, and there is not a large concentration of Arab and Muslim voters in her district. However, Tlaib appealed to the African American voters and women under 35 to represent a wide range of marginalized communities. Tlaib often acknowledged her Muslim and Palestinian identity, which led to the high voter turnout in Dearborn and Dearborn Heights, which are historically Arab-American and Muslim communities.⁴⁷ However, as opposed to Omar, whose identity was part of her narrative, Tlaib’s narrative focused more on political actions and the fight against social injustice, stated within her background as a first-generation American born and raised in Detroit.

Both candidates were able to make use of their intersectionality by appealing to people of various backgrounds and not limiting their approach to people of their social identity. This was only possible because they emphasized experiential knowledge they have gained from their unique backgrounds, which aroused a sense of affinity from people who wanted their voice heard.

⁴⁶ David M. Perry, “Why Ilhan Omar Is the Optimist in the Room.” *The Nation*, September 24, 2020. <https://www.thenation.com/article/politics/ilhan-omar-minneapolis/>.

⁴⁷ Melissa Nann Burke, Christine Ferretti, and Breana Noble. “Tlaib: Brother's Golf Cart Helped Her Become First Muslim Woman Elected to Congress.” *The Detroit News*, August 8, 2018. <https://www.detroitnews.com/story/news/local/detroit-city/2018/08/08/rashida-tlaib-golf-cart-grassroots-historic-win/934690002/>.

The impact of media is another factor that contributed to the election of the two congresswomen. Ilhan Omar's frequent media depiction supported her election by raising her general awareness in the public and giving the impression of not just "a minority candidate with progressive policies." They also featured a portrayal of intersectional factors that allowed people of various backgrounds to relate to her. Data shows how the congresswomen gained a lot of media attention. Within two key Minnesotan news sources, *The St. Paul Pioneer Press* and *The Minneapolis Star Tribune* from January 2018 to January 2020, the words "Ilhan Omar" yield 679 results, 412 of them from the *Pioneer Press* and 267 from the *Star Tribune*. Not all content is favorable, such as one article interviewing a Minneapolis lawyer who points out her political inexperience and some covering the hateful comments made by former President Donald Trump. However, none of the articles negatively reference her faith. Her frequent media mentions due to the focus on her minority traits raised awareness of her candidacy and contributed to garnering the approval of people who felt that their voices are not heard. This led to the process of unifying support for a diverse candidate and encouraging citizens to come together and vote.

The media representation of Rashida Tlaib illustrates that the Congresswoman's multiple identities were relatable to other minorities in the area, especially in a district where minorities are the majority. The media representation shows that Tlaib has gained fewer mentions for her religion and gender than Ilhan Omar. Instead, Tlaib represented herself and was represented by the local media as a woman with multiple identities who could address various issues in the country. In the local media, she got more coverage for issues such as education, healthcare, economy, and civil rights than Ilhan Omar did.⁴⁸ According to Maha, the difference of media depiction is due to three factors. One is the visual difference. Ilhan Omar wears a hijab while Rashida Tlaib does not, which allowed Tlaib to focus on political issues rather than just her faith. Another is that Tlaib did not emphasize her faith or gender as much as Ilhan Omar. Moreover, Michigan has had a longer history of integrating Muslims than Minnesota. Tlaib's focus on covering issues that minorities face in the society, rather than simply focusing on her Muslim identity, was effective in her Michigan district where minorities are the majority.

The frequent media focus on the two Congresswomen due to their intersecting social identities raised their profiles among residents and voters. Though not all of the attention was

⁴⁸ Bashri, "Elections, Representations, and Journalistic Schemas."

positive, the focus on their marginalized identities in the media garnered attention, broke existing stereotypes of minorities, and inspired marginalized populations in Minnesota and Michigan.

The final aspect of their success to consider is the grassroots movement by the two representatives. In the case of Ilhan Omar, the activation of student votes through grassroots and social media engagement outside her community and its success shows that the youth population wanted a candidate representing racial and cultural diversity. There was an increased voter turnout of 37% in Omar's 2016 election for the Minnesota House of Representatives. The voter turnout of East African voters increased, but she also focused on engagement outside her community, for example by communicating with students from the university and Augsburg College. Her campaign manager, communications director, and field director were all in their early twenties. Omar created a support base by reaching out to young voters who shared her vision and viewpoints.

Rashida Tlaib also focused on grassroots engagement a local level, emphasizing the importance of "real shared values," and centering her campaign mission on "direct human contact"⁴⁹. Though Tlaib is an Arab and a Muslim in a majority-Black city, she was successful in integrating herself by engaging with the grassroots movement. Because Tlaib was running to replace John Conyers, who is black and had a long history in the city, Tlaib focused on building support at the local level. She repeatedly demonstrated her closeness with the residents by showing up on voters' doorsteps.⁵⁰ Her campaign manager states that Tlaib knocked on "more than 5,000 doors" in the race and was "aided by a field team of about 10 diverse young people."⁵¹ Her brother was a strong contributor as well, who purchased a golf cart to reach more than 4,000 Arab-American voters from the Warrendale area. This includes many Iraqi families, the Yemeni population, and Lebanese Americans.⁵² Several comments show her eagerness to reach out at the grassroots level: "When you really truly show folks that they matter, that they're important, that they're needed for their community and for our nation, people are more inspired to vote...And that's what we push forward in this election."⁵³ These statements display her

⁴⁹ Burke, Nann, Ferretti, and Noble. "Tlaib: Brother's Golf Cart."

⁵⁰ Jihan Abdalla, "Real Shared Values': Rashida Tlaib Confident She Will Win Again." US Elections 2020. Al Jazeera, November 3, 2020. <https://www.aljazeera.com/news/2020/11/3/rashida-tlaib-confident-she-will-win-again-real-shared-values>.

⁵¹ Burke, Nann, Ferretti, and Noble. "Tlaib: Brother's Golf Cart."

⁵² Ibid.

⁵³ Ibid.

energetic focus to the local level accompanied by her experiential knowledge of living as an individual of intersecting social identities, which had created an impression of commitment to the residents of various backgrounds.

The successful approach of the integration of minority groups who are not necessarily from their backgrounds, successful media depiction, and grassroots movement inspired a feeling of representation among the residents, leading to an increase of nontraditional voters at the polls who were eager to have their voices heard. In all their actions, the exhibition of their intersectional social identities was crucial for their election.

CONCLUSION

The objective of this research was to show that the social integration of minority citizens is the key factor for the election of politicians with a minority background, which was done through investigating the case of Ilhan Omar in Minnesota and Rashida Tlaib in Michigan who both won in “predominantly non-Muslim” communities. The paper first highlighted the importance of electing a candidate with intersecting social identities due to the positive impact they bring to politics and the difficulty these candidates face in getting elected. The point was followed by the comparison of Michigan and Minnesota, which has shown that social integration of communities from diverse backgrounds is a common challenge for both. The final section revealed that social integration of individuals from various backgrounds was only possible because of their own intersectional social identities. The experiential knowledge gained from the difficulties they faced in the country aroused a sense of affinity among minority groups. The reason for their election was not about combatting counterterrorism or countering extremism but was due to their focus on the reality and the concerns of Muslim American life and other minorities, which led to successful social integration in the community.

As Carroll and Sanbonmatsu’s 2013 study has shown, to increase minority women’s representation in government, dramatic cultural changes in citizen’s attitudes are not required; party leaders may simply increase the presence of women through “more encouragement, active female recruitment, and the provision of campaign funds.”⁵⁴ Adding to this, I suggest that for more candidates with varying backgrounds to be elected, the candidates themselves must find out

⁵⁴ Carroll and Sanbonmatsu, “More Women Can Run.”

what the residents in the area are concerned about, carefully build relationships with the community, and mobilize progressive supporters by highlighting their common links with other minority groups in the country feeling left out.

The findings from the above case study are important because they offer a hint as to what kind of policies are needed to achieve integration that values diversity, which is not limited to the community-level or state-level policies. The results also shed light on how to bring diverse candidates to elected political roles. However, some limitations should be noted. First, because this current research only focused on successful cases to show the correlation between social integration and the election of minority candidates, it offers a little basis to generalize the statement to a wider scale. Ilhan Omar and Rashida Tlaib were elected to the U.S. Congress, but the reality is that most Muslims seeking a seat in Congress fail to achieve their goal. A comparison of them would have shown what determines success and failure of representing the federal government. Second, the research lacks statistical data as the case study does not have sufficient prior research. A further investigation that fills the gap of this study can help advance the study of candidates from diverse backgrounds not limited to Muslims, providing important insights into U.S. elections and American democracy.

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Part 3

Domestic Policy

CLIMATE CHANGE AND BOTTOM UP GOVERNANCE: THE DEFIANT POLICIES OF THE U.S. STATE

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The U.S. federal government has vacillated between support and disengagement when it comes to taking action against climate change. Yet, local governments have made fighting climate change a priority. This dynamic demonstrates the importance of differentiating between top-down and bottom-up policies. For example, while the United States initiated the process of withdrawing from the Paris Agreement, U.S. states and cities developed strategies like a GHG emission target or a carbon pricing policy as part of their climate agendas. To better understand local climate action, this study will categorize strategies employed by U.S. states, aiming to prove that they have adopted defiant policies vis-a-vis the federal government.

INTRODUCTION

Climate change is undoubtedly the crisis of our times, from shifting weather patterns that threaten food production to rising sea levels that increase the risk of catastrophic flooding. The impacts of climate change are global in scope and unprecedented in scale. Scientific consensus confirms that the phenomenon is real and human activities are the primary cause. In recent decades, countries from around the world have agreed on steps and goals for tackling climate change and today it is one of the most important priorities on any political agenda.

The United States is one of the most powerful countries in the international community and one of the countries most impacted by climate change. Even so, its position on the issue has been highly variable. First, the United States failed to ratify the Kyoto Protocol, then President Obama worked to reengage in climate negotiations within the United Nations, only to be followed by a leader that denied climate change and called it “mythical,” “nonexistent,” and “an expensive hoax.”

Under these different approaches to climate change by the federal government, there has been constant, local climate action. A federal system, like the United States, fosters some degree of multilevel governance, where climate change policy can be incorporated into a subnational system even when it not addressed at the nation-state level. In the last 20 years, U.S. states and

cities have been leading the way to combat climate change and in certain instances have created a parallel and stronger climate policy than what the federal government has achieved.

This paper will start with a broad explanation of climate change and its impact in the United States to highlight the problematic nature of global warming. Next, a discussion of the governance of climate change will be presented based on two models: *top down* and *bottom up*. This will be followed by an exploration of federal and local climate policy, with the aim to demonstrate how the former one is stronger. Then, a typology of climate policy for U.S. states will be presented in order to prove that they have a *defiant* climate policy against the one implemented by the federal government. Finally, this essay will explore how likely it is that other states will “bandwagon” on local climate action and spur U.S. federal climate reengagement on multilevel climate governance.

CLIMATE CHANGE AND THE UNITED STATES

Life on our planet is conditioned by the increment of temperature. Unfortunately, since the industrial revolution, global temperatures have escalated at record-breaking rates. Why? Scientists say that there is a 95% likelihood that human activity is the cause. The global population has tripled in the last 70 years and human beings have been burning more fossil fuels like oil and coal which release CO₂.

Earth’s climate depends on the functioning of a natural “greenhouse effect.” This effect is the result of heat-trapping gases (also known as greenhouse gases) like water vapor, carbon dioxide, ozone, methane, and nitrous oxide, which absorb heat radiated from the Earth’s surface and lower atmosphere and then radiate much of the energy back toward the surface. Without this natural greenhouse effect, the average surface temperature of the Earth would be about 60°F colder. However, human activities have been releasing additional heat-trapping gases.¹

The augmentation of gases in the atmosphere creates variations in temperature and therefore climate. This is popularly known as climate change. The United Nations Framework Convention on Climate Change defines it as: “A change of climate which is attributed directly or

¹ Piers Forster and Venkatachalam Ramaswamy, “Changes in Atmospheric Constituents and in Radiative Forcing,” in *Climate Change 2007: The Physical Science Basis*, ed. Teruyuki Nakajima and Veerabhadran Ramanathan (New York: Cambridge University Press, 2007), 129-234.

indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”²

The United States is the world’s second largest emitter of heat-trapping gases (after China), but it is the country that has contributed most to CO₂ emissions. From 1750 to 2017, the United States emitted 399 billion tons of carbon dioxide, which is equivalent to 25% of global cumulative emissions.³ In the last 28 years, gross U.S. GHG emissions have increased by 3.7%, CO₂ emissions grew 5.8%, and there was an increase of CO₂ emissions from fossil fuel combustion of 6.2%.⁴

Climate-related changes have already been observed in the United States. These include increases in heavy downpours, rising temperatures and sea levels, rapidly retreating glaciers, thawing permafrost, lengthier growing seasons, longer ice-free seasons in the ocean, on lakes and rivers, earlier snowmelt, and alterations in river flows. Over the past 50 years, United States has experienced an average rise in temperature of more than 2°F, increase in precipitation of about 5%, more frequent extreme weather events, stronger hurricanes in the Pacific and Atlantic coasts, and all of these phenomena are expected to intensify.⁵

Additionally, climate change is harming the health of American citizens. Temperature-related illnesses can cause dehydration and heatstroke.⁶ Poor air quality can lead to lung and cardiovascular diseases.⁷ Precipitation events can transport pathogens that provoke gastrointestinal infections.⁸ Overall mental health is at risk too, contributing to sleeplessness, anxiety, depression, and post-traumatic stress disorder.⁹ Scientists believe that some existing health threats will intensify and new health threats will emerge.

² “Framework Convention on Climate Change,” United Nations, New York, 7.

³ “Who has Contributed Most to Global CO₂ Emissions?” Our World in Data, <https://ourworldindata.org/uploads/2019/10/Cumulative-CO2-treemap.png>

⁴ “Inventory of U.S. greenhouse gas emissions and sinks 1990-2018,” United States Environmental Protection Agency, accessed September 16, 2020, <https://www.epa.gov/sites/production/files/2020-04/documents/U.S.-ghg-inventory-2020-main-text.pdf>.

⁵ Thomas Karl, Jerry Melillo, and Thomas Peterson, *Global Climate Change Impacts in the United States* (New York: Cambridge University Press, 2009).

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ “Preparing for the regional health impacts of climate change in the United States,” Center for Disease and Control Prevention, accessed September 16, 2020, https://www.cdc.gov/climateandhealth/docs/Health_Impacts_Climate_Change-508_final.pdf.

Also, the U.S. economy is endangered. A recent study examined how climate change could affect 22 different economic sectors. Impacts from climate change could cost the United States up to \$520 billion each year.¹⁰ Another study proved that in any case, the United States stands to suffer large economic losses due to climate change, second only to India.¹¹ All the impacts mentioned demonstrate that there is a clear need to strengthen our understanding of how the United States will be impacted by climate change, and most importantly, take them into consideration for decision-making.

THE GOVERNANCE OF CLIMATE CHANGE

Considering their nature and scale, environmental issues are often addressed through strong global coordination under the purview of the nation-state. Actions are centered around the pursuit of a common objective and implemented through targets and timetables based on commonly agreed rules, which are progressively broadened and strengthened over time and legally binding, with a strong measuring, reporting and verification (MRV) system and compliance mechanisms.¹² In the area of climate change, the most important compromises include the Kyoto Protocol, the Copenhagen Accord, and the Paris Agreement.¹³ This means that there are several policies in place in the international arena which are attributed to federal level actors. This is known as the *top down policy*.

Now, considering that climate change is a multilevel governance problem, policies to address climate change have faced a vertical segmentation of rule-making and rule-implementation, that allows participation from supranational to local actors.¹⁴ Actually, some of the most important contemporary contributions to climate change policy are occurring at the subnational and local level and relate to efforts to better incorporate lower level administrative units and social groups into formal processes of climate governance. In the last 20 years,

¹⁰ Jeremy Martinich and Allison Crimmins, "Climate Damages and Adaptation Potential Across Diverse Sectors of the United States," *Nature Climate Change* 9, no. 5 (2019): 397-404.

¹¹ Katharine Ricke, Laurent Drouet, Ken Caldeira, and Massimo Tavoni, "Country-level Social Cost of Carbon," *Nature Climate Change* 8, no. 10 (2018): 895-900.

¹² William Hare, Claire Stockwell, Christian Flachsland, and Sebastian Oberthür. "The Architecture of the Global Climate Regime: A Top-Down Perspective," *Climate Policy* 10, no. 6 (2010): 601.

¹³ Daniel Bodansky, "The History of the Global Climate Change Regime." *International Relations and Global Climate Change* 23, no. 23 (2001): 23-40.

¹⁴ Frank Biermann and Philipp Pattberg, "Global Environmental Governance: Taking Stock, Moving Forward." *Annual Review of Environment and Resources* 33, no. 1 (2008): 277-294.

scholarship on the role of subnational and local governments in global climate governance has grown significantly, which has in turn fostered a new kind of thinking about climate governance.¹⁵ In fact, various commentators have suggested that subnational and local entities, rather than nation-states, may be the most appropriate actors to address specific global environmental problems like climate change.¹⁶ This is known as *bottom up policy*.

THE TOP DOWN CLIMATE POLICY

Given the far-reaching relationship between United States and GHG, effective measures are needed to achieve deep long-term reductions. Nevertheless, in recent years the United States has arguably been a global laggard on climate change policymaking and implementation despite the country's outsized role in contributing to the problem. The three branches of government, which all have a role to play in reducing U.S. GHG, have failed to catalyze a consistent and comprehensive federal approach. The following section will provide a brief summary of top down climate policy in the United States.

It all started with President George W. Bush's hostility towards the Kyoto Protocol. With the President's support, Congress rejected ratification due to the exclusion of China and India, as well as concerns about negative economic impacts.¹⁷ The Bush administration also opposed the introduction of GHG regulations and often expressed skepticism about climate change science.¹⁸ Under President Bush, the United States went from a prospective climate leader to a straggler, and the United States did not take a leading role in U.N. climate negotiations while he was in office.¹⁹

Contrary to his predecessor, Barack Obama took office and reengaged in multilateral climate negotiations with the United Nations. During the 2009 Climate Change Conference in

¹⁵ K. Jörgensen, A. Jogesh, and A. Mishra, "Multi-level Climate Governance and the Role of the Subnational Level." *Journal of Integrative Environmental Sciences* 12, no. 4 (2015): 235-245.

¹⁶ J. Dirix, W. Peeters, J. Eyckmans, P.T. Jones, and S. Sterckx, "Strengthening Bottom-Up and Top-Down Climate Governance." *Climate policy* 13, no. 3 (2013): 363-383.

¹⁷ David Sanger, "Bush Will Continue to Oppose the Kyoto Pact on Global Warming," *The New York Times*, June 12, 2001, <https://www.nytimes.com/2001/06/12/world/bU.S.h-will-continue-to-oppose-kyoto-pact-on-global-warming.html>.

¹⁸ Henrik Selin and Stacy VanDeveer, "U.S. Climate Change Politics and Policymaking." *Wiley Interdisciplinary Reviews: Climate Change* 2, no.1 (2011): 122.

¹⁹ Daniel Kelemen and David Vogel. "Trading Places: The Role of the U.S. and EU in International Environmental Politics," *Comparative Political Studies* 43, no. 4 (2010): 427-456.

Copenhagen, the United States compromised on a climate target of reducing GHG 17% below 2005 levels by 2020 and supported low-carbon technology research on clean technologies.²⁰ In 2015, the United States became part of the Paris Agreement, where it added a climate target to its agenda: reduce emissions by 26–28% below 2005 levels by 2025. Actually, in both accords the United States displayed the most leadership among all the parties and had a big influence in shaping the institutional design of the agreements.²¹

President Obama pledged that his administration would mark a “new chapter in American leadership on climate change.”²² He even presented voluntary pledges to reduce emissions, a mid-century strategy consisting of 80% below 2005 levels by 2050.²³ But, his policy implementation was quite mixed. In his two terms of office, natural gas production (flat for the decade before he took office) increased 28% and oil production soared 76%. Likewise, during the Obama terms the country surpassed Russia and Saudi Arabia in gas and oil production, respectively.²⁴

The Trump administration clearly opposed Obama’s climate policies and there was little legislative action on this front during the 116th Congress. This is primarily because climate change is an ideological issue for Republicans. Their opposition to climate policy is rooted in populism, economic nationalism, a conviction that the United States has a right to exploit nature, isolationism, and a rejection of multilateral institutions.²⁵ President Trump followed President Bush by rejecting the scientific consensus about anthropogenic climate change. Still the most shocking action President Trump took was withdrawing the United States from the Paris Agreement and cancelling the implementation of the National Determined Contribution. This move had several consequences like the reduction of federal incentives for low-carbon projects and a loss in momentum and motivation for the international community.

²⁰ Rodoslav Dimitrov, “Inside UN Climate Change Negotiations: The Copenhagen Conference,” *Review of Policy Research* 27, no. 6 (2010): 803.

²¹ Charles Parker and Christer Karlsson, “The UN Climate Change Negotiations and the Role of the United States: Assessing American Leadership from Copenhagen to Paris,” *Environmental Politics* 27, no. 3 (2018): 535.

²² “A New Chapter on Climate Change,” The White House: President Barack Obama, accessed December 24, 2020, <https://obamawhitehouse.archives.gov/the-record/climate/global>

²³ “USA” Climate Action Tracker, accessed December 24, 2020, <https://climateactiontracker.org/countries/U.S.a/pledges-and-targets/>.

²⁴ Marianne Lavelle, “2016: Obama’s Climate Legacy Marked by Triumphs and Lost Opportunities,” *Inside Climate News*, accessed December 16, 2020, <https://insideclimatenews.org/news/23122016/obama-climate-change-legacy-trump-policies>.

²⁵ Frank Jotzo, Joanna Depledge, and Harald Winkler. “U.S. and International Climate Policy Under President Trump,” *Climate Policy* 18, no. 7 (2018): 813-817.

THE BOTTOM UP CLIMATE POLICY

Effective national and international responses is essential to addressing climate change, but local actions play a vital role in mitigation and adaptation measures. For years, American states and cities have been addressing climate change in the absence of stronger federal action. For example, they have worked on: GHG emissions reduction targets, the creation of climate action plans, and programs to deploy clean energy, among other policies. In order to examine climate action at the subnational and local level, this paper will further explore these policy tools.

In total 27 states plus the District of Columbia and 132 cities have adopted climate objectives regarding GHG emissions targets.²⁶ This includes Democratic states like California, Oregon, and New York and Republican states such as Louisiana and Montana; and the most populous cities: San Diego, Los Angeles, and Chicago. Each government has adopted a target that suits its particular circumstances, but through the years this has been a consistent practice that shows the widespread support for climate action.

A policy that complements a GHG emission target is known as climate action plan. This includes the detailed actions a local government can take to help meet those goals. Yet, it may also include have an adaptation component –such as resilience strategies– which includes policies related to energy efficiency and economic and social goals. In total, 29 states have a climate action plan in place.²⁷ Among the top 100 most populous cities in the United States as of 2017, less than half (45) had climate action plans. Nevertheless, it is important to note the study of Markolf Azevedo, Muro and Victor (2016) where according to ICLEI, since 1991 over 600 local governments in the United States have developed climate action plans.²⁸

Another policy that local governments use to address GHG emissions is carbon pricing. This is a mechanism that reduces carbon emissions by using market mechanisms to pass the cost of emitting on to emitters. The main objective of this policy is to reduce the use of carbon dioxide–emitting fossil fuels. The instrument may take form as a carbon tax, emission trading

²⁶ “U.S. State Greenhouse Gas Emissions Targets,” Center for Climate and Energy Solutions, accessed January 18, 2020, <https://www.c2es.org/document/greenhoU.S.e-gas-emissions-targets/>; “Measuring Up 2015 How US Cities Are Accelerating Progress Toward National Climate Goals,” ICLEI and WWF, accessed January 23, 2020, https://icleiusa.org/wp-content/uploads/2015/08/Measuring_Up_2015.pdf.

²⁷ “State climate policy maps,” Center for Climate and Energy Solution, accessed February 8, 2021, <https://www.c2es.org/content/state-climate-policy/>

²⁸ Samuel Markolf, Ines Azevedo, Mark Muro, and Victor David, “Pledges and Progress,” Brookings, accessed January 10, 2021, https://www.brookings.edu/wp-content/uploads/2020/10/FP_20201022_ghg_pledges_v4.pdf

system (ETS) or a cap and trade program, a crediting mechanism, under a results-based climate finance (RBCF), or by international accords.²⁹ A prime example of carbon pricing scheme is the Regional Greenhouse Gas Initiative (RGGI), the first mandatory market-based program with 11 member-states.

Besides the regional efforts, states can have independent carbon pricing programs, as is the case for California and Massachusetts. So, far the program has proven successful at the state level. California has reduced its emissions by 5.3% since the start of the program in 2017.³⁰ In Massachusetts, the program is expected to reduce aggregate CO₂ emissions from certain sectors 80% below 2018 levels by 2050.³¹ Cities have found ways to price carbon as a workaround for cap and trade programs implemented at the state levels. Aspen, CO introduced a carbon fee in 1999 and Athens, OH passed a carbon fee through a referendum.³² These states and cities, have implemented strategies to reduce their own carbon footprints and advance climate solutions locally.

Likewise, a wide range of state policies help to reduce GHG emissions from the power sector. The most popular policies are a renewable portfolio standard, adopted in 29 states, or a clean energy standard, adopted in 7 states. These policies, overall, mandate that some percentage of electricity utilities come from renewable/clean sources.³³ Many cities are employing innovative strategies to procure low-carbon energy, including participating in power purchase agreements, green tariffs, and community choice aggregation. Exemplary cases include the Climate Action Plan (CAP) tax in Boulder, CO and the Community Choice Aggregation (CCA) program in Hyattsville, MD.³⁴

In addition, states and cities can promote energy efficiency projects, including building codes that require low-energy features or appliance standards and tax credits or rebates for

²⁹ Kaia Rose and Eric Mann, “Carbon pricing dashboard,” The World Bank, accessed December 14, 2020, <https://carbonpricingdashboard.worldbank.org/what-carbon-pricing>.

³⁰ “California Cap and Trade,” Center for Climate and Energy Solutions, accessed February 12, 2021, <https://www.c2es.org/content/california-cap-and-trade/>

³¹ J. Ye, “U.S. State Carbon Pricing Policies,” Center for Climate and Energy Solutions, accessed May 18, 2021, <https://www.c2es.org/document/us-state-carbon-pricing-policies/>

³² Carlie Clarcq, “How Municipalities are Playing a Part in Solving the Climate Crisis,” accessed January 25, 2020, <https://climate-xchange.org/2020/03/12/how-municipalities-are-playing-a-part-in-solving-the-climate-crisis/#athens>.

³³ Center for Climate and Energy Solutions, “State Climate Policy Maps.”

³⁴ “Implementing carbon pricing at the municipal level,” ClimateXChange, accessed January 23, 2021, <https://climate-xchange.org/wp-content/uploads/2018/08/Implementing-a-Carbon-Price-at-the-Municipal-Level-Climate-XChange-compressed.pdf>. Clarcq, “How Municipalities.”

energy efficiency products. A creative way to save energy is through a decoupling mechanism, which disengages the utility profits from gas and electric to limit the sale of energy. In total, 32 U.S. states have a decoupling policy.³⁵ Cities too have the opportunity to reduce carbon emissions in the energy sector. They are now requiring LEED and EnergyStar certifications and offering Property Assessed Clean Energy (PACE) loans. As an example, California's cities have required LEED certification for their buildings since 2004 and Dallas, TX has had the PACE program since 2013.³⁶

The last policy local governments can implement is a low carbon and alternative fuel standard for the transportation sector. This type of policy aims to reduce GHG emissions from transportation fuels without prescribing the fuel type (e.g. cellulosic and non-cellulosic ethanol or biodiesel). Currently only California and Oregon have low-carbon fuel standard policies in place, but another five states have clean fuels measures (Washington, Minnesota, Missouri, Louisiana, and Pennsylvania).³⁷ Since the scope of action in the transport sector is very wide, another policy tool involves providing rebates to purchase electric vehicles through measures like a zero-emissions vehicle program and clean energy vehicle incentives.

Cities have fleets of vehicles, taxis, and an overall dense transportation system, but they have advantages over states in terms of their ability to transition to clean transportation. Consider how carpooling has become a trend, it is popular in cities like Visalia-Porterville, CA, Moultrie, GA, and Liberal, KS. Biking is also a common and sustainable practice in U.S. cities such as Eugene, OR, Laramie, WY, and Vermillion, SD. Lastly the most common practice, walking is replacing other forms of commuting in Ithaca, NY, Pullman, WA, and Ketchikan, AK.³⁸

These six types of policies demonstrate the increasing importance of “bottom-up” action. More than half of the states have implemented a climate policy and numerous cities have managed some innovative measures to reduce GHG and combat global warming. The international climate framework is important for building a guideline for the subnational level,

³⁵ Center for Climate and Energy Solutions, “State Climate Policy Maps.”

³⁶ Daniel Burgoyne, “LEED Certificated State Buildings,” California Department of Government Services, accessed January 2, 2021, <https://www.dgs.ca.gov/OS/Resources/Page-Content/Office-of-Sustainability-Resources-List-Folder/California-LEED-Certified-State-Buildings>; Heather Lepasca and Kevin Spath, “Property Assessed Clean Energy (PACE),” Dallas Economic Development, accessed February 7, 2021, <https://www.dallascodev.org/260/Property-Assessed-Clean-Energy-PACE>

³⁷ Center for Climate and Energy Solutions, “State climate policy maps.”

³⁸ John Taylor, “Top U.S. Cities for Green Transportation.” Save on Energy, accessed January 26, 2021. <https://www.saveonenergy.com/learning-center/post/top-u-s-cities-for-green-transportation/>

but there are cases in the United States where local governments exceed federal action and become illustrative examples of good climate actors.

RESEARCH DESIGN

One of the main objectives of this research is to study the prevalence of local climate action. The study will categorize U.S. state climate action regarding the number of climate policy instruments each state has, in order to demonstrate that American states have a defiant climate action policy vis-a-vis the federal government and to analyze the implications. To construct the typology mentioned a series of indicators will be used. There are six indicators corresponding to climate policy instruments, these are: a GHG emission target, a climate action plan, a carbon pricing policy, an electricity portfolio standard, an energy efficiency decoupling policy and a low carbon and alternative fuel standard.

Each indicator has a 1 point value, where the minimum score a state can get is 0 and the maximum score is 6. If the state has an overall score of 0, it has an *evenness* climate policy, meaning that the state does not have any climate policy instruments in its jurisdictional level and it only follows the federal legal framework. If the state has 1-3 points, it has a *complemental* climate policy which means that it also follows the federal policy but registers with at least one extra instrument. And if the state has 4 to 6 of the policies it is categorized as a *defiant* state towards the federal climate agenda, this suggests that the state considers the U.S. (Nation-State) commitments and its federal legal frameworks insufficient and has opted to implement climate policy by itself.

Table 1: Measurement of state climate policy

Measurement of climate state policy	
<i>Indicator</i>	<i>Value</i>
The state has a greenhouse gas emission target	1
The state has a climate action plan	1
The state has a carbon pricing policy	1
The state has an electricity portfolio standard	1
The state has an energy efficiency decoupling policy	1
The state has a low carbon and alternative fuel standard	1

Table 2: Typology of state climate policy

Categorization of state climate policy	
Score	Category
0 points	Evenness
1-3 points	Complemental
4-6 points	Defiant

RESULTS AND ANALYSIS**Table 3: Main results**

State	Overall score	Category of state climate policy	State	Overall score	Category of state climate policy
<i>Alabama</i>	0	Complemental	<i>Montana</i>	2	Complemental
<i>Alaska</i>	0	Evenness	<i>Nebraska</i>	0	Evenness
<i>Arizona</i>	2	Complemental	<i>Nevada</i>	4	Defiant
<i>Arkansas</i>	1	Complemental	<i>New Hampshire</i>	4	Defiant
<i>California</i>	6	Defiant	<i>New Jersey</i>	5	Defiant
<i>Colorado</i>	4	Defiant	<i>New Mexico</i>	3	Complemental
<i>Connecticut</i>	5	Defiant	<i>New York</i>	5	Defiant
<i>Delaware</i>	4	Defiant	<i>North Carolina</i>	4	Defiant
<i>District of Columbia*</i>	4	Defiant	<i>North Dakota</i>	1	Complemental
<i>Florida</i>	1	Complemental	<i>Ohio</i>	2	Complemental
<i>Georgia</i>	1	Evenness	<i>Oklahoma</i>	1	Complemental
<i>Hawaii</i>	5	Defiant	<i>Oregon</i>	5	Defiant
<i>Idaho</i>	1	Complemental	<i>Pennsylvania</i>	5	Defiant
<i>Illinois</i>	4	Defiant	<i>Puerto Rico*</i>	1	Complemental
<i>Indiana</i>	1	Complemental	<i>Rhode Island</i>	5	Defiant
<i>Iowa</i>	2	Complemental	<i>South Carolina</i>	2	Complemental
<i>Kansas</i>	0	Evenness	<i>South Dakota</i>	1	Complemental
<i>Kentucky</i>	1	Complemental	<i>Tennessee</i>	0	Evenness
<i>Louisiana</i>	2	Complemental	<i>Texas</i>	1	Complemental
<i>Maine</i>	5	Defiant	<i>Utah</i>	1	Complemental
<i>Maryland</i>	4	Defiant	<i>Vermont</i>	5	Defiant
<i>Massachusetts</i>	5	Defiant	<i>Virginia</i>	5	Defiant
<i>Michigan</i>	4	Defiant	<i>Washington</i>	5	Defiant
<i>Minnesota</i>	5	Defiant	<i>West Virginia</i>	0	Evenness
<i>Mississippi</i>	0	Evenness	<i>Wisconsin</i>	4	Defiant
<i>Missouri</i>	2	Complemental	<i>Wyoming</i>	1	Complemental

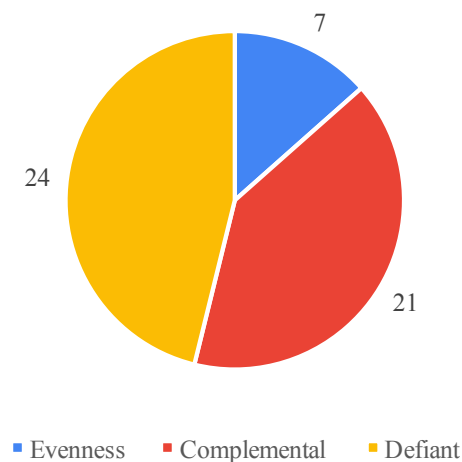
Results show that a plurality of states in the United States have a *defiant* climate policy towards the one implemented by the federal government – this confirms the hypothesis. Nearly half of the states opted to develop 4 to 6 policy instruments that tackle global warming, beyond the top down policy of the United States. In total, there are 24 states in this category: California, Colorado, Connecticut, Delaware, District of Columbia*, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.

Following the *defiant* category –in numbers– comes the *complemental* one. Here states have at least one and up to three climate policy instruments, aside from federal policies. In total there are 21 states under this category: Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Puerto Rico,* South Carolina, South Dakota, Texas, Utah and Wyoming.

Finally, there are seven states that do not have any climate policy instruments at all: Alabama, Alaska, Kansas, Mississippi, Nebraska, Tennessee and West Virginia. This means they have an *evenness* policy with the federal government, (i.e. they only dictate the measures already established and do not implement climate change policy within their jurisdiction). But most importantly, this indicates that only a minority of states fail to incorporate individual climate change policies into their agenda.

Figure 1: Categories of climate state policy by number of states

Categories of climate state policy by number of states



Moreover, the feature that stands out the most is that 45 subnational governments have implemented at least one climate policy instrument, a clear majority. This demonstrates the importance of differentiating between top down policy and bottom up policy; the two of them can coincide or differ. In the United States we see the former case. There are several opinions that categorize the United States as a straggler on climate change policy for its dependence on fossil fuels and its low commitment on environmental multilateralism; when the truth is that most local governments in the country are pioneers in this area.

THE UNITED [GREEN] STATES

Bottom up policy is becoming a growing trend, as demonstrated in the United States. However, this analysis would not be complete without an examination of the atypical cases of California, the only state that has adopted all six climate strategies. What makes it an exemplary case? For the seven states with no climate policy at all, can we expect them to bandwagon behind their peers? Moreover, the United States is in a crucial moment. Under the leadership of President Joe Biden, the country can make a turn from being a climate laggard to a climate leader and start engaging on top down climate policy .

California's climate policies are a lesson for the nation and the world. The state is a leader in clean energy transition and has some of the world's most ambitious decarbonization policies, which allowed the state to reach its climate targets four years in advance. California's success relies on leadership, cross-agency engagement and stakeholder involvement. The secret was to involve Californians at all levels to respond to a shared challenge. This means that a systematic, cross-cutting effort using a variety of strategies is the most effective approach. California's climate actions including various statutes, executive orders, administrative actions, and local initiatives were embraced by a host of private and governmental entities, making it the blueprint for success.³⁹

In regards to the states that do not have climate policies; there are encouraging signs that they may start in the near future. The following actions suggest a bandwagon tendency: Alabama ranks 14th in net electricity generation from renewable energy resources; Kodiak (an island in

³⁹ Mary Nichols, "California's Climate Change Policies: Lessons for the Nation," *Carbon & Climate Law Review* 4, no. 2 (2010): 154-160.

Alaska) has been running on 100% percent renewable energy since 2014; Kansas ranks 5th in the nation for wind generation; Mississippi since 2015 has been generating electricity from renewable sources almost all of which was biofuels from wood; Nebraska ranks 18th in the nation for wind generation; in Tennessee 10 wind manufacturing facilities are located in-state, producing components for the wind industry and employing 100-500 people; and West Virginia ranks 24th in the nation for wind generation. Be that as it may, research indicates that none of the states have plans to develop a climate action plan, set a GHG target, or create a renewable portfolio standard. Therefore, it is assumed that any bandwagon tendency may depend on national pressure.⁴⁰

On the other hand, there is an encouraging trend regarding top down climate change policy in the United States thanks to President Biden's electoral win. He could be "the climate president." As author Alyssa Battiston points out,

He can use executive action to set standards for things like carbon emissions in the power sector and methane emissions resulting from oil and gas drilling. He can empower the Securities and Exchange Commission to mandate disclosure around climate risk. He can direct the federal bureaucracy to actively mitigate the disparate effects of environmental harms. He can rejoin the Paris Agreement and attempt a new wave of climate diplomacy.⁴¹

So far, this assertion seems possible. President Biden has recommitted the United States to the Paris climate agreement, ordered federal agencies to start reviewing and reinstating more than 100 environmental regulations, and rescinded the construction permit for the Keystone XL oil pipeline.⁴² An important thing to take into consideration is that Biden brings with him the largest team of climate change experts ever assembled in the White House like: Gina McCarthy, David Hayes, John Kerry, Sue Biniaz, Jonathan Pershing, Leonardo Martinez-Diaz, Brenda Mallory and Ali Zaidi.⁴³

⁴⁰ "Alabama," "Alaska," "Kansas," "Mississippi," "Nebraska," "Tennessee," and "West Virginia," Climate Nexus, accessed February 13, 2021, <https://climatenexus.org/climate-change-us/state-impacts/#mississippi>

⁴¹ Alyssa Battistoni, "Will Joe Biden Be the First Climate President?" *Dissent Magazine*, accessed February 11, 2021, https://www.dissentmagazine.org/online_articles/will-joe-biden-be-the-first-climate-president

⁴² Coral Davenport and Lisa Friedman, "Biden Cancels Keystone XL Pipeline and Rejoins Paris Climate Agreement," *The New York Times*, February 19, 2021, <https://www.nytimes.com/2021/01/20/climate/biden-paris-climate-agreement.html>.

⁴³ Lisa Friedman, "A 'Nerve Center' for Climate in the Biden White House," *The New York Times*, February, 19 2021, <https://www.nytimes.com/2021/01/19/climate/biden-climate-change.html?action=click&module=RelatedLinks&pgtype=Article>.

Finally American climate policy will rest on a strategy of combining an ambitious set of federal and local policies, where in fact both can be mutually reinforced to practice multilevel climate governance. Federal leadership will have a political and symbolic effect in the international community, but it can directly positively affect local governments in the United States. Similarly, bottom up actions can serve as a priority map on local needs and how the central government can respond.

CONCLUSION

Governing the environment is a difficult task. Countries around the world are making their best efforts to control a critical phenomenon. The United States' position on the issue has vacillated between supportive and disengaged, even while the country is suffering the effects of climate change such as heavy downpours and rising temperatures and sea level and when it is the country that has contributed most to CO₂ emissions over time. To tackle the climate issue, the United States has exhibited two approaches, the top down policy (federal level) or the bottom up policy (local level).

With weak top down policy in recent years the United States has been called a global laggard on climate change policymaking and implementation. President Bush rejected ratification of the Kyoto Protocol and expressed skepticism about climate change. President Barack Obama intended to make a change and became active in climate multilateralism, yet during his terms fossil fuel production increased. President Trump rejected climate change and withdrew the United States from one of the most historical international treaties designed to address it.

On the opposite side, bottom up policy is very strong. States and cities have been addressing climate change and have played a vital role in U.S. climate action. A wide range of policies have been adopted at the regional, state, and municipal levels to reduce GHG emissions, develop clean energy resources, promote alternative fuel vehicles, and promote more energy-efficient buildings and appliances. This research focus on studying six bottom up policy instruments—a GHG emission target, a carbon pricing policy, a climate action plan, an electricity portfolio standard, an energy efficiency decoupling policy and a low carbon and alternative fuel standard— that U.S. states have developed.

For this, a categorization of state climate policy was created to assess whether state governments have enacted a strategy of either *evenness*, *complemental* or *defiant* in relation to federal government measures. Results prove that a plurality of states, 24 in total, have a *defiant* climate policy with 4 or more instruments to tackle climate change. There are 21 states with 1-3 instruments, and seven states with no climate policy at all. Highlights of this research include: (i) the fact that 45 states, the District of Columbia and Puerto Rico have at least one climate policy instrument in their own jurisdictional level; (ii) the leadership of California, the only state with six instruments; (iii) the possibility of a bandwagon effect for Alabama, Alaska, Kansas, Mississippi, Nebraska, Tennessee and West Virginia; and (iv) the unique opportunity local governments have to move forward through partnerships with the federal government under the Biden administration.

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THE POLITICS OF CLIMATE CHANGE: WHY THE UNITED STATES HAS FAILED TO RESPOND

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The views reflected here are those of the author and do not represent the official position of the United States Naval Academy, United States Navy, or the Department of Defense.

Why is the United States failing to take measures that would prevent mass suffering caused by the changing climate? In this paper, I argue that the United States has not responded effectively due to the influence of private industry on its politics, the market framework that politicians use to form policy, and the undemocratic nature of party competition.

INTRODUCTION

Global warming threatens the collapse of human civilization.¹ As the planet warms and sea levels rise, cities will flood; countries will be lost; and wars for natural resources will be fought.² Despite desperate warnings from the planet's scientists, nihilistic profiteering marches us closer to the fateful precipice. State-owned fossil fuel companies are preparing to invest about \$1.9 trillion dollars over the next decade in unsustainable energy, shattering any hope that the planet might reach goals set by the Paris agreement.³ Other energy companies are investing in Arctic oil drilling, fracking, "mega mines", tar-sands processing, and fracking.⁴ As stated by the UN Human Rights Council (OHCHR), "Somber speeches by government officials have not led

¹ Ripple, William, Christopher Wolf, Thomas Newsome, Phoebe Barnard, William Moomaw, and Philippe Grandcolas. "World scientists' warning of a climate emergency." *BioScience* (2019).

² Michael T Klare. *All Hell Breaking Loose: The Pentagon's Perspective on Climate Change*. Metropolitan Books, 2019. 109.

³ Fiona Harvey. "State-Owned Fossil Fuel Firms' Plan to Invest \$1.9tn Could Destroy Climate Hopes." *The Guardian*. February 9, 2021. <http://www.theguardian.com/environment/2021/feb/09/state-owned-fossil-fuel-firms-planning-19tn-investments>.

⁴ Christopher Wright and Daniel Nyberg. "Creative Self-Destruction: The Climate Crisis and the Myth of 'green' Capitalism." *The Conversation*, September 20, 2015. <http://theconversation.com/creative-self-destruction-the-climate-crisis-and-the-myth-of-green-capitalism-47479>.

to meaningful action and too many countries continue taking short-sighted steps in the wrong direction.”⁵

Given America’s prominence on the world stage, its policies on climate change are pivotal to humanity’s survival, yet the U.S. government has often ignored the issue when not outright obstructing efforts to solve it.⁶ Why is the United States not taking extreme measures to protect the climate and ensure a sustainable world economy? In this paper, I argue that the United States cannot effectively respond to climate change because of the predominant influence of the wealthiest corporations and investors on the U.S. government. I argue this point by the scrutinizing institutional factors that facilitate the government’s lack of action.

BACKGROUND

The universe is estimated to be about fourteen billion years old, and our planet is roughly five billion years old.⁷ The oldest fossil record of homo sapiens dates to about 315,000 years ago.⁸ Early humans likely had the intellectual capacity of modern humans but lived in primitive, communal societies that relied on hunting and gathering for survival; the production and distribution of subsistence was organized according to the traditions and needs of the group.⁹

Roughly 10,000 years ago, many human societies transitioned from nomadic lifestyles to sedentary farm life, consequently forming vast civilizations in places like Egypt, China, and India. These civilizations used state power to direct complex, command economies.¹⁰ In addition to sustaining the population, the arrangement of such economies benefitted the state’s elites and conformed to local traditions. For the first time, an upper class accumulated wealth, slaves built large monuments, and humans altered their environment in far-reaching ways. It is important to

⁵ Reliefweb.int. “Climate Change and Poverty - Report of the Special Rapporteur on Extreme Poverty and Human Rights (A/HRC/41/39) - World.” Accessed March 14, 2021. <https://reliefweb.int/report/world/climate-change-and-poverty-report-special-rapporteur-extreme-poverty-and-human-rights>.

⁶ Coral Davenport and Mark Landler. “Trump Administration Hardens Its Attack on Climate Science.” *The New York Times*. May 27, 2019. <https://www.nytimes.com/2019/05/27/us/politics/trump-climate-science.html>.

⁷ J. W. Moffat, “How old is the universe?” *Physics Letters B* 357, no. 4 (1995): 526-531.; Dalrymple, G. Brent. 1991. *The Age of the Earth*. Stanford, Calif.: Stanford University Press.

⁸ Ewen Callaway. “Oldest Homo Sapiens Fossil Claim Rewrites Our Species’ History.” *Nature*, 2017. <https://doi.org/10.1038/nature.2017.22114>.

⁹ John Hawks. “How Has the Human Brain Evolved over the Years?” *Scientific American Mind* 24, no. 3 (2013): 76–76; Heilbroner, R. L. and Boettke, . Peter J.. "Economic system." *Encyclopedia Britannica*, October 23, 2020. <https://www.britannica.com/topic/economic-system>.

¹⁰ Ibid.

note here that not all command economies produced large empires, and many societies remained nomadic. Feudal Europe had a decentralized, warfare-prone political system, yet its economic system, serfdom, was principally based on subsistence.¹¹ Before capitalism, markets existed but were often dedicated to luxuries and superfluities rather than to the provision of essential goods and services.¹²

Our transition to market-based, capitalist economies is a complex topic, but it deserves our attention for the way it affects our environment and politics. Definitions of capitalism vary, but for our purposes, Investopedia's definition will suffice: "Capitalism is an economic system in which private individuals or businesses own capital goods. The production of goods and services is based on supply and demand in the general market—known as a market economy—rather than through central planning."¹³ Capitalism galvanized the owners of land and the means of production to optimize output over time (productivity) in an effort to outperform the competition. The central goal was no longer subsistence, which was now secured through the market by those who could afford it.

CAPITALISM AND THE CLIMATE

Despite just a few hundred years of existence, capitalism has driven the most intelligent animal on Earth to its own destruction. The global capitalist economy necessitates a continuous state of growth. This phenomenon is called a "growth imperative". Low, negative, or stagnant growth rates are associated with recessions, high unemployment, and disaster. Politicians campaign on growing the economy, and the ultimate goal of increased profit guides the decisions of corporations and their managers. Put succinctly, "A capitalist firm operating in a competitive market is subject to a growth imperative, because uncertainty about the profit rate under a no-growth policy makes the firm's prospects highly unattractive in finite time and bankruptcy practically certain in the long run."¹⁴

¹¹ Britannica, T. Editors of Encyclopaedia. "Serfdom." *Encyclopedia Britannica*, August 20, 2019. <https://www.britannica.com/topic/serfdom>.

¹² Heilbroner and Boettke, "Economic system."

¹³ Investopedia Staff. "Capitalism." Investopedia.com, accessed March 12, 2021. <https://www.investopedia.com/terms/c/capitalism.asp>.

¹⁴ Myron J. Gordon, and Jeffrey S. Rosenthal. "Capitalism's growth imperative." *Cambridge Journal of Economics* 27, no. 1 (2003): 25-48.

The central logic of endless growth contradicts the physical limitations of the planet and its resources. A strict adherence to this logic might lead one to conclude that the human population will grow forever, that there are infinite nonrenewable resources, and that the Global South will eventually obtain the consumer lifestyle found in the United States.

The free market hampers the technological development of renewable energy. For a country to facilitate its development of green industry, its government must protect the new industry from foreign competition. If a government fails to protect this new industry (with tariffs and benefits), then it runs the risk of the industry being undermined by another country's industry with better comparative advantage. If we take the free market as sacrosanct, then it follows that countries that already have established comparative advantage in green industry, such as China, will dominate the market.

Canadian author Naomi Klein addresses the danger of free market competition in her book, *This Changes Everything*. Using the World Trade Organization as a weapon, the United States “has acted against local renewable supports in China and India, so Japan and then the European Union let it be known that they considered Ontario’s local-content requirement to be a violation of World Trade Organization rules.”¹⁵ The WTO ruled against Canada, causing foreign investors to pull their support from Ontario’s solar energy project. The free market also constrains fossil fuel regulations:

The European Union, for instance, is considering new fuel quality standards that would effectively restrict the sales of oil derived from such high-carbon sources as the Alberta tar sands. It’s excellent climate policy, of the kind we need much more, but the effort has been slowed down by Canada’s not so subtle threats of trade retaliation. Meanwhile, the European Union is using bilateral trade talks to try to circumvent longstanding U.S. restrictions on oil and gas exports, including a decades-old export ban on crude oil. In July 2014, a leaked negotiating document revealed that Europe is pushing for a ‘legally binding commitment’ that would guarantee its ability to import fracked gas and oil from North Dakota’s Bakken formation and elsewhere. Almost a decade ago, a WTO official claimed that the organization enables challenges against “almost any measure to reduce greenhouse gas emissions”—there was little public reaction at the time, but clearly there should have been. And the WTO is far from the only trade weapon that can be used in such battles—so too can countless bilateral and regional free trade and investment agreements.¹⁶

¹⁵ Naomi Klein, *This changes everything: Capitalism vs. the climate*. Simon and Schuster, 2015: 68.

¹⁶ Klein, *This changes everything*, 71.

Furthermore, technological development and minor regulations alone will not solve the paradox of the capitalist growth imperative. Those placing their *faith* in technology at the expense of social change are implicitly hoping that an “eco-economic decoupling” will take place.¹⁷ That is, they hope that the global economy will grow without the associated encroachment on the environment. This belief has no scientific basis, and thus there is no reason to accept it.

Economic anthropologist Jason Hickel found:

[T]here is no empirical evidence that absolute decoupling from resource use can be achieved on a global scale against a background of continued economic growth, and absolute decoupling from carbon emissions is highly unlikely to be achieved at a rate rapid enough to prevent global warming over 1.5°C or 2°C, even under optimistic policy conditions. We conclude that green growth is likely to be a misguided objective.¹⁸

To those who have a deep-seated belief in the inevitability of human progress, I can only say that such an inevitability does not preclude cataclysmic setbacks in what has already been a tumultuous history.

The paradox of endless growth on a finite planet and its current manifestation, global warming, put political and corporate leaders in a precarious position. Serious solutions to end this paradox contradict the institutional, social forces that impel politicians and CEOs to maintain the status quo while seeking material expansion. With this in mind, I seek to scrutinize these institutional aspects of American politics that prevent serious efforts to address the changing climate.

AMERICAN POLITICS

The United States of America is not a pure or direct democracy since its citizens vote for representatives, as opposed to voting directly on policy. This separation between the will of the people and the formulation of policy allows for the implementation of unpopular policies.

James Madison, the “Father of the Constitution,” believed that subverting the popular will was a righteous act; if all in society had equal influence on the formulation of policy,

¹⁷ Parrique T., Barth J., Briens F., C. Kerschner, Kraus-Polk A., Kuokkanen A., Spangenberg J.H., “Decoupling debunked: Evidence and arguments against green growth as a sole strategy for sustainability,” 2019.

¹⁸ Jason Hickel, and Giorgos Kallis. “Is green growth possible?.” *New political economy* 25, no. 4 (2020): 469-486.

regardless of class status, an indignant, beggarly majority could vote to seize and redistribute the assets of the rich minority. To guard against this perceived moral perversion, Madison envisaged a government that preserved the class structure of contemporary society:

The Advantages of Government cannot be extended equally to all—Those remote from Seat of Government cannot be placed in a Situation equally advantageous with such as near it—Distinctions will always exist—that of Debtor and Creditor—Property had made Distinctions in Europe before a Nobility was created—Inequality of Property will produce the same Distinctions here—The Man in affluent Circumstances has different Feelings from the man who daily toils for a Subsistence. The landed Interest has now the Supreme Power—a Century hence the commercial may prevail—The Government ought to be so organized as to give a Ballance to it and protect one Order of Men from the predominating Influence of the other. The Senate ought to represent the opulent Minority—If this is not done the System cannot be durable.¹⁹

Originally, the limited extent of popular control on government was exercised by propertied white men who could vote for the House of Representatives (but not the Senate or Electoral College).²⁰ To use post-revolutionary Virginia as an example of how limited this popular control was, at least one-half to three-fourths of white males did not own land and thus could not participate in these elections.²¹

Today every adult can ostensibly participate in democratic national elections, which might lead one to conclude that every member of the electorate influences the policies of government in equal proportion. In reality, the “opulent Minority” is still represented quite favorably.²² Were this not to be the case, public policy would reliably reflect public opinion.

In 2018 while the 115th Congress was in session, 78 percent of Americans believed that climate change was causing extreme weather and sea level rise, yet 53 percent of representatives and senators were skeptical or outright deniers.²³ President Trump also contested the scientific

¹⁹ Archives.gov. “Founders Online: Term of the Senate, [26 June] 1787.” Accessed March 13, 2021. <https://founders.archives.gov/documents/Madison/01-10-02-0044>.

²⁰ Loc.gov. “The Founders and the Vote.” Accessed March 13, 2021. <https://www.loc.gov/classroom-materials/elections/right-to-vote/the-founders-and-the-vote/>.

²¹ Jackson Main Turner. “The Distribution of Property in Post-Revolutionary Virginia.” *The Mississippi Valley Historical Review* 41, no. 2 (1954): 241-58. Accessed March 13, 2021. doi:10.2307/1895804.

²² Schlozman, Kay Lehman, Philip Edward Jones, Hye Young You, Traci Burch, Sidney Verba, and Henry E. Brady. “Louder Chorus — Same Accent: The Representation of Interests in Pressure Politics, 1991-2011.” Brookings, January 24, 2014. <https://www.brookings.edu/research/louder-chorus-same-accent-the-representation-of-interests-in-pressure-politics-1991-2011/>.

²³ Monmouth.edu. “Climate Concerns Increase; Most Republicans Now Acknowledge Change,” November 29, 2018. https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_112918/; Vice.com. “The Climate

consensus, perhaps believing it to be a Chinese hoax.²⁴ Though five to one Americans favored participating in the Paris Agreement on climate change mitigation, the government withdrew its membership.²⁵

Why do so many politicians believe that we should not lower carbon emissions? Well, there are two sensible ways for a politician to form an opinion. The opinion can form through a process of thought, introspection, and research based on empirical data; in contrast, it can also form in accordance to what is politically convenient. Opinions can be seen as a means to secure political office, devoid of any absolutist moral considerations. In this light, one can have a cynical opinion of truth itself. Instead of empiricism, utility decides what is true. In honest debate, differences in opinion arise from differences in normative beliefs (as opposed to positive statements). Politicians may differ in what *ought to be* (normative, value judgements), but any guise of honest politics breaks down when they differ in **scientific** theories of *what is* (positive statements). Honest disagreements could arise in cases of nonscientific inquiries (such as whether Iraq had WMDs, in which case one's belief was predicated on the credibility of various sources), but this does not apply to knowledge acquired through the scientific method.

With this reasoning in mind, I make no claims to neutrality. Neutrality, if understood as covering events in an even-handed manner, is actually quite dangerous for any analysis of climate politics. This mistake is often found in the press, as explained by Andrew Dessler and Edward Parson in their book, *The Science and Politics of Global Climate Change*, “[J]ournalists often follow a professional norm of providing balance between opposing views and few are confident or practiced in judging some views to have more merit than others. Moreover, controversy sells newspapers. Since even settled issues may be debated by a minority, the press generally over-reports scientific dissent and under-reports consensus.”²⁶ An unprincipled

Change Deniers in Congress.” Accessed March 13, 2021. <https://www.vice.com/en/article/pg5zqg/a-guide-to-the-climate-change-deniers-in-congress>.

²⁴ Edward Wong, “Trump Has Called Climate Change a Chinese Hoax. Beijing Says It Is Anything But.” *The New York Times*. November 18, 2016. <https://www.nytimes.com/2016/11/19/world/asia/china-trump-climate-change.html>.

²⁵ Yale.edu. “Yale Program on Climate Change Communication,” April 19, 2017. <https://climatecommunication.yale.edu/visualizations-data/registered-voters-say-us-participate-paris-agreement/>.

²⁶ Dessler, Andrew E., and Edward A. Parson. *The science and politics of global climate change: A guide to the debate*. Cambridge University Press, 2019: Location 1793 (Kindle edition).

exaltation of neutrality could lead one, for example, to accept the fossil fuel industry's efforts to shovel its point of view into school curriculums.²⁷

Instead of neutrality, I maintain that we should hold steadfast to empirical objectivity. When a false statement (climate change is a hoax) is used as a pretext for an opinion (regulation is bad), its content is not worthy of serious consideration. The opinion should instead be analyzed in terms of the practical outcomes of its application and whose interests they serve.

Professor Thomas Ferguson's investment theory of party competition explains the discrepancy between public opinion and policy.²⁸ It posits that the average citizen does not have the resources to invest time and money into political parties, so the parties are disproportionately influenced by the people who do have those resources, specifically, blocs of investors. These blocs do not invest in political parties for altruistic reasons, but rather to advance their own material interests. I must admit that we cannot *fundamentally prove* the intentionality of these investors, yet we can analyze the outcomes of their actions to make reasonable inferences of their intentions.

According to the theory, parties ought to be analyzed as coalitions of investor blocs. As stated in Ferguson's book, *Golden Rule: The Investment Theory of Party Competition and the Logic of Money-Driven Political Systems*, "Blocs of major investors define the core of political parties and are responsible for most of the signals the party sends to the electorate."²⁹ The parties acquire voters by "making very limited appeals to particular segments of the potential electorate," and "on all issues affecting the vital interests that major investors have in common, no party competition will take place."³⁰

To illustrate the implications of this theory on climate change policy, we can compare the financial support of politicians with their positions on policy. Due to limitations of space and resources, I cannot expound on the positions and donors of all Republicans and Democrats; however, I present the investor blocs and positions of recent, major presidential candidates as approximations of their respective parties.

²⁷ Jie Jenny Zou. "Pipeline to the Classroom: How Big Oil Promotes Fossil Fuels to America's Children." *The Guardian*. June 15, 2017. <http://www.theguardian.com/us-news/2017/jun/15/big-oil-classrooms-pipeline-oklahoma-education>.

²⁸ Thomas Ferguson. *Golden rule: The investment theory of party competition and the logic of money-driven political systems*. University of Chicago Press, 1995.

²⁹ Ferguson. *Golden rule*, 22.

³⁰ Ferguson. *Golden rule*, 206.

It is also worth noting that getting exact figures on campaign finance proves to be an impossible task due to provisions in U.S. law. Opaque political 501©4 organizations need not reveal their donors, distinguishing them from super PACs. These organizations, pejoratively referred to as “dark money” groups, can donate to super PACs, so that the identities of their sponsors remain unknown. Ferguson discusses how he calculated the support of various sectors for political candidates in his papers, which rely on data from the Federal Election Commission and the Internal Revenue Service.³¹

REPUBLICANS

Ferguson’s paper on the 2012 election reveals that “support for Romney is extremely high in a bloc of industries that have been heavily engaged in battles over climate change, alternative energy, and regulatory policy, including oil (where the Romney advantage approaches Himalayan dimensions), mining, including many coal companies, chemicals, paper, and utilities.”³² Mitt Romney also received high levels of support from private equity, investment banks, hedge funds, and commercial banking.

In 2011, Romney, who is often described as a moderate Republican, proclaimed, “My view is that we don’t know what’s causing climate change on this planet. And the idea of spending trillions and trillions of dollars to try to reduce CO2 emissions is not the right course for us. My view with regards to energy policy is pretty straightforward. I want us to become energy secure and independent of the oil cartels. And that means let’s aggressively develop our oil, our gas, our coal, our nuclear power.”³³ His spokeswoman later clarified that he believes “human activity contributes to it, but he doesn’t know to what extent.”³⁴ While Romney acknowledges the changing climate, he obfuscates the link between carbon emissions and the warming climate, defying empirical evidence, and he believes in aggressively emitting more,

³¹ Thomas Ferguson, Paul Jorgensen, and Jie Chen. "Industrial structure and party competition in an age of Hunger Games: Donald Trump and the 2016 presidential election." *Institute for New Economic Thinking Working Paper Series* 66 (2018). 23.

³² Thomas Ferguson, Paul Jorgensen, and Jie Chen. "Party Competition and Industrial Structure in the 2012 Elections: Who's Really Driving the Taxi to the Dark Side?" *International Journal of Political Economy* 42, no. 2 (2013): 3-41. Accessed March 13, 2021. <http://www.jstor.org/stable/24696548>. 23.

³³ Politifact.com. "PolitiFact - On Mitt Romney and Whether Humans Are Causing Climate Change." Accessed March 13, 2021. <https://www.politifact.com/factchecks/2012/may/15/mitt-romney/mitt-romney-and-whether-humans-are-causing-climate/>.

³⁴ Ibid.

presumably because global warming is of trivial significance to him. His version of the truth and his opinion meet the needs of his bloc of investors.

That large donors finance politicians to obstruct climate policy is sometimes openly admitted. On CBS News, John McCain, who campaigned against climate legislation in 2008, was asked why the government response to climate change had taken so long; he responded, “Special interests. It's the special interests. It's the utility companies and the petroleum companies and other special interests. They're the ones that have blocked progress in the Congress of the United States and the administration. That's a little straight talk.”³⁵

What of uncompromising politicians who reject empirical evidence of the warming climate altogether? Ferguson notes that in 2012 mainstream Republicans received “substantially more money across most sectors than the Tea Party’s candidates in both our samples... in a number of sectors support for the Tea Party and similar far right candidates runs much higher. Many of these, once again, almost caricature a list of sectors that have noisily mobilized against the Obama administration, including mining, oil, and gas, and utilities.”³⁶

Over the past fourteen years, oil and gas donations to the Republican Party increased 317 percent, and the party went from having nominees that were skeptical of climate change solutions (Bush, McCain, Romney) to President Trump, an outspoken denier.³⁷ In contrast, 16 percent of total oil and gas donations went to Democrats in the 2020 election cycle.³⁸

After President Trump won the Republican nomination, he received donations from “major industries plainly hoping for tariff relief, waves of other billionaires from the far, far right of the already far right Republican Party, and the most disruption-exalting corners of Wall Street.”³⁹ Unable to find any scientific support, the far-right and its investors often rely on free-market fundamentalist pretexts and socially conservative issues to appeal to voters. For example, after President Trump froze federal fuel-efficiency standards for cars and light trucks, the National Highway Traffic Safety Administration justified his decision by claiming that we were already doomed. The 500-page analysis states that the planet is projected to warm seven degrees

³⁵ Katie Couric, “The Candidates On Climate Change.” CBS News, December 12, 2007. <https://www.cbsnews.com/news/the-candidates-on-climate-change/>.

³⁶ Ferguson, 2013, 28.

³⁷ Opensecrets.org. “Oil & Gas: Long-Term Contribution Trends.” Accessed March 13, 2021. <https://www.opensecrets.org/industries/totals.php?ind=E01++>.

³⁸ Ibid.

³⁹ Ferguson, 2018, 41.

by 2100, preventing this warming would require infeasible economic changes and technological innovations, and the now-defunct automobile regulations barely made a dent anyway.⁴⁰

DEMOCRATS

At a fundraiser for wealthy donors, Romney made his infamous claim that President Obama's supporters are the 47 percent of the country that see themselves as victims, have a sense of entitlement, and are dependent on government handouts. In truth, Obama, who raised more money than Romney and spent more time campaigning than any other president had in history, had broad support from the overall business community, including massive support from the technology sector.⁴¹ Ferguson writes that "the President probably enjoyed substantially higher levels of support within business than most other modern Democratic presidential candidates", and that "Obama's fundraising campaign did not reach record-breaking numbers due to small donors: Barely 4% of Obama's itemized money (we are counting total amounts, not numbers of contributions) came from donors who gave \$250 or less."⁴²

President Obama's version of the truth and his opinion, like Romney's, conform to the wishes of the donors who invested in him. Obama accepts the scientific consensus on climate change and has described it as an existential threat.⁴³ The former president believed that the solution would come from the market after applying a cap-and-trade system. Though later admitting to favoring a carbon tax, he never advocated for it since he did not think it could pass.⁴⁴ The cap-and-trade system would set a national limit on carbon emissions and allow companies to trade emission permits. The bill failed. In 2010, the *New York Times* reported:

The idea began as a **middle-of-the-road Republican plan to unleash the market** to reduce power plant pollution and **spur innovation** [my emphasis]. But when

⁴⁰ Chris Mooney. "Trump Administration Sees a 7-Degree Rise in Global Temperatures by 2100." *Washington Post* (Washington, D.C.: 1974). September 27, 2018. https://www.washingtonpost.com/national/health-science/trump-administration-sees-a-7-degree-rise-in-global-temperatures-by-2100/2018/09/27/b9c6fada-bb45-11e8-bdc0-90f81cc58c5d_story.html.

⁴¹ Brendan J. Doherty, "Presidential Reelection Fundraising from Jimmy Carter to Barack Obama." *Political Science Quarterly* 129, no. 4 (2014): 585-612.

⁴² Ineteconomics.org. "Poles Apart? Party Polarization and Industrial Structure in American Politics Now." Accessed March 14, 2021. <https://www.ineteconomics.org/research/research-papers/poles-apart-party-polarization-and-industrial-structure-in-american-politics-now>.

⁴³ Jeffrey Goldberg. "The Obama Doctrine." *Atlantic Monthly* (Boston, Mass.: 1993), March 10, 2016. <https://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/>.

⁴⁴ Evan Lehmann and ClimateWire, "Obama Calls Carbon Price Better than Regulations." *Scientific American*, December 2, 2015. <https://www.scientificamerican.com/article/obama-calls-carbon-price-better-than-regulations/>.

lawmakers tried to apply the concept to the far more pervasive problem of carbon dioxide emissions, it ran into gale-force opposition from the oil industry, conservative groups that portrayed it as an economy-killing tax and lawmakers terrified that it would become a bonanza for Wall Street traders and Enron-style manipulators.⁴⁵

President Obama then spent his second term approving executive orders and regulations that were mostly dismantled by the Trump administration.⁴⁶

Despite Mitt Romney's election loss, his dream of aggressively developing unsustainable energy was realized by President Obama. At the 2020 State of the Union Address, President Trump boastfully announced that “thanks to our bold regulatory reduction campaign, the United States has become the No. 1 producer of oil and natural gas anywhere in the world, by far.”⁴⁷ He left out the fact that this process began under the Obama administration, which President Obama himself took credit for at a bipartisan gala.⁴⁸ In 2015, President Obama signed a bill ending a forty year ban on crude oil exports, causing total fuel exports to grow over 750 percent.⁴⁹ It is of extreme importance to note that these exports, like manufacturing outsourced to Asia, are not counted in national greenhouse gas emissions, yet they must be addressed if the United States is to make a serious effort at reducing emissions.

Hillary Clinton did not radically break from President Obama's donors and their associated opinions by any stretch of the imagination. According to the Washington Post, the Clinton Foundation raised “close to \$2 billion from a vast global network that includes corporate titans, political donors, foreign governments and other wealthy interests” in the fourteen years preceding the 2016 election.⁵⁰ Accordingly, she hoped to pursue climate policy within a market framework, avoiding solutions unpalatable to her Republican colleagues such as a carbon tax. In

⁴⁵ John M. Broder, “‘Cap and Trade’ Loses Its Standing as Energy Policy of Choice.” *The New York Times*. March 26, 2010. <https://www.nytimes.com/2010/03/26/science/earth/26climate.html>.

⁴⁶ Popovich, Nadja, Livia Albeck-Ripka, and Kendra Pierre-Louis. “The Trump Administration Rolled Back More than 100 Environmental Rules. Here’s the Full List.” *The New York Times*, October 16, 2020. <https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks-list.html>.

⁴⁷ “Full Transcript: Trump’s 2020 State of the Union Address.” *The New York Times*. February 5, 2020. <https://www.nytimes.com/2020/02/05/us/politics/state-of-union-transcript.html>.

⁴⁸ Peter Baker, “From Obama and Baker, a Lament for a Lost Consensus.” *The New York Times*. November 28, 2018. <https://www.nytimes.com/2018/11/28/us/politics/obama-baker-consensus.html>.

⁴⁹ Greenpeace.org. “Policy Briefing: Carbon Impacts of Reinstating the U.s. Crude Export Ban,” March 17, 2020. <https://www.greenpeace.org/usa/reports/carbon-impacts-of-reinstating-the-us-crude-export-ban/>.

⁵⁰ Rosalind Helderman. “Clintons’ Foundation Has Raised Nearly \$2 Billion — and Some Key Questions.” *Washingtonpost.com*. Accessed March 13, 2021. https://www.washingtonpost.com/politics/clintons-raised-nearly-2-billion-for-foundation-since-2001/2015/02/18/b8425d88-a7cd-11e4-a7c2-03d37af98440_story.html.

2016, her campaign chair stated that she would not prioritize a sweeping rule on climate but would instead focus on “smaller legislative actions and employ executive powers.”⁵¹

SPECTRUM OF OPINION

We now have a picture of the spectrum of opinion pushed by the two parties and their backers. Major candidates can either deny or accept climate change, with some so-called moderates offering partial acceptances. Those who accept the scientific consensus completely assure us that this “classic market failure” (Obama) will be inevitably fixed by an innovative market solution.⁵² The range of Washington’s sanctioned opinion on climate change reflects a wider split in the business community. Of all the possible approaches to the climate crisis, the ones most able to attract funding ascend to mainstream political competition. Those unable or unwilling to accept donations from private interests, such as the Green Party of the United States, are left out.

This process of opinion formation comes to the exclusion of virtually all of the electorate, who are left to choose between a binary set of candidates with opinions that are inoffensive to commercial interests. The predominance of the owning class (composed of the minority who rely on stock dividends, rents, trusts, royalties, and other assets) over those who need to work for a living have clear implications for which group’s interests take precedence in a deteriorating climate. To quote the Human Rights Council, “Perversely, the richest, who have the greatest capacity to adapt and are responsible for and have benefitted from the vast majority of greenhouse gas emissions, will be the best placed to cope with climate change, while the poorest, who have contributed the least to emissions and have the least capacity to react, will be the most harmed. The poorest half of the world’s population—3.5 billion people—is responsible for just 10 percent of carbon emissions, while the richest 10 percent are responsible for a full half. A person in the wealthiest 1 percent uses 175 times more carbon than one in the bottom 10

⁵¹ Anne C. Mulkern and ClimateWire, “Hillary Clinton’s Plan to Combat Climate Change.” *Scientific American*, May 9, 2016. <https://www.scientificamerican.com/article/hillary-clinton-s-plan-to-combat-climate-change/>.

⁵² Steven Mufson, “‘I Think We’re Going to Solve It,’ Obama Says of Efforts to Slow Climate Change.” *Washington Post* (Washington, D.C.: 1974). December 1, 2015. https://www.washingtonpost.com/business/economy/obama-urges-international-unity-against-common-foe-islamic-state/2015/12/01/c0e0101c-9817-11e5-8917-653b65c809eb_story.html.

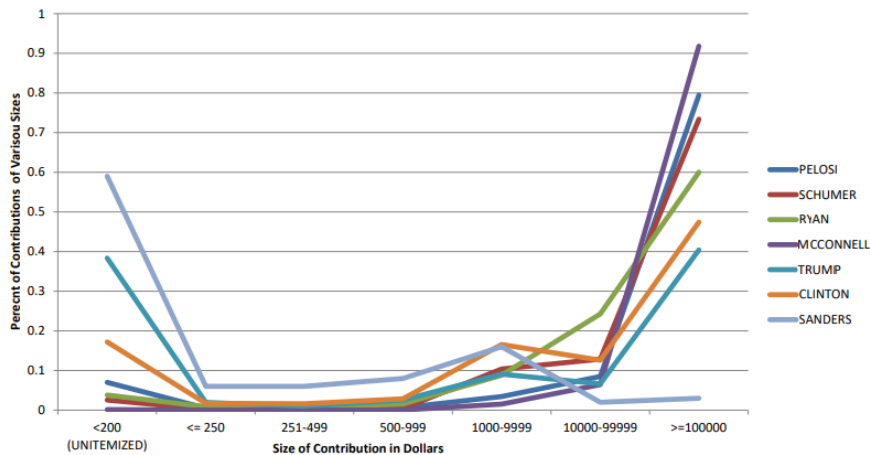
percent.”⁵³ This statement is also applicable to the United States, where over one in every ten people live in poverty and another three in ten live close to poverty.⁵⁴

SOCIAL DEMOCRATS

If party policies are currently based on coalitions of investors, then the only way candidates representing popular policies could acquire the funding to reach the public is through decentralized, popular funding. The public would need to become an investor bloc. This implication does not mean that the public would then vote for that candidate, as this would assume that people currently vote for what is in their material interest. The best empirical evidence we have for this application of the theory comes from the presidential campaigns of Bernie Sanders.

As the following graph shows, Bernie Sanders raised an unprecedented amount of funds from small donations, with many larger donations coming from aggregated contributions of unions. According to Ferguson, “We have checked carefully to see if Sanders, like Obama in

Size of Contributions: Profiles of American Political Leaders, 2016 Cycle



both 2008 and 2012, perhaps received large sums delivered in small doses from big donors. He

⁵³ OHCHR, (A/HRC/41/39).

⁵⁴ Povertyusa.org. “Poverty Facts.” Accessed March 13, 2021. <https://www.povertyusa.org/facts>.

did not...There were essentially no big ticket contributions from top executives and, a fortiori, no Super PACs.”⁵⁵

Sanders is a proponent of social democracy, making him a fringe element in American politics despite the historic popularity of social democrats in several European countries since World War II.⁵⁶ Social democrats can be distinguished on one hand from conservatives and most liberals by their willingness to intervene in the market (to promote social welfare), and on the other hand from communists and most socialists by their unwillingness to plan most or all of the economy.

With regard to the climate, Sanders champions the Green New Deal (GND). According to Sander’s campaign, the GND is “a ten-year, nationwide mobilization centered around justice and equity during which climate change will be factored into virtually every area of policy, from immigration to trade to foreign policy and beyond.”⁵⁷ The plan promises to completely shift the energy system to renewable energy, hold the fossil fuel industry accountable, rebuild the economy, and ensure a just transition for workers.

As posited by the investment theory of party competition, parties represent coalitions of investors. If Sander’s coalition is composed of small donors representing the public interest, then his policy positions on climate should align with public opinion.

According to Data for Progress, a progressive think tank, 59 percent of voters support the GND while 28 percent were opposed and 12 percent unsure.⁵⁸ According to Climate Nexus, a nonprofit funded by Rockefeller Philanthropy Advisors and worked by Yale and George Mason University researchers, 59 percent of voters support the GND; 25 percent oppose it; 16 percent are unsure.⁵⁹ A *Washington Post* survey found that 78 percent of Americans would support the Green New Deal if it guaranteed jobs with good wages to all workers; the second-most popular

⁵⁵ Ferguson, 2018, 41.

⁵⁶ “Social Democracy’s Struggles and Successes in Europe.” Deutsche Welle (www.dw.com). Accessed March 14, 2021. <https://www.dw.com/en/social-democracys-struggles-and-successes-in-europe/a-49130784>.

⁵⁷ Berniesanders.com. “The Green New Deal.” Accessed March 13, 2021. <https://berniesanders.com/issues/green-new-deal/>.

⁵⁸ Dataforprogress.org. “The Green New Deal Is Popular.” Accessed March 13, 2021. <https://www.dataforprogress.org/the-green-new-deal-is-popular>.

⁵⁹ Robinson Meyer. “Voters Really Care about Climate Change.” *Atlantic Monthly* (Boston, Mass.: 1993), February 21, 2020. <https://www.theatlantic.com/science/archive/2020/02/poll-us-voters-really-do-care-about-climate-change/606907/>.

associated policy was making buildings energy efficient (70 percent in favor); the third was achieving zero-emission energy sources within 10 years (69 percent in favor).⁶⁰

An important caveat is that most Americans (67 percent) said they would oppose the GND if it increased federal spending by trillions of dollars, perhaps suggesting that the public would favor diverting federal spending from other areas as opposed to raising overall tax revenue for the deal's funding.⁶¹ However, after the onset of the COVID-19 pandemic and its concomitant federal stimulus packages, 66 percent of Americans would now support "providing a multitrillion-dollar federal economic stimulus that prioritizes investments in clean energy infrastructure" according to a *Guardian/Vice* poll.⁶²

Given the popular support for Sander's climate policy, the investment theory of party competition can be applied to America's social democrats with empirical success (with the assumption that his climate policies and funding reflect those of other social democrats). This suggests that candidates who desire to represent public opinion without corporate or other third-party intervention must solicit funds from the public as its own investor bloc; it must be a grassroots campaign.

Of course, it does not have to be this way. Private campaign funding could be banned and substituted with a limited public funding system in which each citizen donates a set, tax deductible amount. Such a law would be anathema to corporate interests and perhaps impossible to pass under current conditions, yet it is not impossible to envisage such a law. Society is what humans make of it.

CONCLUSION

In this paper, I sought to provide a social framework with which we could study climate change policy. My paper presupposed basic knowledge of the climate change issue. This means that a scientific review of climate change and its link to extreme weather and rising sea levels was excluded. A thorough debunking of climate change denial was also not included. This

⁶⁰ Washington Post. "Americans like Green New Deal's Goals, but They Reject Paying Trillions to Reach Them." *Duluth News Tribune*, November 28, 2019. <https://www.duluthnewstribune.com/news/government-and-politics/4792375-Americans-like-Green-New-Deals-goals-but-they-reject-paying-trillions-to-reach-them>.

⁶¹ *Ibid.*

⁶² Oliver Milman. "Guardian/Vice Poll Finds Most US 2020 Voters Strongly Favor Climate Action." *The Guardian*, September 23, 2020. <http://www.theguardian.com/us-news/2020/sep/23/us-voters-climate-change-guardian-vice-poll>.

knowledge is essential for understanding the significance of climate change but was excluded for brevity.

The background consisted of a basic social history of humanity. Its purpose was to show the briefness of human life, the infinitesimal existence of capitalism, and the incredible rate of contemporary global warming caused by greenhouse gas emissions. Humans started as egalitarian hunter-gathers. Recently, human society started to organize society according to the logic of capitalist markets. The people who own society's production process compete in the free market and influence politics. Barring intervention, this process leads to our current situation, an infinitely expanding market as odds with the physical limitations of Earth.

Within the framework of American politics and capitalist economics, we can use Thomas Ferguson's investment theory of party competition to analyze climate politics with empirical success. I demonstrated this with recent presidential candidates as approximations of mainstream climate opinion. America's economic inequality facilitates this convergence of opinion and investor blocs. The last section focused on the campaign of Bernie Sanders, who was supported by an investor bloc of small donors and unions.

Finally, and to conclude with my own feelings about this, no good effort can be made to preserve the human condition without the type of analysis that compels us to re-examine the institutions we have constructed, what those institutions impel us to do, and where we are heading. We must consciously change our collective direction, compel all involved to recognize the importance of the effort, and proceed down a sustainable path. We must invest in green technology, infrastructure, and production as well as halt our reliance on fossil fuels as soon as possible. Furthermore, we must eventually look beyond the capitalist free market as a means of organizing society. Unchecked consumerism cannot continue indefinitely. To ignore this is to reject reality.

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PRIORITIZING CULTURAL RIGHTS: WHAT HISTORY SAYS ABOUT THE PATH FORWARD FOR SUBSISTENCE IN ALASKA

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The legislative history of subsistence policies in Alaska is perhaps the most complex land use debate in the history of the United States. That state's inherent rurality, combined with a much more recent history of colonization and approaches to Native policy that completely diverge from American precedence, complicate matters and have led to legal debates that challenge the power of state and federal land management. This paper examines the legislative process and debate leading into Alaska's current constitutional crises and the societal factors underpinning one of the greatest contemporary conflicts between the state and federal government.

Land use policies in Alaska are nearly as vast and complicated as the 663,300 square mile state itself, particularly for rural and Native Alaskan residents. Hunting and fishing are integral elements of Alaskan life, bearing an often cultural and spiritual weight for Indigenous people, and serving as a lifestyle and point of pride for non-Indigenous people. However, a lack of understanding between these groups and the state and federal government's inability to properly prioritize Indigenous cultural rights resulted in some of the most complicated land use policies in the United States, preventing and challenging access to food and culture for many Alaskans.

The passage of the Alaska Native Claims Settlement Act (ANCSA), a piece of Congressional legislation, in 1971 extinguished all hunting, fishing, and gathering rights for Alaska Natives and instituted the corporation system.¹ The corporation system, as written in ANCSA, had no specific hunting, fishing, and gathering rights to replace what ANCSA removed, forcing Natives to rely on exemptions in other pieces of legislation such as the Marine Mammal Protection Act.² The Alaska National Interest Lands Conservation Act (ANILCA) essentially replaced ANCSA in 1980, as the Congressional expectations set forth in ANCSA had not been realized. ANILCA introduced "subsistence" regarding Native Alaskans to the legislative table with provisions to protect subsistence practices for rural Alaskans by providing

¹ Alaska Native Claims Settlement Act, Pub. L. No. 92203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. §§ 16011629h (2000). Hereafter referred to as "ANCSA."

² Duhaime, Gérard, and Nick Bernard. *Arctic Food Security*. Vol. 58. Alberta: Canadian Circumpolar Institute (CCI) Press, 2008.

priority for rural hunters and fishers. Subsistence for all Alaskans was recognized as a crucial element of food security when Congress stated, in their declaration of findings for ANILCA, that “in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses.”³ The legislation notably substituted “rural” for “Native,” however.

Following the passage of ANILCA, the State of Alaska passed legislation enforcing the rural prioritization system to bring the state into alignment with Congress. However, the prioritization system was shot down in 1989 by the Supreme Court of Alaska because it was deemed inconsistent with the Alaskan Constitution’s strict equal access clause.⁴ The 1989 state Supreme Court decision threw Alaska out of compliance with ANILCA, therefore passing control of subsistence rights on federal lands back to the federal government (whereas the federal government previously oversaw state control of federal land.) Subsistence rights in Alaska are now governed by two separate bodies and standards; the federal government regulates federal lands and prioritizes use for rural citizens, while the state government regulates state and private lands with no prioritization. The attempts since made to amend Alaska’s constitution to include prioritization for rural residents (therefore achieving ANILCA compliance and returning control to the state) have been unsuccessful.

Preceding both ANILCA and ANCSA are years of lobbying and debates surrounding Alaskan statehood. When Alaska formally reached statehood in 1959, competing land claims had already spread throughout the former territory. There were 92,400,000 acres of federal land reserves (including military and resource extraction reserves), 4,000,000 acres held in trust by the federal government for Native reservations, 700,000 acres held by private individuals, and 600,000 acres in the patent process for private individuals.⁵ The Native land claims were especially thorny--Native leaders advocated against the reservation system after watching the allotment process in the Lower 48. Additionally, reservations’ notoriety for poor land quality and unfair treatment had reached the ears of Alaska Native communities. At the time of the statehood

³ Alaska National Interest Lands Conservation Act, U.S. Title 16, Chapter 51 (1980).

⁴ *McDowell v. State*, 785 P.2d 1, 10–11 (Alaska 1989). The *McDowell* decision, discussed later in this paper, fundamentally changed subsistence rights in Alaska when it ruled subsistence priority for rural residents (established by ANILCA) unconstitutional, throwing the state out of alignment with federal law and dividing subsistence management between state and federal powers.

⁵ Williss, George F. “*Do Things Right the First Time*”: *the National Park Service and the Alaska National Interest Lands Conservation Act of 1980*. Washington, D.C.: U.S. Department of Interior, National Park Service, 1985, page 61. Hereafter referred to as “Williss.”

bill, standing Native land claims had been largely unaddressed. Conflicts between state officials, federal officials, and Native groups were widespread, especially when it came to dividing up rural lands used by Native people in subsistence practices. Requests to manipulate Native lands for American uses were abundant, and Native tribes often responded by filing claims to land to prevent developments like the construction of dams (as in the case of the Rampart Dam), an attempted nuclear device test (in the case of Cape Thompson), and proposed recreational sites infringing on hunting, fishing, and trapping land (in the case of Minto.)⁶ These claims came together alongside inter-tribal cooperation to unite many Alaskan Natives as a powerful political force. By 1971, Native-driven delays of the Alaskan Pipeline System (TAPS)--not a desire for justice for Native people--forced the passage of the Alaska Native Claims Settlement Act.⁷

ANCSA'S PROVISIONS AND PASSAGE

The debates surrounding every iteration of the Alaska Native Claims Settlement Act were complicated and often heated. Land claims had been in the Congressional mind for years, but as the 70's approached, it became increasingly clear that land claims legislation was imminent. The Alaska Federation of Natives grew anxious that an insufficient bill would further limit Native lands. In February of 1970, AFN president Emil Notti (Koyukon Athabaskan) delivered a speech calling for, if the land claims legislation was unfair, a separate nation in western Alaska open for both American Indians and Alaska Natives.⁸ The American Indian Movement (AIM) had been founded in the Lower 48 just two years earlier, and Native sovereignty was gaining national attention. It was clear to the non-Indigenous American that the United States' previous attempts at Native relations--especially the reservation system--were insufficient. ANCSA marked a new era in the federal government's approach to Native policy. Instead of a pure tribal reservation system, ANCSA created twelve district regions to be paired with 12 for-profit Alaska Native regional corporations, overseeing over 200 smaller village corporations, every corporation led by enrolled Native corporation members. One of the many later amendments to ANCSA included a 13th corporation for Alaska Natives no longer living in Alaska, headquartered in Washington,

⁶ Arnold, Robert D. *Alaska Native Land Claims*. Anchorage, AK: Alaska Native Foundation, 1976, pages 102-103, 94, 100. Hereafter referred to as "Arnold."

⁷ Willis, page 69.

⁸ Arnold, page 133.

that deals with monetary claims from ANCSA but not land claims. Corporations did not replace tribal governments, and they do not act as governing bodies. In fact, the corporation system explicitly separated governance from land ownership, a stark divergence from the reservation system seen in the Lower 48.⁹

Under ANCSA, Alaska Natives received titles to 40 million acres of land--all other claims based on aboriginal title were extinguished, with the exception of Annette Island Reserve (now officially known as the Metlakatla Indian Community), which is still the only Native reservation in Alaska. Metlakatla was created in 1891 as a multi-tribe reservation after Tsimshian people emigrated from Canada, and members of the Metlakatla Indian Community are ineligible from claiming any and all ANCSA benefits, in trade for their reservation status.¹⁰ There were other reservations before ANCSA, though all but the Metlakatla Indian Community were dissolved under the legislation. While reservations were extinguished, the tribes pre-dating those reservations were not--there are currently 229 federally recognized tribes in Alaska, including Metlakatla. Unlike in the Lower 48, Alaskan tribes do not operate out of any specific land base. Native Alaskans can be both enrolled in tribes and shareholders in corporations, and individuals enrolled in tribes are still eligible for certain federal resources.

ANCSA had a tight immediate timeline--for example, regional corporations had to be established within 18 months of ANCSA's passage, which meant corporations had to find their shareholders in that time. However, many villagers did not read nor write English, and several could not speak or understand it.¹¹ Some were able to translate, but it was often difficult to convey legal nuances in translation. The land selection process for villages was another constraint that forced villagers to make decisions for both themselves and the generations that would follow them--as the authors of *Native Land Claims* (a Native Alaskan detailing of the Native land claims process) eloquently stated:

While villagers knew better than any other persons what lands were needed for subsistence activities, food gathering was only one of several values important in land selection. They wanted to choose lands that would protect an existing way of

⁹ Hirschfield, Martha. "The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form." *The Yale Law Journal* 101, no. 6 (1992): 1331-355. Accessed February 14, 2021. doi:10.2307/796926.

¹⁰ Arnold, page 146.

¹¹ *Ibid*, page 161.

life for themselves and their children, but they also wanted to assure that their choices would be best for their children's futures.¹²

Other factors included, but were not limited to: land value over time, land that would protect other lands, natural resource values, and access to transportation points like roads or ports. Strategizing land claims had to happen quickly and with the future of the soon-to-be corporation in mind. On the legislative side, ANCSA was not without holes, and the act has a staggering amount of amendments. ANCSA did not wholly ignore subsistence, but it did fail to meaningfully define or protect subsistence rights--this was likely on purpose, since subsistence was (and continues to be) a heavily divisive issue in both Congress and Alaska. ANCSA deferred to the Secretary of Interior's withdrawal authority to make decisions regarding subsistence rights on public lands. While Native people were free to continue subsistence practices on corporation-claimed land, those practices could be limited or extinguished by neighboring public lands, nearby development causing changes in the local ecosystem, or other human interference--Native or otherwise. Additionally, the land claims are just that--land claims. Subsistence practices involving whaling, sealing, and other maritime hunts are another issue altogether.

ANCSA notably held more land in trust for Alaska Natives than the government had ever held for any other Indigenous group, and the compensation for lands given up from Native claims was "nearly four times the amount all Indian tribes had won from the Indian Claims Commission over its 25-year lifetime."¹³ This should be celebrated cautiously, if at all: Native Alaskans had aboriginal land claim to virtually the entire state, so 40 million acres--one ninth of the total size of Alaska--was still a severe reduction in land rights.

Ultimately, ANCSA was an "experiment that attempted to employ a purely capitalistic invention -- the corporation -- to protect what is essentially a non - capitalistic , predominantly subsistence lifestyle."¹⁴ However, not all Natives are anti-capitalist, and some Native leaders got frustrated with Sierra Club comments suggesting otherwise. Furthermore, the corporation system is problematic on an economic level; as Harold Napoleon, president of the southwestern Alaska regional nonprofit corporation Yupiktak Bista, noted: "...Any economic realist will tell you that out of every one hundred, ten corporations may succeed. In some cases, rather than have a

¹² Arnold, page 250.

¹³ Ibid, page 148.

¹⁴ Williss, page 89.

village money making corporation, a community center or a community library would have been more practical, and might have proven more valuable in 20 years when the village corporation has gone broke.” The very tasks required of corporations by the settlement act had the potential to exceed the actual settlement amount and mineral revenues received by the corporation. A 1970’s analysis by Lee Forsuch for the Alaska Native Foundation estimated the cost of basic operations for a village corporation at approximately \$70,000 a year, covering staffing, office, and travel expenses--most villages were unable to support such expenditures.¹⁵ Corporations built hotels, restaurants, and banks to generate profits, but many had to turn to natural resources to build any sort of financially viable infrastructure.¹⁶ However, corporations--when successful--can substantially provide for their shareholders. The Bristol Bay Native Corporation describes ANCSA as “an engine for economic development in Alaska, especially in rural areas.”¹⁷ As we consider ANCSA corporations’ effect on local economies and their shareholders, it is again important to re-emphasize the distinction between Native corporations and tribal governments. While corporations can provide some services and work to generate income, they are under no obligation to provide social or cultural services. Especially considering Alaska’s subsurface resource wealth, corporations are often forced to decide between generating immediate profits via resource extraction, or deciding to preserve the lands they have jurisdiction over. Thousands of complicating factors, from wealth inequality stacked against Native communities to climate change to inter-tribal politics, muddy the waters. Subsistence rights is an issue right in the middle of those waters, both a cultural and economic issue, that is heavily impacted by land use policies and the immediate physical environment. When ANCSA failed to address subsistence, it did not leave subsistence in the hands of corporations--it created a legal no-man’s land dependent on circumstances, local courts, and decisions from Washington.

On one level, the Alaska Native Claims Settlement Act has core features of restorative land justice and affirmative action; it provided money to targeted communities, encouraged self-reliant infrastructure, and granted more land titles back to Indigenous people than any other United States agreement, law, or treaty before it. Tribal leaders were heavily involved in the formation of the act and in many of the subsequent amendments. However, ANCSA’s inability

¹⁵ Arnold, pages 227-228.

¹⁶ Ibid, page 227.

¹⁷ “Land: ANCSA.” Bristol Bay Native Corporation. Accessed January 30, 2021. <https://www.bbnc.net/our-corporation/land/ancsa/>.

to fully address subsistence could not be remedied by land claims or the corporation system. While the corporation system does enforce Native sovereignty over surface and subsurface land claims, navigable waterways are a massive component of traditional food practices. Furthermore, the creation of public lands under ANCSA restricted traditional Native hunting grounds. As amendments to ANCSA piled on, none were able to undertake the task of defining and regulating (or, perhaps, deregulating) subsistence hunting. When ANCSA was born, ANILCA was already on the horizon.

ANILCA: IMPLICATIONS FOR SUBSISTENCE AND SETTING THE FEDERAL STANDARD

The Alaska National Interest Lands Conservation Act was signed into law by President Jimmy Carter on December 2, 1980 after a nine-year legislative struggle. The Act reclassified over 100 million acres of Alaskan land into public lands, including national parks, national wildlife refuges, national forest, national wild and scenic rivers, and national wilderness preservation systems. In addition to designating public lands, the Act worked to patch up some administrative weaknesses of ANCSA, facilitate studies on natural resource usage, and address transportation and travel issues across the new public lands. Because hunting, fishing, and gathering is typically prohibited on public lands, ANILCA also had to address subsistence rights on the now-230+ million acres of land managed by the federal government--much of which overlapped with traditional Native harvesting grounds. Title VIII of the Act addresses subsistence--arguably the driving force behind the bill. Between 1977 and 1980, Congress received about 20 versions of ANILCA, and nearly every draft included policies to protect subsistence resources.¹⁸ One of the great failures of ANCSA was its unwillingness to address subsistence, and it was clear that ANILCA had to rectify this. The Alaska Task Force created a subsistence study focused on Native and non-Native subsistence practices, land values, lifestyles, archeology, history, and anthropology.¹⁹ The task force conducting the study was a collaborative effort between the National Parks Service and NANA Native Corporation, an Inupiat corporation.

¹⁸ Naiman, Joris. "ANILCA SECTION 810: AN UNDERVALUED PROTECTION FOR ALASKAN VILLAGERS' SUBSISTENCE." *Fordham Environmental Law Journal* 7, no. 2 (1996): 211-350. Accessed February 15, 2021. <http://www.jstor.org/stable/44174257>.

¹⁹ Williss, page 232.

For subsistence rights, Title VIII is easily the most important part of ANILCA. Title VIII opens with the claim that Congress had found (via the task force study) that subsistence was “essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence.”²⁰ Section 805 divides the state into six subsistence regions (now 10), managed by the Federal Subsistence Management Program under the Department of the Interior. The subsistence portion of the Act establishes harvesting preference on public lands for rural residents who are harvesting for subsistence instead of consumption. Section 804 further establishes the criteria for subsistence preference, stating that preference for rural residents is determined by: 1) customary and direct dependence upon the populations as the mainstay of livelihood, 2) local residency, and 3) the availability of alternatives.²¹ While the introduction to Title VIII specified Native access to subsistence resources as culturally and economically critical, the actual legislative teeth of Title VIII leave out specification for Native people, instead focusing on rural people who meet the above criteria. This exclusion was done purposefully; according to Senator Udall, initial drafts of ANILCA only protected subsistence for Alaska Natives, but the State of Alaska urged edits, arguing that the Constitution of Alaska would bar enforcement of a Native-only subsistence law.²² However, by replacing “Native” with “rural” in the final draft, ANILCA excludes non-rural Natives, ignoring the task force claim in Title VIII’s introduction that subsistence is essential to Native cultural survival.

ANILCA gave the Alaskan government two options: they could either write state-level subsistence statutes in line with ANILCA and manage their own subsistence practices under federal oversight, or they could just allow for direct federal management. The state opted for the former and wrote multiple subsistence statutes, the most relevant of which being a 1978 statute (written before the passage of ANILCA, but with ANILCA drafts in Congress) and a 1986 statute clarifying the 1978 one. The 1978 statute established a two-tier subsistence system: the first tier opened subsistence harvesting to everybody if populations were adequate, and the second tier limited subsistence harvesting to individuals who met the same three requirements as listed in ANILCA (customary and direct dependence, local residency, and the availability of

²⁰ Alaska National Interest Lands Conservation Act, U.S. Title 16, Chapter 51 (1980). Title VIII, Section 801, subsection 1.

²¹ Alaska National Interest Lands Conservation Act, U.S. Title 16, Chapter 51 (1980). Title VIII, Section 804.

²² *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1988).

alternatives.) This statute only required rural residency in the second tier, not the first. The 1986 statute required rural residency for both tiers.

Neither ANILCA nor the state-level subsistence statutes define “rural.” The 1989 lawsuit, *Kenaitze Indian Tribe vs. State of Alaska*, applied the Census Bureau’s definition of rural--2,500 citizens or less in a community--to subsistence policies in Alaska. In a state with geography and climate as unique as Alaska, strictly population-based definitions of rurality are exceptionally problematic today. Utqiagvik, for example, is the northernmost city in the United States and is only accessible to the general public by airplane--however, the town has over 4,000 residents, therefore exempting it from the technical “rural” categorization. By defining rurality only by population density, the legislation ignores the complexities that actual rural Alaskans face every day. While many towns such as Utqiagvik may have met the “rural” classification at the time, they legally do not now, a major long-term failure of the legislation and the Census Bureau’s definition of rural as a whole. The Federal Subsistence Board has since made efforts to rectify this--one of their core duties is determining which communities and/or areas in Alaska classify as rural or nonrural, largely without specific population requirements.²³ However, the issues presented by ANILCA’s vagueness and the *Kenaitze Indian Tribe vs. State of Alaska* decision are indicative of a larger ignorance of what rurality looks like in practice, perpetuated by the federal government.

MCDOWELL V. STATE: THE POLITICAL FALLOUT OF CLASHING IDEALS

In 1983, four men, including Sam McDowell of Anchorage, filed suit against the State of Alaska, the state Department of Fish and Game, the Alaska Federation of Natives, and others over the preference system as enacted in the 1978 state-level statute. McDowell and the other appellants amended their complaint upon passage of the 1986 statute (originally against the second tier of the 1978 statute) to challenge the rural requirement, stating that it violated the Constitution of Alaska.²⁴ In addition to the 1986 statute, ANILCA does utilize rural requirements for subsistence preference--however, the appellants were challenging state law, not federal law, so ANILCA was not directly under fire. In 1989, the Supreme Court of Alaska sided with

²³ “Federal Subsistence Board,” Code of Federal Regulations, title 36 (2011): 242.10, (d).
<https://www.law.cornell.edu/cfr/text/36/242.10>.

²⁴ *McDowell v. State*, 785 P.2d, 1 (Alaska 1989).

McDowell and struck down the rural requirements in the 1986 statute. Because ANILCA requires the rural provision, this threw the state’s subsistence regulations out of sync with ANILCA, and subsistence fell back under federal management. Therefore, rural residency is still required for subsistence preference on federal lands in Alaska, but it is required and subsistence on those lands is administered by the federal government rather than the state. The court-amended 1986 statute still applies off federal lands. The conflict between federal management and the state could be resolved if the state legislature amended the state Constitution to fall in line with the McDowell decision, however, the legislature has been unable to successfully do so (despite multiple attempts) since 1989.

The McDowell case was ultimately representative of a larger cultural and political conflict in Alaska. Charles Johnson, Inupiat then-president of Bering Straits Native Corporation and chair of the Alaska Federation of Natives subsistence committee, described the McDowell supporters in 1982 as “quite willing to divide this state racially to achieve their end.”²⁵ McDowell, meanwhile, was clear in his disdain for Alaska Natives, publicly stating “that poor-old-subsistence-native concept won't work with me” and “We're not going to allow these people who we gave \$1 billion and 44 million acres of land to disenfranchise us.”²⁶ The McDowell case, and its political fallout, illustrates the divide in understandings of what “subsistence” means, and who should have access to it--a divide that is very much alive today. Ultimately the preference policy was not about “rural” versus “urban.” As aforementioned, the word “rural” was imposed early on to specifically avoid directly addressing Native people, but using “rural” as a synonym or placeholder for “Native” paints all Native Alaskans as rural and all non-Native Alaskans as urban, which is simply untrue. Especially today, many Native people live in urban areas, and many non-Native people live in rural areas. One in thirteen Anchorage residents are Indigenous.²⁷ Whether or not an Indigenous person lives in an urban area--or even their ancestral homelands, for that matter--should not affect the human and cultural rights of Indigenous people to access their own culture, especially as colonization and climate change are continually

²⁵ Turner, Wallace. “ALASKA HUNTERS SEEK TO END LAW GIVING NATIVES PRIORITY.” *The New York Times*, July 4, 1984, Sunday edition, sec. Around the Nation.

²⁶ Ibid.

²⁷ Dunham, Mike. “Anchorage Is Alaska's Biggest Native 'Village,' Census Shows.” *Anchorage Daily News*. *Anchorage Daily News*, July 10, 2011. <https://www.adn.com/alaska-news/article/anchorage-alaskas-biggest-native-village-census-shows/2011/07/11/#:~:text=According%20to%20information%20from%20the,and%20Athabascans%2C%20the%20figures%20show.>

pushing Arctic and sub-Arctic Indigenous people away from their traditional homes. Furthermore, non-Native people do have the right to responsibly and sustainably hunt and fish in the appropriate areas. Native advocates for the preference policy--even the abridged and flawed “rural” (rather than Native) focused policy--understood the problems that accompany Alaska’s tourism economy and subsequent resource scarcity. One of the most-frequented arguments for Indigenous ways of harvesting plants and animals, behind the fundamental nature of Indigenous human and cultural rights, is the fact that Indigenous traditions are often the best land and water stewardship practices. However, subsistence is not just about the ways in which people harvest plants and animals; there is a strong cultural element to subsistence that runs much deeper than hobby or lifestyle preference. The word “subsistence” itself is remarkably tricky, because different people have different connotations. At its most complex, subsistence directly tied to a multidimensional food sovereignty and food security framework, characterized by the ICC for Inuit in the following:

Alaskan Inuit food security is the natural right of all Inuit to be part of the ecosystem, to access food and to care-take, protect and respect all of life, land, water and air. It allows for all Inuit to obtain, process, store and consume sufficient amounts of healthy and nutritious preferred food – foods physically and spiritually craved and needed from the land, air and water, which provide for families and future generations through the practice of Inuit customs and spirituality, languages, knowledge, policies, management practices and self-governance. It includes the responsibility and ability to pass on knowledge to younger generations, the taste of traditional foods rooted in place and season, knowledge of how to safely obtain and prepare traditional foods for medicinal use, clothing, housing, nutrients and, overall, how to be within one’s environment. It means understanding that food is a lifeline and a connection between the past and today’s self and cultural identity. Inuit food security is characterized by environmental health and is made up of six interconnecting dimensions: 1) Availability, 2) Inuit Culture, 3) Decision-Making Power and Management, 4) Health and Wellness, 5) Stability and 6) Accessibility.²⁸

While the above framework is specifically tailored to Inuit and not other Native groups in Alaska, it demonstrates the complexity of the word “subsistence” in the Native context and how deeply tied it is to cultural survival. The non-Native understanding of subsistence is indeed

²⁸ “Alaskan Inuit Food Security Conceptual Framework: How to Assess the Arctic From an Inuit Perspective.” Anchorage, AK: ICC, 2015.

cultural as well, but in remarkably different ways. When the McDowell plaintiffs stated “subsistence should depend upon individual needs and traditions, not on one's place of residence” (referencing the rural preference, which McDowell explicitly viewed as preferential to Natives), the word “traditions” was loaded in a drastically different way than the ICC’s use of the word “traditional.”²⁹ For McDowell sympathizers, tradition was more connected to immediate memory and concepts of frontiersmanship. McDowell himself moved to Alaska as an adult (he was born in Missouri) and was described by his family as a pioneer. His relationship with tradition--and therefore subsistence--was just fundamentally different from the Native relationships with those concepts. When McDowell supporters use the word subsistence, it is essentially a different word than the one used by many Native Alaskans. In fact, the Bureau of Indian Affairs website claims that some Native Alaskans prefer the term “Our Way of Life” because it is more holistic than the applied legal definition of subsistence.

The conflict between Native and non-Native hunters, the State of Alaska, and the federal government did not end with the post-McDowell federal takeover of Alaskan public lands. Complicated and interwoven series of lawsuits from all sides of the issue have persisted into today. The Katie John cases, a series of lawsuits named for the Ahtna elder who initiated them, challenged the definition of “public lands” to include navigable and non-navigable waterways so an Upper Ahtna community could access their traditional fishery. Alaskan state legislatures have made repeated attempts to amend the state constitution, and the Alaskan Congressional delegation has taken shots at amending ANILCA. The issue of state versus federal control is really secondary to the issue of rural and/or Native subsistence priority versus equal subsistence access. A sheer lack of understanding between involved parties, paired with language barriers and a legal vocabulary unfit to describe the cultural weight of the matters at hand, has created a legal mess that is often remarkably difficult for Alaskan residents to navigate. Whether or not federal management is ultimately the best option available for Native subsistence rights and food sovereignty is the ultimate question here, and one that has no clear answers. Native advocates and leaders have fallen on both sides of the issue, and whether the federal or state government is most supportive is often a question of circumstance--Native Alaskan culture and the Alaskan environment itself is remarkably diverse and varied, so no one prescription can be made to the entire state and ethnic group. We must keep in mind that both the federal and state governments

²⁹ McDowell v. State, 785 P.2d, 1 (Alaska 1989).

have their own interests that do not always align with Indigenous interests; such is the (mild) history of the entire United States.

The uncertain state/federal management system in place is volatile and unsustainable. The State government can never be expected to accept indefinite federal control, especially in a state with as strong libertarian leanings as Alaska. A task force on subsistence priority involving representatives from the Department of the Interior, leadership from the state legislature, and both tribal and Native corporation leadership must review any potential amendments to either the Constitution of Alaska or ANILCA. Holistic, paid inclusion of Native leaders is key--previous attempts at such task forces have not always included leadership from a diversity of Native Alaskan groups, and Native Alaskan culture is exceptionally varied in expression and experience. Paid positions are crucial in ensuring the task force members are able to dedicate their time fully to the task force and preventing expectations of free physical, mental, or emotional labor. The advent of the climate crisis has brought environmental issues to the political realm with more strength than ever before, and as the American political system faces climate policy's most difficult questions, Alaskan land management is bound to become the center of D.C. debate yet again. Issues such as drilling in the Arctic National Wildlife Refuge and the hotly-contested Pebble Mine in Bristol Bay have almost accomplished this, one of the many appeals to either of those projects may be the catalyst for another massive Congressional debate on how the state's resources should be accessed. When the moment does occur, we must not forget the history of ANCSA, ANILCA, and the cultural competency failures that have delivered us to this point.

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THE COST OF CRIME SOLVING: FAMILIAL DNA SEARCHES IN U.S. CONGRESSIONAL DEBATE

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Many recent apprehensions of serial criminals like the Golden State Killer and NorCal Rapist have relied on familial DNA searching, which compares unidentified DNA profiles against law enforcement and commercial databases in search of a suspect's biological relatives. Various congressional actions to either promote or limit familial DNA searches have been proposed since the technique rose to prominence in the 2010s. By examining the process by which conventional DNA technologies were legally incorporated in the 1990s, I explore potential lessons for contemporary legislators as they consider the privacy and equity implications of new forensic methodologies like the familial DNA search.

INTRODUCTION

GEDMatch, an online service founded in 2010, offers its 1.45 million users the opportunity to explore their genetic origins and lineage by uploading a DNA profile and seeking fellow users who share pieces of their genetic code.¹ The GEDMatch model is among the newest entrants of an emerging commercial market for personal genomics. These genomic services promise to inform clients on matters of health and ancestry but have come under criticism for promulgating a linkage between genetic origins and biological race, conceptions that lack scientific validity.² One of GEDMatch's more surprising and prolific users is the U.S. Federal Bureau of Investigation. In a multi-decade criminal investigation, the FBI coopted user-uploaded genetic data from GEDMatch in their search for the infamous Golden State Killer, the perpetrator of at least thirteen murders, fifty rapes, and 120 burglaries between 1973 and 1986.³ The investigation ended with the 2018 arrest and eventual prosecution of Joseph James

¹ Users typically complete a DNA test with an outside service before uploading these results to GEDMatch.

² See, e.g., Nadia Abu El-Haj, *The Genealogical Science: The Search for Jewish Origins and the Politics of Epistemology* (Chicago: University of Chicago Press, 2012); Kim TallBear, *Native American DNA: The False Promise of Genetic Science* (Minneapolis: University of Minnesota Press, 2013); Alondra Nelson, *The Social Life of DNA: Race, Reparations, and Reconciliation After the Genome* (Boston: Beacon Press, 2016); Aaron Panofsky & Joan Donovan, "Genetic Ancestry Testing Among White Nationalists: From Identity Repair to Citizen Science," in *Race, Nature, and the Politics of Difference* (Durham: Duke University Press, 2019).

³ Chris Phillips, "The Golden State Killer Investigation and the Nascent Field of Forensic Genealogy," *Forensic Science International* 36 (2018).

DeAngelo. Having linked his crime sprees through the collection of DNA evidence at the crime scenes, the FBI collaborated with GEDMatch to access their database of user profiles and assemble a family tree for the Golden State Killer—a genealogical web that would come to include over 1,000 American citizens. Eventually, analysis of the constructed family tree led to DeAngelo, a former police officer whose movements and history comported with the FBI’s profile of the killer. DeAngelo was sentenced to life incarceration without parole in 2020 after pleading guilty.⁴

The search for the Golden State Killer is the latest prominent cold case investigation to feature this method of forensic analysis, known as “familial DNA searching.” Proponents of the method argue that it is particularly useful as a means of producing investigative leads when police have a DNA sample from an unidentified perpetrator but cannot match it to an individual profile within their databases of past criminal offenders. Yet the practice has also drawn fierce criticism from both civil libertarians, who argue that familial searching violates the Fourth Amendment of the U.S. Constitution, and from criminal justice advocates, who see potential for the practice to disparately target overpoliced nonwhite and indigent communities. Law enforcement enlistment of commercial databases like GEDMatch in familial searching has intensified this criticism due to elevated privacy concerns. If criminal DNA databases and personal genomic databases constitute what anthropologist Anna Jabloner labels two ‘molecular worlds,’ law enforcement is increasingly pushing the limits of what results when these two worlds are made to collide.⁵

Such criticisms make congressional regulation of familial DNA searching a thorny prospect with many stakeholders. While legislation has been proposed to limit the cases in which familial searching might be used by state and federal investigators, debate on these bills has never led to passage. In order to outline the stakes and potential consequences of proposed congressional regulations in this context, I turn to a historical analysis of the last major technological development to reshape the forensic landscape: the standardization of conventional DNA typing in the 1990s. In examining this case study, I argue that a lack of governmental leadership in the early stages of the so-called “DNA Wars” hampered the technology’s capacity

⁴ Heather Murphy and Tim Arango, “Joseph DeAngelo Pleads Guilty in Golden State Killer Cases,” *The New York Times*, June 29, 2020, <https://www.nytimes.com/2020/06/29/us/golden-state-killer-joseph-deangelo.html>.

⁵ Anna Jabloner, “A Tale of Two Molecular Californias,” *Science as Culture* 28, no. 1 (2019), 2.

to exonerate the innocent and identify perpetrators. Applying these lessons to current debates surrounding the familial search, I advance a number of potential actions Congress might take in order to avoid the pitfalls of conventional DNA use pre-2000—though each pathway has its own strengths and weaknesses. Ultimately, I conclude with a broader discussion of factors that differentiate familial searching from conventional DNA typing, and thus point toward potential items of congressional debate that may arise with the continued development of crime-solving technologies. Are failures on privacy and equity unfortunate “costs” of crime-solving, or can Congress find a new way forward?

DNA ‘FINGERPRINTING’: STABILIZING FORENSIC DNA IN THE 1990s

Unlike other common forensic techniques such as fingerprinting, ballistics, and toolmark analysis, which evolved alongside new policing and investigative techniques, DNA became an object for analysis in the biological sciences far before law enforcement could imagine its crime-solving potential. While DNA was first isolated in the late 1800s and its structure was documented during the 1950s, it was not until the 1980s that scientists and law enforcement seriously considered the prospect of using DNA and its traces to identify criminal suspects. DNA, much like fingerprints, the logic went, was unique to each individual, allowing for reliable matching of unknown samples to those yielded by suspects. This analogy yielded the term ‘genetic fingerprinting’ or ‘DNA fingerprinting,’ though, as modern critics have pointed out, the processes of fingerprinting and this new genetic methodology were actually quite different in technique and scope.⁶ For this reason, I will instead refer to this process as ‘conventional DNA analysis’ or just ‘DNA analysis.’

Conventional DNA analysis involves a number of scientific procedures used to compare two DNA samples. Because much of the human genome is common across individuals, the process involves the analysis of a small number of short tandem repeaters (STRs), high-variance locations in DNA strands that can be directly compared across subjects.⁷ After the DNA sample from a crime scene or suspect is collected, a process called gel electrophoresis is used in order to

⁶ Paul Rabinow, “Galton’s Regret and DNA Typing,” *Culture, Medicine and Psychiatry* 17, no. 59-65 (1993), 113; Duster, “Selective Arrests,” 169.

⁷ “DNA Fingerprinting,” *National Human Genome Research Institute*, accessed January 15, 2021, <https://www.genome.gov/genetics-glossary/DNA-Fingerprinting>.

generate a barcode-like visual representation of the STRs' genetic contents. Based on estimations of how frequently certain genetic sequences appear across the entire population, the analyst will compare the two DNA samples in question and will exclude a suspect if they cannot have been the source of the unidentified sample.⁸ Conversely, the analyst may conclude that the suspect should be included if the two samples closely resemble one another. While forensic practitioners have moved away from the terminology of “matching” samples due to its potential conveyance of overconfidence, “inclusion” is frequently tantamount to a match and thus holds evidential weight, with over one in one billion odds that the two samples being analyzed originated from different individuals.⁹

The earliest attempts to utilize DNA analysis to convict a criminal suspect occurred in England in the case of *R. v. Pitchfork* in 1988, in which police used an expansive dragnet to collect DNA profiles from almost every man in the village where two girls were raped and murdered on walking paths.¹⁰ While the successful identification and conviction of Colin Pitchfork in this case was hailed as a watershed breakthrough in modern crime-solving, the importation of DNA analysis into the United States fell far short of observers' high expectations. The first major U.S. criminal case to rely heavily on DNA evidence, *Andrews v. State of Florida* (1988), saw Judge Richard Orfinger bar DNA analysis from being entered into evidence.¹¹ Subsequently, cases in Maine and New York also saw the exclusion of DNA evidence.¹² In all three of these cases, the judges took issue with (1) the procedures and standards followed by the forensic lab, or (2) the “general acceptedness” of the scientific processes underlying DNA analysis, a precedent for evidential admission emerging from the district court case *Frye v. United States* (1923).¹³

Obstructions to admission of forensic DNA in these cases limited the technology's vast potential to identify suspects and, just as importantly, exonerate the innocent. As Sheila Jasanoff notes in her influential work on the intersections of law and the sciences, the consensus on DNA analysis at conventions and in peer-reviewed journals was “shaky” at best, with large concerns

⁸ Eric S. Lander & Bruce Budowle, “DNA Fingerprinting Dispute Laid to Rest,” *Nature* 371, no. 6500 (1994), 136.

⁹ Jennifer Mnookin, “The Uncertain Future of Forensic Science,” *Daedalus* 147, no. 4 (2018), 103.

¹⁰ *R. v. Pitchfork*, England and Wales Court of Appeal Criminal Division, 963 (1988).

¹¹ *Andrews v. State of Florida*, 533 So. 2d 841, Fl. Dist. Ct. App (1988).

¹² Colin Norman, “Maine Case Deals Blow to DNA Fingerprinting,” *Science, New Series* 246, no. 4937 (1989); *People v. Castro*, 143, 144 Misc. 2d 276 (1989).

¹³ *Frye v. United States*, 293 F. 1013, D.C. Cir., (1923).

surrounding the use of population genetics to extrapolate the statistical certainty with which a DNA sample could be excluded or included as a match.¹⁴ In the 1990s, scientists working with DNA eventually came to a more solid consensus on the reliability of DNA analysis and population genetics. There was a particularly concerted effort to communicate this consensus to the general public ahead of the contentious media circus surrounding the O.J. Simpson trial. DNA evidence served as a key plank in the prosecution’s argument that the football star murdered his ex-wife, Nicole Brown Simpson, and her friend, Ron Goldman.¹⁵ Ahead of the trial, Eric Lander and Bruce Budowle published an article where they declared the scientific disputes on the reliability of DNA “laid to rest.”¹⁶ Yet vigorous attacks on the chain of custody in that case vastly curtailed the amount of DNA evidence presented to the jury, allowing the defense to focus on evidential sideshows that led to Simpson’s acquittal (the ‘fitting of the glove’ being the most famous).¹⁷

While the standard of ‘general scientific acceptedness’ under *Frye* seems to leave matters of evidential validity to the scientific community, the Simpson trial exposes a deeply political dimension to this judgment. The scientific community was no longer in doubt about the validity of DNA analysis by the time of *People v. Simpson*, and yet the evidence was inadmissible. The Simpson trial also took place after the first case in the so-called *Daubert* trilogy, a series of Supreme Court cases that moved away from the ambiguous *Frye* standard and created new tests of evidential admissibility, focusing on “knowledge” instead of “acceptedness” and rigidifying the need for peer review, evidence, and experimental validity in scientific evidence.¹⁸ Yet such a formulation disappears the role of governmental institutions in the gatekeeping of knowledge. As Lander and Budowle note, their declaration that the DNA analysis dispute was “laid to rest” came not simply through rigorous scientific debate in journals and at universities, but the formation of a Technical Working Group on DNA Analysis Methods (TWGDAM) by the FBI and Department of Justice. In this working group, a governmental taskforce brought stakeholders

¹⁴ Sheila Jasanoff, *Science at the Bar: Law, Science, and Technology in America* (Cambridge: Harvard University Press, 1995), 78.

¹⁵ Jasanoff, *Science at the Bar*, 52; Sheila Jasanoff, “The Eye of Everyman: Witnessing DNA in the Simpson Trial,” *Social Studies of Science* 28, no. 5-6 (1998), 713-740.

¹⁶ Lander and Budowle, “DNA Fingerprinting Dispute Laid to Rest.”

¹⁷ Jasanoff, “The Eye of Everyman,” 716.

¹⁸ *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).

affiliated with prosecutors, defenders, and forensic science to the table in order to create new standards for the testing, storage, and admission of DNA evidence in criminal cases.

This state-led enterprise fostered consensus in the scientific community, but, as the *Simpson* case shows, this consensus was not readily uptaken by courts and jurors. Instead, it was *congressional* action, largely through the DNA Identification Act of 1993, that is credited with the eventual stabilization of DNA evidence through the implementation of lab standards, accreditation processes, and the authorization of the Combined DNA Index System (CODIS), a DNA database system that contains profiles uploaded by state and national police. CODIS requires compliance with federal standards of DNA collection and custody in order to attain access and log samples.¹⁹ While the passage of this act in 1994 technically preempted the *Simpson* decision, the accumulation of profiles in CODIS and extent to which labs adjusted their processes to comport with new auditing measures like competency tests lagged the law's initial passage. As CODIS became a more and more important crime-solving tool, law enforcement began to adhere to nearly identical standards and established clear chains of custody. This shift left less and less room for arguments against DNA like those employed by the defense in the *Simpson* case and *Lifecodes* trilogy. A clear, congressionally-authorized framework in conjunction with governmental leadership paved the way for the consistent use of DNA to solve crimes.

Scholars in science and technology studies (STS), most notably Sheila Jasanoff, point to the “idiom of co-production” as a key theoretical tool in reviewing the intersections between law and science. The idiom of co-production urges that scientific knowledge and the exercise of governance are not separate, nor is one dominant over the other. Instead, co-production suggests that science and governance are engaged in a complicated push-and-pull relationship that entwines the two in the pursuit and making of knowledge.²⁰ Indeed, I suggest that the salience of co-production in the DNA Wars case study, and the role of Congress and government in the wars' eventual settlement, provides a variety of lessons for the context of familial DNA searching.

¹⁹ “H.R. 829 – DNA Identification Act of 1993,” *Congress.gov*, <https://www.congress.gov/bill/103rd-congress/house-bill/829>.

²⁰ Sheila Jasanoff, “The Idiom of Co-Production,” in *States of Knowledge* (New York: Routledge, 2013), 1-13.

THE FAMILIAL SEARCH: METHOD, CRITIQUES, PROPOSALS

Over the past twenty years, Congress and state legislatures have passed legislation to expand CODIS and the DNA databases within it. While these databases initially contained only the genetic profiles of those convicted of violent offenses, the 2001 passage of the Patriot Act and the 2005 reauthorization of the Violence Against Women Act greatly expanded the crimes qualifying an offender for inclusion in these databases.²¹ In 2013, the Supreme Court decision in *Maryland v. King* found that police could legally take a DNA sample from any arrestee as a standard booking procedure, a practice adopted by 28 states that has also served to greatly expand the reach of CODIS.²²

The CODIS offender database is frequently used by law enforcement while investigating homicides, rapes, or other major crimes that yield genetic evidence. The database acts as a library of convicts and arrestees that the sociologist Troy Duster likens to an archive of suspects.²³ The indexing of these profiles allows analysts to compare an unknown DNA sample against thousands of offender profiles at once, with the logic that there is an increased likelihood that past convicts and arrestees are inclined to offend again, and perhaps ‘graduate’ to more violent offenses. Yet Duster’s research has documented the troubling extent to which DNA databases disproportionately collect and index the genetic information of Black and Latino men, a disparity reflecting the increased likelihood that these demographics will be arrested and convicted for an offense relative to their white counterpart.²⁴

Some critics argue that familial DNA searching only intensifies the racial biases of DNA databases. During the familial searching process, law enforcement canvasses CODIS for any potential offender profiles that bear a resemblance to the unidentified sample, flagging such profiles as prospective siblings, parents, children, and cousins. A 2014 statistical analysis, however, found that the overrepresentation of nonwhite men in DNA databases leads to significant error rates during the familial matching process, with three to eighteen percent of first

²¹ Sheldon Krimsky & Tonia Simoncelli, *Genetic Justice: DNA Data Banks, Criminal Justice, and Civil Liberties* (New York: Columbia University Press, 2011), 32.

²² *Maryland v. King*, 569 U.S. 435 (2013).

²³ Troy Duster, “Selective Arrests, An Ever-Expanding DNA Forensic Database, and the Specter of an Early Twenty-First Century Equivalent of Phrenology,” in *Tactical Biopolitics: Art, Activism, and Technoscience* (Cambridge: MIT Press, 2008).

²⁴ Duster, “Selective Arrests,” 171.

cousins incorrectly identified as full siblings.²⁵ One co-author of the study, Erin Murphy, has focused on these racial disparities as a mechanism by which Duster’s analogy of the ‘suspect archive’ is reconfigured as a “suspect class,” as attenuations of genetic relation expand the reach of DNA databases into family intimacies and project criminality onto the phenotypic manifestations of ancestry.²⁶ Critically, Murphy argues that this makes familial DNA searching an unconstitutional violation of the Fourth Amendment’s prohibition against improper search and seizure. Murphy contends that focusing the glare of investigatory inquiry on individuals for no reason other than the police-involvement of their relative clearly breaches this prohibition, though others have concluded that the Supreme Court would likely uphold the practice if the question were to come before them.²⁷

In addition to the racial inequities of familial DNA searching (and DNA databases more broadly), familial DNA searching has come under withering criticism from civil libertarians and privacy rights advocates. Beyond the Fourth Amendment argument offered by Murphy and others, groups like the New York American Civil Liberties Union have argued that the familial search presumes a biological and heteronormative view of the family that could inadvertently reveal adoptions, affairs, and other sensitive information surrounding parentage and conception.²⁸ These concerns surrounding privacy reflect a new frontier in the growing corpus of tort and constitutional cases that embrace privacy as a vehicle to strike down invasive state laws, following the model of *Griswold* (1965) and *Roe* (1973).²⁹ However, advocates for privacy focus not only on the government, but also on commercial genomics companies like GEDMatch, 23andMe, and ancestry.com, arguing that collaboration between these actors and law enforcement betrays the privacy expectations of consumers (though user agreements complicate the legal viability of such arguments).³⁰

In response to such concerns, various legislative proposals have been introduced at the state and federal levels. In California, for example, lawmakers passed a new rule authorizing the

²⁵ Rori Rohlf et al., “The Influence of Relatives on the Efficiency and Error Rate of Familial Searching,” *PLOS ONE* 9, no. 1 (2014).

²⁶ Erin Murphy, *Inside the Cell: The Dark Side of Forensic DNA* (New York: Nation Books, 2015).

²⁷ Elaine Ortyl, “DNA and the Fourth Amendment: Would a Defendant Succeed on a Challenge to a Familial DNA Search?” *American Journal of Law & Medicine* 45 (2019), 421.

²⁸ “Comments Regarding Familial DNA Searching,” *ACLU of New York*, accessed February 9, 2021, <https://www.nyclu.org/en/publications/comments-regarding-familial-dna-searching>.

²⁹ *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973).

³⁰ Bartha Maria Knoppers, “Consent to ‘Personal’ Genomics and Privacy,” *EMBO Reports* 11, no. 6 (2010), 418.

creation of an interdisciplinary committee to individually consider whether familial DNA searching is appropriate in a given case, while Maryland is the only state to adopt legislation specifically banning the use of familial DNA searching by state law enforcement.³¹ Federally, the most significant proposed action is the “Utilizing DNA Technology to Solve Cold Cases Act” of 2011, a bill sponsored by Democratic Representative Adam Schiff of California that would explicitly authorize the federal use of familial searching, but only in cases of homicide, manslaughter, kidnapping, and sexual crimes against minors.³² However, while the legislation was introduced in the 112th Congress and subcommittee hearings occurred, the bill never received a vote or floor debate.³³

The absence of congressional intervention in this emergent frontier for law enforcement, judges, and geneticists leaves a realm of ambiguity with competing jurisdictions between localities, states, and the federal government. A similar period of ambiguity persisted for much of the historical case study of conventional DNA analysis in the 1990s. By applying lessons from the “DNA Wars” to the context of familial DNA searching, I question whether this ambiguity can be clarified without governmental leadership.

THE CO-PRODUCTION OF FAMILIAL SEARCHING

A number of similarities stand out when comparing debates over familial searching to the DNA Wars of the 1980s and 1990s. As in the historical case study, we can see that the various controversies associated with familial DNA searching are related to questions of both science *and* governance.

In the former regard, the aforementioned study by Rori Rohlf, Erin Murphy, and others that finds statistical bias against nonwhite individuals in the familial searching process exposes the degree to which familial searching is, as of yet, a highly inexact process. Beyond questions of racial bias, the familial search simply does not have the precision to tell us what the exact biological and social relations of a suspected individual to a potential family member is, and thus

³¹ Michael B. Field et al., “Study of Familial DNA Searching Policies: Case Study Brief Series,” *Office of Justice Programs’ National Criminal Reference Service* (2017), 2.

³² “Utilizing DNA Technology to Solve Cold Cases Act of 2011: A Hearing Before the Subcommittee on Crime, Terrorism, and Homeland Security,” United States House of Representatives Committee on the Judiciary (Washington, D.C.: U.S. Government Printing Office, 2012), 4-10.

³³ “H.R.3361: Utilizing DNA Technology to Solve Cold Cases Act of 2011,” *Congress.gov*.
<https://www.congress.gov/bill/112th-congress/house-bill/3361?r=39&s=1>.

operates as, more than anything else, a means of generating leads. Thus, I parallel the current state of familial DNA searching within the scientific community to that of conventional DNA analysis in the 1980s—subject to, at best, a shaky scientific consensus. Unlike conventional DNA analysis however, familial DNA searching has not been comparably tested in the court system given that it is used mainly to generate leads and is thus seldom central to the suite of probative evidence in a given trial.³⁴ Thus, the familial search is subject to a similarly shaky *legal* consensus.

The similarities between the current status of familial DNA searching and early conventional DNA analysis extend to the ways in which federal institutions have (or, more importantly, have *not*) intervened in their regulation and stabilization. As with early DNA analysis, no congressional action has been taken to distill the scientific and legal ambiguities endemic to familial searching. Indeed, the only federal guidance on familial searching comes from a 2019 DOJ guidance that suggests against the use of familial searching in nonviolent crimes and mandates that police must identify themselves when uploading profiles to databases like GEDMatch. The guidance also bans police from using genetic information to examine non-crime-related issues such as disease risk and ancestry.³⁵ Importantly, the guidance is aimed only at the use of commercial databases rather than the far more frequently used criminal databases in CODIS.

While this early foray into regulation through federal rulemaking resembles one step toward clarifying the ambiguities latent to familial DNA searching, such non-statutory actions are ill-equipped to fully resolve the issue. In the historical case study of the “DNA Wars,” I argued that congressional action through the DNA Identification Act was key in supplementing the guidance of TWGDAM and other individual agencies. As established in the discussion of proposed legislation by Adam Schiff, similar congressional action has not taken place in the contemporary context of familial searching. Is congressional intervention the answer to the controversies surrounding familial DNA searching? While it is beyond the scope of this paper to fully estimate the outcomes of proposed legislation like Schiff’s “Utilizing DNA to Solve Cold

³⁴ Field et al., “Study of Familial DNA Searching Policies,” 12.

³⁵ Jocelyn Kaiser, “New Federal Rules Limit Police Searches of Family Tree DNA Databases,” *Science Magazine*, September 25, 2019, <https://www.sciencemag.org/news/2019/09/new-federal-rules-limit-police-searches-family-tree-dna-databases>.

Cases Act,” I dedicate the next section to a discussion of potential congressional interventions, the stakeholders they might involve, and how they compare to the DNA Wars case study.

POTENTIAL INTERVENTIONS AND DISCUSSION

Potential interventions by Congress in familial searching policy would need to balance several imperatives, including the need to solve violent crime, the disparate racial impact of DNA databases, and the question of genetic privacy. For this reason, I focus on these imperatives in analyzing the potential of four proposed interventions: (1) crime-based restrictions on familial searching; (2) jurisdiction-based restrictions on familial searching; (3) prohibitions on the police use of commercial databases; and (4) moratoria on familial searching altogether. Finally, I grapple with the practice’s controversies that may elude any of these interventions and serve to differentiate the familial searching case from that of conventional DNA analysis.

First, Congress might consider restricting the ability of law enforcement to use familial DNA searching based on the type of crime at question. This regulation is perhaps the most likely given that states such as California already have these limitations in place. The “Utilizing DNA to Solve Cold Cases Act” proposes a set of crimes, deemed “violent offenses,” that would warrant the use of familial DNA searching. Such regulation attempts to balance privacy concerns with the risks of failure to apprehend violent individuals who pose a threat to the public. Yet this restriction runs into an issue of definition: what constitutes a “violent” crime, and can criteria for inclusion change? The FBI definition of violent crime, for example, includes four distinct offenses: “murder and nonnegligent manslaughter, rape, robbery, and aggravated assault.”³⁶ This list is noticeably different from the Schiff proposal, which includes crimes like kidnapping and sex crimes against children (not necessarily meeting the FBI definition of rape).³⁷ Crime-based restrictions on familial searching, while an obvious site for compromise, leave room for ambiguity and criticism.

³⁶ “Violent Crime,” 2018: *Crime in the United States*, Criminal Justice Information Services Division of the Department of Justice, 2018, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/violent-crime>.

³⁷ See, specifically, Roger Lancaster, *Sex Panic and the Punitive State* (Berkeley: University of California Press, 2014), on the extent to which sex crime and sex offender status have become a unique area of American crime control.

Second, a jurisdictional approach may be appealing to legislators. Schiff’s proposal, for instance, would also require state attorneys-general to seek the permission of the DOJ to employ familial DNA searching, a case-specific approach.³⁸ More broadly, a jurisdictional approach might restrict the use of familial searching to federal law enforcement only. This approach would parallel that of some death penalty reformists who argue that capital punishment should remain a tool of the federal government but be prohibited at the state-level due to lower standards during the prosecutorial and sentencing processes.³⁹ However, the vast majority of offenses that most lend themselves to the promise of familial searching (particularly homicide and rape) typically fall under state jurisdiction unless they involve the crossing of borders, the commission of or conspiracy to commit a federal crime, or (in some cases) take place on Native American reservations.⁴⁰ This could drastically curtail the putative promise of familial searching. Additionally, federal crime control programming is not free of the biases and lack of oversight that plague state law enforcement. Thus, while collecting the authority to complete familial searching procedures under federal law enforcement may make it easier to track and account for the uses of the technology, this approach does not necessarily address concerns about equity and privacy.

Equity and privacy concerns cast long shadows over the third potential intervention: the prohibition of the use of commercial databases in criminal investigations. These databases, particularly GEDMatch, have emerged as a powerful tool in police investigations, apprehending not just the Golden State Killer but also other well-known serial offenders like the NorCal Rapist.⁴¹ Yet there has been immense pressure on GEDMatch and other personal genomics sites to provide more transparency in how genetic data can be used and accessed. In response, under new ownership, GEDMatch pledged to fight police search warrants and crack down on law enforcement use of the database, a shift from the collaborative disposition of prior leadership.⁴² Some privacy advocates have sought affirmative guarantees in federal law that law enforcement

³⁸ “A Hearing Before the Subcommittee on Crime, Terrorism, and Homeland Security,” 6.

³⁹ Justin Gearty, “Federalizing the Death Penalty,” *Gearty Law Offices*, November 1, 2010, accessed archivally at <https://www.avvo.com/legal-guides/ugc/states-disparities-with-the-application-of-the-death-penalty>.

⁴⁰ Lisa L. Miller, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control* (New York: Oxford University Press, 2016).

⁴¹ Sarah Midkiff, “A Genealogy Site DNA Test Just Brought Down Another Serial Rapist,” *Refinery29*, September 22, 2018, <https://www.refinery29.com/en-us/2018/09/210633/norcal-rapist-suspect-roy-charles-waller-arrested>.

⁴² Jon Schuppe, “New Owner of Consumer DNA Database Vows to Fight Police Search Warrants,” *NBC News*, December 10, 2019, <https://www.nbcnews.com/news/us-news/new-owner-consumer-dna-database-gedmatch-vows-fight-police-search-n1099091>.

will not use or appropriate commercial databases for the use of familial DNA searching. While a popular measure among civil libertarians, others have pointed out the salience of race in this debate; as Jabloner traces, commercial databases often heavily consist of the DNA of upper-class white individuals, a stark contrast to the overrepresentation of nonwhite and poor individuals in criminal offender databases.⁴³ Thus, critics may raise the point that a reliance on criminal databases further entrenches the disparities that make familial searching particularly error prone (and, by extension, harmful to) nonwhite populations. These critics are not necessarily *proponents* of police use of commercial databases, but rather question why the genes within them are singled out as being particularly worthy of defense.

Those most critical of familial DNA searching propose a total moratorium on the practice at all levels of government and law enforcement. As of 2021, Maryland, and the District of Columbia have passed laws banning familial searching, with Maryland legislators expressing the view that familial searching violates the state constitution as an illegal search and seizure.⁴⁴ A total moratorium would, of course, come under attack from a whole host of stakeholders affiliated with law enforcement, who might argue that a ban would make the country less safe by taking a potential investigative tool off the table. Those affiliated with genetic science, who vigorously defend the scientific reliability of familial searching in most instances, could also emerge as critics of such a moratorium. In contrast, this measure would likely be the preferred outcome of both privacy and equity advocates.

Notably, a moratorium on the specific technological measure of familial DNA searching would not address the issues underlying the equity concern. Duster's 'suspect archive,' instantiated in the CODIS databases, will be alive and well regardless of what actions Congress might take in the regulation of familial searching. This uncomfortable fact points to some of the differences between familial DNA searching and the historical context of conventional DNA analysis. Familial DNA searching, while controversial for many of the reasons just addressed, is as of yet a highly particularized and infrequent practice compared to even early attempts to use conventional DNA analysis to solve crimes. Its aforementioned status as a lead-generating device rather than a means of positively identifying someone limits its probative purchase, likely

⁴³ Jabloner, "A Tale of Two Molecular Californias," 5.

⁴⁴ Natalie Jones, "Maryland Bill Would Prohibit Using DNA Databases to Solve Crimes," *WTOP News*, February 20, 2019, <https://wtop.com/maryland/2019/02/maryland-bill-would-prohibit-using-dna-databases-to-solve-crime/>.

precluding it from ever reaching the same omnipresence in police precincts as conventional identificatory approaches. The fact that ending familial DNA searching will not end disparate collection of DNA from Black and Latino men, for example, points to an issue larger than the familial search itself. This inequality begs for the interrogation of how science and forensics fit within larger systems of policing and state violence.

While congressional interventions on the specific issue of familial searching are limited in their capacity to solve these underlying issues, a vigorous congressional debate on the practice (regardless of whether legislators support one of the four proposed interventions, a combination of them, or none of them) would be immensely fruitful in laying out a path forward that addresses concerns of equity, privacy, *and* crime-solving. Discourse on the subject of crime and justice has advanced that these three goals are, to some extent, incompatible and thus must be triangulated or compromised, but this paradigm has not been adequately challenged, debated, or reckoned with. When equity and privacy are formulated as simple “costs” of crime-solving, the ideal outcome of crime-solving—justice—is clouded by means-ends deliberations. In debating and weighing in on the issue of familial DNA searching, legislators would not just be removing the ambiguity of a highly contested technical practice, but also bring us closer to a reckoning on the compatibility of equity, privacy, and crime-solving in the twenty-first century.

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RETRACING SOUTH ASIANS THROUGH CALIFORNIA: WHERE KAMALA HARRIS, TWENTIETH CENTURY ACTIVISM, AND RACIAL IDENTITY COLLIDE

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With the recent vice-presidential election of Kamala Harris, a biracial South Asian politician, it is clear now more than ever that the historical and contemporary position of bi- and multiracial South Asians in the United States requires deeper investigation. To fill the gap in scholarship and representations of biracial South Asians, this article explores the resilience and activism of South Asian migrants and multiracial South Asian communities in early 20th Century California to understand how they laid the groundwork for the future political success of bi- and multiracial South Asians. While this is a little-known history, it is necessary for deconstructing racial hierarchy and white supremacy in the United States, as it empowers bi- and multiracial South Asians, multiracial peoples more broadly, and those from all kinds of marginalized identities through agency, representation, and history.

INTRODUCTION

When telling her story, Vice President Kamala Harris often begins with her parents, who met as graduate students and became civil rights activists at the University of California, Berkeley, and who “instilled Vice President Harris with a strong sense of justice.”¹ While many would assume that 1960s activist organizations in California like the Black Panther Party, National Association for the Advancement of Colored People, and the Congress of Racial Equality, were alone responsible for developing the political fervor of young people, this ignores a deeper legacy of revolutionary activism in the region. As early as the 1910s, mono- and biracial South Asian communities had been agitating for agency, autonomy, and liberation, creating spaces for themselves and future leaders to advance the political agency of multiracial South Asian American leaders. The resilience and activism of South Asian migrants in the early twentieth century—through the creation of political organizations like the Ghadar Party, and the creation of bi- and multiracial South Asian communities, like the Mexican-Punjabi community in the Imperial Valley—laid the groundwork for future biracial South Asian Americans’ political

¹ “Kamala Harris: The Vice President,” The White House, [White House.gov](https://www.whitehouse.gov/administration/vice-president-harris/), accessed February 22, 2021, <https://www.whitehouse.gov/administration/vice-president-harris/>.

success, as seen through Dalip Singh Saund, a member of a multiracial South Asian community, and Vice President Kamala Harris, who is herself a biracial South Asian American.

I use the term “biracial South Asian” to refer to a group or individual with parentage from two distinct racial groups, one of which is South Asian, while I use the term “multiracial South Asian” to refer to a group or individual with parentage from multiple racial groups, one of which is South Asian. I identify “South Asian” as the unifying race in order to center and examine South Asian identity, especially the ways in which it complicates American racial politics where race is popularly understood along lines of whiteness and blackness. As someone who identifies as a biracial South Asian American, I am adamant about understanding how this racial identity not only affects those who identify this way but also how it undermines traditional beliefs about race, power, and identity in the United States.

Though Harris’s election has ushered a new wave of conversations about the positionality of bi- and multiracial people in the United States, there is little attention dedicated specifically to biracial South Asian people and communities, despite the fact that they have an enduring historical and contemporary presence in this country. By investigating South Asians in the United States before 1965, contemporary readers can gain greater insight into not only how these early peoples have shaped modern politics, but also about how their collective action in resistance to white supremacist forces, such as racism and imperialism, have created a framework for mono-, bi-, and multiracial South Asian Americans—and Americans at large—to define their own place in history.

EARLY SOUTH ASIAN ACTIVISM AND THE MEXICAN-PUNJABI COMMUNITY IN CALIFORNIA

While many Americans might be most familiar with South Asians’ U.S. presence after 1965, when the Hart-Celler Act opened the United States to increased Asian immigration, it is impossible to discuss contemporary South Asians in American politics without understanding how the early history of South Asians in this country laid the foundation for future political activism, local organizing, and resilient leadership. Many scholars mark the late nineteenth century, when Punjabi men arrived as farmers and laborers on the west coast, as the starting point

for South Asian immigration to the United States.² Though many Punjabi migrants first arrived in Canada, then called British Columbia, they gradually moved south into Washington, Oregon, and then California due to employment, housing, and racial discrimination in British Columbia. However, even as they moved southward to Oregon and Washington, white settlers continued to target Punjabis with discrimination and violence, evident structurally in organizations like the Asiatic Exclusion League and directly in events like the Bellingham riots. The Bellingham riots, for instance, took place in Washington on September 4, 1907, and consisted of mobs of about 400 and 500 white men who terrorized Punjabi neighborhoods, abducting, beating, and abandoning Punjabi men in remote places. While some Punjabis fled back north after such acts of terrorism, other stayed, so that by 1910, when the demand for workers on the Western Pacific Railroads increased and immigration restrictions loosened as a result, Punjabi migrants could begin settling in California.³

And yet, as was the case in British Columbia, Washington, and Oregon, white communities in California targeted Punjabi communities with violence and racist propaganda. Local newspapers referred to the new settlers' arrival as the "Hindu invasion," and wrote about Punjabis in demeaning ways, referring to them as "the most undesirable people" and an "unmitigated nuisance."⁴ Newspapers also documented local violence and intimidation, as in the article titled, "Hindus Driven Out," where "Twenty citizens of Live Oak attacked two houses occupied by 70 Hindus and ordered them to leave the city."⁵ Such depictions of South Asians, along with racist cartoons showing them to be "incompetent and indolent," stoked white

² However, South Asians had actually arrived in the United States about one hundred years earlier, in the late 1700s, though little is known about the history of these sailors on Yankee clipper ships trading between New England and India, because, as historian Vijay Prashad indicates in *The Karma of Brown Folk*, "they jumped ship, married black women, and disappeared from the historical record." Vijay Prashad, *The Karma of Brown Folk* (Minneapolis: University of Minnesota Press, 2000): 71. Still, this group of early migrants that Prashad refers to are not to be confused with the subject of Vivek Bald's work in *Bengali Harlem and the Lost Histories of South Asian America*. In this book, Bald recounts the history of African American-South Asian communities in the United States, particularly in New York City and New Orleans, in the early 20th century, though these South Asian migrants had also been sailors who jumped ship and married black women. For more on this biracial South Asian community, see: Vivek Bald, *Bengali Harlem and the Lost Histories of South Asian America* (Cambridge, MA, Cambridge, Mass.: Harvard University Press, 2013).

³ Prashad, *The Karma of Brown Folk*, 71-72; Amandeep Bal, "Pioneer Punjabis in North America: Racism, Empire and Birth of Ghadar," *Journal of Sikh & Punjab Studies* 26, no. 1&2 (2019): 9-14; Farah Ibrahim, Hifumi Ohnishi, and Daya Singh Sandhu, "Asian American Identity Development: A Culture Specific Model for South Asian Americans," *Journal of Multicultural Counseling and Development* 25, no. 1 (1997): 43-44.

⁴ Bal, "Pioneer Punjabis in North America," 15.

⁵ *Ibid.*

supremacist and xenophobic sentiments. Then, when the Asiatic Exclusion League demanded that the Superintendent of Immigration Commission, H.A. Millis, investigate the Punjabi community in 1910, Millis concluded that Punjabis were not an important part of the West Coast's labor force and called for their immediate exclusion. So, by 1911, even with the need for labor on the Western Pacific Railroads, immigration officials in San Francisco began rejecting new South Asian arrivals. Such sentiments were later codified by legislation like the 1917 Immigration Law, more popularly known as the "Asiatic Barred Zone Act," which used longitudinal measurements to limit immigration from Asia along with literacy tests and other Asiatic exclusion provisions that, as local press indicated, would "especially bar Hindus."⁶ Still, despite this hostile environment, South Asian immigrants continued to find their way to the American West Coast to create lives for themselves.⁷

This first wave of South Asian immigration in California largely settled in Sacramento Valley, San Joaquin Valley, and the Imperial Valley, where they had access to farmlands that reminded many of the migrants of home. For instance, one Punjabi settler, Pune Singh, remembered that "On arriving in the Sacramento Valley, one could not help but be reminded of the Punjab. Fertile fields stretched across the flat valley to the foothills lying far in the distance. Most of the jobs available were agricultural and I found many Punjabis already working throughout the area."⁸ Access to familiar farmlands gave Punjabis an advantage in California farms, allowing them to earn higher wages because of their skill.⁹

Some Punjabis became very successful as farmers, as in the case of Jawala Singh, also known as the "Potato King," who, by leasing and purchasing land, had become one of the wealthiest farmers in America.¹⁰ However, Singh's legacy does not end there, as he used his prosperity to support his community as a social justice activist and a revolutionary for India's independence. For instance, in 1912, when he founded the first Sikh temple, or *gurdwara*, in the United States in Stockton, CA, it served as a community space for the religious, political, and social life of all Punjabi communities.¹¹

⁶ Karen Isaksen Leonard, *Making Ethnic Choices: California's Punjabi Mexican Americans*, Asian American History and Culture Series (Philadelphia: Temple University Press, 1992) 46; Huping Ling and Allan W. Austin, *Asian American History and Culture: An Encyclopedia: An Encyclopedia* (Routledge, 2015): 328.

⁷ Bal, "Pioneer Punjabis in North America," 15; Leonard, *Making Ethnic Choices*, 46.

⁸ Leonard, *Making Ethnic Choices*, 34.

⁹ Bal, "Pioneer Punjabis in North America," 13-14.

¹⁰ Ling and Austin, *Asian American History and Culture*, 360.

¹¹ Bal, "Pioneer Punjabis in North America," 13-14; Ling and Austin, *Asian American History and Culture*, 360.

In fact, the *gurdwara* in Stockton became the central hub for the revolutionary activity of the Ghadar Party, a U.S.-based anti-imperialism organization opposed to British colonial rule in India, of which Jawala Singh was also a founder and leader. As an organization inspired by the American Revolution, it created solidarity among Sikhs, Hindus, and Muslims, had international support from Europe and Asia, and developed a network of newspapers and publications that sparked revolutionary fervor in South Asians from diverse occupational backgrounds, from the colonial soldier, to the mill worker, and even to the college educated. For these reasons, the Ghadar Party posed a major threat to the British colonial government. While the party considered itself a militant organization and used direct action to oppose British rule, much of its success laid in its abilities to ideologically mobilize and build alliances around revolution, liberation, and resistance to British imperialism, which was also a resistance to white supremacy.¹²

Though the Ghadar Party only existed until the 1930s, the Guru Gobind Singh Scholarship, which Singh established at the University of California, Berkeley in 1912, became an even longer-lasting testament to Jawala Singh's legacy. This three-year scholarship was open to men and women of any race, ethnicity, or caste in India. While the scholarship paid for all tuition, housing, and personal expenses, it also became a revolutionary training ground from which the students could return to India prepared to start a revolution against British colonial rule.¹³ Thus, Singh's local organizing helped set a foundation for South Asian political and community involvement in California that resisted white supremacy not only abroad, but also in the United States, as he was dedicated to creating safe spaces, despite the violence, racism, and discrimination of the time, for South Asians to create meaningful change. As a political leader and local organizer, Singh served as a model for building community against oppression and empowering the first mono- and biracial South Asian communities in the United States. While this history might not be widely known throughout the United States, this kind of activism is a vital part of the fabric of American political life.

Meanwhile, when Pune Singh remembered seeing so many Punjabis in California's farmlands, they were all likely men, because the United States' restrictive immigration laws at the time prevented South Asian women from migrating to the country. As a result, many Punjabis in

¹² Ling and Austin, *Asian American History and Culture*, 327-328, 360-361; Bal, "Pioneer Punjabis in North America," 16-19; Leonard, *Making Ethnic Choices*, 83-84.

¹³ Bal, "Pioneer Punjabis in North America," 12-14, 16; Leonard, *Making Ethnic Choices*, 32-36; Ling and Austin, *Asian American History and Culture*, 360-361.

the Imperial Valley married Mexican and Mexican-American women.¹⁴ Mexican-Punjabi marriages, while sometimes developed out of love, also developed out of necessity, as Punjabi men could not own land in California under the 1913 Asian Land Laws; their marriages to Mexican women granted them the opportunity to have economic autonomy as land-owning agriculturalists and businessmen. Even more, these relationships produced a new ethnic community of Mexican-Punjabis, a biracial, biethnic South Asian American community, that provided a safe haven for South Asian immigrants facing discriminatory policies and racial violence.¹⁵

With this, the Mexican-Punjabi community in the Imperial Valley became known as “a refuge from political factionalism” because marriage and family life defined it.¹⁶ This reputation stood in contrast to that of unmarried Punjabi men in central and northern California who were most active in the Ghadar Party. Though the Imperial Valley did host Ghadar Party speakers from time to time, most families withdrew from the party because they believed that party leaders were using organizational donations for personal gain. However, this did not mean that residents of the Imperial Valley were not politically active. As early as the 1920s—especially with the 1923 Supreme Court decision from *United States v. Bhagat Singh Thind* in which the court denied South Asians citizenship on the grounds that they were not “‘white’ in a popular sense” and that they could not assimilate—Punjabi farmers in the Imperial Valley were donating money and organizing for citizenship rights. However, these rights would not come until two decades later with the passing of the Luce-Celler in 1946.¹⁷ With the examination of the local activism and organizing of California’s early South Asian immigrants and biracial South Asian communities, scholars can better understand the context in which public officials like Dalip Singh Saund in the 1950s and Kamala Harris in the 2000s became prominent political figures.

¹⁴ Ling and Austin, *Asian American History and Culture*, 345; Stanley Thangaraj, “Playing through Differences: Black–White Racial Logic and Interrogating South Asian American Identity,” *Ethnic & Racial Studies* 35, no. 6 (June 2012): 988, <https://doi.org/10.1080/01419870.2012.661868>.

¹⁵ Leonard, *Making Ethnic Choices*, 32-36; Prasad, *The Karma of Brown Folk*, 71-72; Ibrahim, Ohnishi, and Sandhu, “Asian American Identity Development,” 43-44; Ling and Austin, *Asian American History and Culture*, 364.

¹⁶ Leonard, *Making Ethnic Choices*, 84.

¹⁷ Jeff H. Lesser, “Always ‘Outsiders’: Asians, Naturalization, and the Supreme Court,” *Amerasia Journal* 12, no. 1 (January 1985): 83–100, <https://doi.org/10.17953/amer.12.1.033ktptx4431w322>. Leonard, *Making Ethnic Choices*, 84

DALIP SINGH SAUND: POLITICAL ORGANIZING AND RACE

Instrumental in the Imperial Valley's local political organizing for South Asian citizenship was Dalip Singh Saund, a Punjabi Sikh who traveled to the United States in 1921 to pursue his doctorate at the University of California, Berkeley, and who would go on to represent the Imperial Valley as the first South Asian elected to Congress. As a student at Berkeley, though, Saund lived in the same Stockton *gurdwara* that Jawala Singh had established, and, as was the case for so many South Asians before him, this is where Saund first began to actively engage in politics, even advocating for India's independence as the president of Berkeley's Hindustani Association of America. However, he was not directly involved in the Ghadar Party, as in his autobiography, *A Congressman from India*, Saund never mentions the party, and instead portrays his own revolutionary activism in intellectual terms, allowing him to tie the American Founding Fathers to Mahatma Gandhi while exemplifying his own American-ness without seeming too radical. After finishing his degree in 1925 and learning that the British Indian government was tracking his "anti-British utterances in America," Saund stayed in California, living and farming with relatives in the Imperial Valley. By 1928, Saund further solidified his position in a multiracial South Asian community when he married Marian Kosa, the white daughter of Czech immigrants. Together, they would have three biracial South Asian children.¹⁸

While Saund built up his farming business throughout the 1930s, he continued his local activism by speaking about Indian independence to civic organizations and churches throughout California. By the 1940s, he was organizing in the Imperial Valley to help gain U.S. citizenship rights for South Asians. Saund turned this advocacy into a campaign organization, the India Association of America, and, as its national leader, he was instrumental in persuading Congress to pass the Luce-Celler Act in 1946. After becoming a citizen in 1949, Saund was elected the justice of peace in Westmoreland Township, CA. Then in 1956, he was elected as a Democrat in the House of Representatives for California's 29th District, Imperial Valley and Riverside County. During Saund's political rise, he remained connected to his community, serving on the executive committee of Stockton's *gurdwara* from 1948 to 1953, and as chair of the Imperial

¹⁸ Swati Rana, *Race Characters: Ethnic Literature and the Figure of the American Dream* (Chapel Hill: The University of North Carolina Press, 2020): 136; Office of the Historian and Office of the Clerk United States House of Representatives, "Asian and Pacific Islander Americans in Congress: 1900-2017" (House Document, Washington, DC, 2017), 316; Dalip Singh Saund, *Congressman from India* (New York: E. P. Dutton, 1960).

County Democratic Central Committee in 1951. Though Saund's political rivals often tried to delegitimize his campaigns by emphasizing his otherness as a nonwhite, non-Christian, foreign-born man, Saund relied on grassroots organizing and his American values to demonstrate his commitment to his constituents.¹⁹

Though Dalip Singh Saund's political success marks a major turning point for the representation of South Asian and biracial South Asian Americans in U.S. politics, an analysis of *Congressman from India* reveals the complicated racial negotiations Saund had to make to achieve that success. Throughout the book, Saund celebrates his marriage to Kosa as a marriage of East and West, while he also shies away from confronting the racial discrimination and prejudice that he, his family, and his community experienced in California. For instance, Saund never discusses the implications of the 1922 Cable Act on Kosa, which required her to renounce her U.S. citizenship in order to marry Saund, and he also doesn't talk about the fact that his own children were not accepted by the white community in Westmoreland because they were considered "halfbreeds."²⁰ Even more jarring is Saund's entire omission of the Mexican-Punjabi families that were well-known in Imperial Valley, though, like Saund's children, they were often discriminated against because they were considered "half-breeds" and "mestizos" by other Mexicans and South Asians.²¹

While these omissions were likely the result of layers of internalized racism and oppression, it is important to note that Saund wrote *Congressman from India* with white political constituencies in mind, so when he emphasizes his own role as the unifier of East and the West, especially through his marriage to his white wife, he does so to increase his proximity to whiteness. Similarly, by omitting meaningful discussion of racism, prejudice, and discrimination in the United States, Saund could continue to portray a vision of the American Dream as one in which a model minority like himself could prosper through hard work and the wholehearted belief in American exceptionalism.²² By understanding the nuanced political and racial position of Dalip Singh Saund, himself a monoracial person, in the 1950s, in relation to the South Asian

¹⁹ Lan Dong, *25 Events That Shaped Asian American History: An Encyclopedia of the American Mosaic* (Santa Barbara: ABC-CLIO, 2019): 134-135; Tom Patterson, "Triumph and Tragedy of Dalip Singh Saund," *California Historian* 38, no. 4 (1992) <https://www-tc.pbs.org/rootsinthesand/dalip.pdf>.

²⁰ Patterson, "Triumph and Tragedy of Dalip Singh Saund."

²¹ Rana, *Race Characters*, 146.

²² Ling and Austin, *Asian American History and Culture*, 356-57; Dong, *25 Events That Shaped Asian American History*, 133; Rana, *Race Characters*, 144-146; Patterson, "Triumph and Tragedy of Dalip Singh Saund." Saund, *Congressman from India*.

organizers who laid the political foundation for his activities, the position and significance of Kamala Harris as part of this legacy of multiracial South Asian activism becomes even more apparent.

KAMALA HARRIS AS A POLITICAL AND RACIAL FIGURE

Given that South Asians and biracial South Asians have a political history in the United States that extends over a century, the presence of Kamala Harris as a major biracial South Asian political figure continues that legacy. From her upbringing in Oakland, CA, in the same area that produced Jawara Singh, the Ghadar Party, and Dalip Singh Saund, to her election as San Francisco District Attorney, California's Attorney General, and subsequent state senator, Harris carries with her the history of South Asian resilience and activism even now in her role as Madame Vice President. Though Harris herself never explicates the South Asian activist connection, early South Asian political leaders helped create the space that nurtured the activism of Harris's mother, Shyamala Gopalan, at Berkeley, and she, in turn, instilled that social justice framework in her daughter. Despite controversies over Harris's career as a "progressive prosecutor," Harris traces her own social justice consciousness in her autobiography *The Truths We Hold: An American Journey* to her mother, whom she credits with teaching her how to be "a confident, proud" black woman, and also have "pride" in her "South Asian roots."²³ However, Harris's position as a dual-minority biracial person, or a biracial person with parentage from two minority groups, like the Imperial Valley's Mexican-Punjabis, complicates her role in the legacy of mono- and biracial South Asian politics. The reduction of racial identity in the United States to binary lines of whiteness and blackness, in combination with the "one drop rule," South Asian respectability politics, and anti blackness have often caused Harris to limit the expression of her racial identity and emphasize one over the other.²⁴

Despite Harris's current visibility as a biracial American, her South Asian identity was largely unknown to non-South Asians until November 2019 when she released the viral cooking video with South Asian American actress, Mindy Kaling, which NPR's *Code Switch* podcast

²³ Purnima Bose, "Kamala Harris's *The Truths We Hold: An American Journey*," *American Literary History* 32, no. 2 (2020): e25-e28, doi: 10.1093/alh/ajaa005; Kamala D. Harris, *The Truths We Hold: An American Journey* (New York: Penguin Press, 2019) 10.

²⁴ Nico Slate, "The Other Kamala: Kamala Harris and the History of South Asian America," *Tides*, February 25, 2019, <https://www.saada.org/tides/article/the-other-kamala>.

characterized as her “racial coming out.”²⁵ This video marked a turning point in the public’s perception of Harris’s race, evident in one of Kaling’s opening statements in the video: “What we’re going to cook today is an Indian recipe—because you are Indian!”²⁶

While her South Asian identity is well-known now that she is the sitting vice president, this was not always the case, especially when Harris had first entered the presidential campaign trail, with Kaling herself even explaining that “I don’t know that everybody knows that [you’re Indian].”²⁷ In a country which understands race through a black-white binary and the “one drop rule,” it is understandable that many people would simplify Harris’s racial identity to only include her African American identity. As Dr. Nitasha Sharma, Associate Professor of African American Studies and Asian American Studies at Northwestern University, puts it in an interview with *Code Switch*, “The invisibility of Harris’s Indian-ness is an allegory for the racial position of Asians in the United States. We are generally invisible, irrelevant, it seems, to the conversation of race. So... people often only speak about [Harris] as a black woman.”²⁸ Thus, the American traditional black-white understanding of race can be limiting, especially for bi- and multiracial people whose racial identities exist outside of this framework. For Harris, this means that others try to put her in a single racial category, limiting her racial identity expressions to conform to oppressive societal standards. The ways in which Harris has subsequently censored herself is evident in the language of her upbringing, as she describes her mother raising her as a “confident, proud” black woman, but not as an equally “confident, proud” South Asian woman; instead, she learned to have “pride” in her “South Asian roots,” the language of which distances her from her South Asian-ness.²⁹

In this way, the pressures of a binary racial system have caused Harris to choose to highlight one racial background over another to be more palatable to American audiences. While this act of choosing is not always apparent in personal stories about her childhood and her mother, the act of choosing is apparent elsewhere. For instance, a short biography on the inside back

²⁵ Kumari Devarajan, “Claim Us If You’re Famous,” November 10, 2020, in *Code Switch*, produced by NPR, podcast, MP3 audio, 7:10, <https://www.npr.org/2020/11/10/933631207/claim-us-if-youre-famous>.

²⁶ Kamala Harris, “Kamala Harris & Mindy Kaling Cook Masala Dosa,” Kamala Harris, November 25, 2019, video, 1:14, <https://www.youtube.com/watch?v=xz7rNOAFkgE>.

²⁷ Harris, “Kamala Harris & Mindy Kaling Cook Masala Dosa,” 1:14.

²⁸ Devarajan, “Claim Us If You’re Famous,” 7:10.

²⁹ Nisha Chittal, “Why Kamala Harris Shouldn’t Have to Choose between Identifying as Black or South Asian,” *Vox*, August 14, 2020, <https://www.vox.com/identities/2020/8/14/21366307/kamala-harris-black-south-asian-indian-identity>; Harris, *The Truths*, 10.

cover of *The Truths We Hold* celebrates Harris as “the second black woman ever elected to the U.S. Senate,” and while this accomplishment is important for advancing representation in U.S. politics, it leaves out Harris's dual position as the first South Asian senator.³⁰ In fact, out of the three summaries that take up the inside and back covers of the book, this is the only explicit mention of her race. Harris continues to emphasize her African American identity throughout her book, even emphasizing her American blackness over her diasporic or Jamaican blackness, in order to minimize any chance of alienation or perceived difference between herself and mainstream Americans.³¹ This practice is not new, though, as even half a century earlier, Dalip Singh Saund was emphasizing his American values and proximity to whiteness in his own autobiography and political activities. Though Harris has brought herself closer to blackness, both her and Saund had to fit within the standards of the U.S. racial binary to succeed politically, all at the expense of expressing their own racial complexities.

With this context, it is more clear why the actions of this video seem to be specifically curated to emphasize Harris’s South Asian heritage, evident when Harris reminisces about her mother’s cooking style, her Indian family, and her South Indian connection to Kaling. Emphasizing their commonalities, Harris remarks to Kaling, “you look like the entire one-half of my family,” after which Kaling jokingly responds that she has been telling others they were related.³² While this is heartfelt, this moment, even more, serves to exemplify the lengths to which Kamala Harris has had to go to qualify or prove her South Asian-ness. Mindy Kaling, as a well-known South Asian actress, is instrumental in this, as she represents the South Asian community’s acceptance of Harris, even if the reality of this acceptance is fraught with tension.

Though it might be true that many South Asians are excited about Harris’s political prominence, as Kaling expresses in the video, her words leave out a history of anti blackness among South Asians that likely interferes with some South Asians’ full acceptance of Harris. Evidence of this can be found in Indian media outlets that questioned whether Harris is “Indian enough” because of her stronger identification with her African American identity.³³ Likewise,

³⁰ Harris, *The Truths We Hold*.

³¹ Bose, “Kamala Harris’s *The Truths We Hold*,” e27, e31; Reuters Staff, “Fact Check: Kamala Harris Did Not Switch from Identifying as Indian-American to Black,” *Reuters*, August 24, 2020, <https://www.reuters.com/article/uk-fact-check-harris-did-not-switch-raci-idUSKBN25H1RC>

³² Harris, “Kamala Harris & Mindy Kaling Cook Masala Dosa,” 1:39.

³³ Seema Sirohi, “Is Democratic Vice-President Nominee Kamala Harris Too ‘Left’ or Enough Indian?” *The Economic Times*, August 12, 2020, <https://economictimes.indiatimes.com/news/international/world-news/is-democratic-vice-president-nominee-kamala-harris-too-left-or-enough-indian/articleshow/77508151.cms>; Chittal,

colorism within South Asian communities reinforces anti blackness, as colorist thinking favors lighter skin color in order to increase one's proximity to whiteness. While none of the sources I've encountered have openly talked about Harris's skin tone, one can observe from the images and videos of her, like in her portrait on the cover of her autobiography or even in her video with Mindy Kaling, that Harris does not have very dark skin. Though skin color is no indicator of racial identity, fairer skin has proven to bring one closer to whiteness and, therefore, has helped nonwhite people gain favoritism and privileges.³⁴ In the case of Harris, colorism and South Asian respectability politics work in her favor; as Dr. Sharma indicates, "she's so respectable, and she's doing all the things" that South Asians approve of: she is married to a "nice white man," she is not "crazy progressive," and she is "highly educated... and well dressed."³⁵ She is also a Brahmin according to the Indian caste system, which makes it easier for many South Asians to be all right with her being one of the United States' first major South Asian representatives.³⁶

Thus, Harris's biracial identity is steeped with sociopolitical complexity, but it is a complexity integral to the narrative of race in the United States. The public's unprecedented acknowledgement and acceptance of Harris's South Asian identity *and* her African American identity—unprecedented especially in the context of the public overshadowing Barack Obama's black-white biracial identity—signal a shift in popular understandings of race. Because whiteness is not part of Harris's biracial identity, she opens up the American public to a more nuanced and expansive understanding of bi- and multiracialism. As with Obama, media outlets have questioned both Harris's blackness and her citizenship status to try to undermine her campaign; however, Harris has skirted such challenges to her identity by describing herself as a "proud American."³⁷ While some might criticize such a comment for its intentional glossing over of race,

"Why Kamala Harris Shouldn't Have to Choose between Identifying as Black or South Asian."

³⁴ Margaret Hunter, "The Persistent Problem of Colorism: Skin Tone, Status, and Inequality," *Sociology Compass* 1, no. 1 (2007): 237–54, <https://doi.org/10.1111/j.1751-9020.2007.00006.x>; Margaret L. Hunter, "'If You're Light You're Alright': Light Skin Color as Social Capital for Women of Color," *Gender and Society* 16, no. 2 (2002):175–93; Devarajan, "Claim Us If You're Famous;" Nikki Khanna, *Whiter: Asian American Women on Skin Color and Colorism* (NYU Press, 2020); JeffriAnne Wilder, *Color Stories: Black Women and Colorism in the 21st Century: Black Women and Colorism in the 21st Century* (ABC-CLIO, 2015); Traci Baxley, "Taking Off the Rose-Colored Glasses: Exposing Colorism through Counter Narratives," *Taboo: The Journal of Culture and Education* 14, no. 1 (2014): 20-35, <https://doi.org/10.31390/taboo.14.1.05>.

³⁵ Devarajan, "Claim Us If You're Famous."

³⁶ Nitasha Tamar Sharma, *Hip Hop Desis: South Asian Americans, Blackness, and a Global Race Consciousness* (Durham: Duke University Press, 2010) 97-99; Prashad, *The Karma of Brown Folk*, 91; Devarajan, "Claim Us If You're Famous."

³⁷ Chittal, "Why Kamala Harris Shouldn't Have to Choose between Identifying as Black or South Asian."

it reveals the negotiations that racialized peoples in the United States, like Kamala Harris and Dalip Singh Saund, have had to make in order to be accepted as Americans. Even more, it symbolizes that nonwhite mono-, bi-, and multiracial people are a vital part of the American story.³⁸

CONCLUSION

As the most visible biracial South Asian politician in the United States today, Kamala Harris's vice-presidential election marks an important turning point for nonwhite mono-, bi-, and multiracial people in the United States and throughout the world. Harris's prominent political visibility begins conversations about the complexities of racial identity beyond the black-white binary, as well as provides a lens through which to explore the deeper history of various racialized South Asian groups in the United States. There are clear parallels between the steps that both Kamala Harris and Dalip Singh Saund took in order to be accepted by mainstream American society, steps that positioned both closer to one side of the black-white binary. However, earlier South Asians, like Jawala Singh and those in the Ghadar Party, created spaces outside of the American West's white supremacist and xenophobic society, like the *gurdwara*, where South Asians of all backgrounds could consider and actualize revolution, resistance, and liberation. Even the less overtly political Mexican-Punjabi community forged their own interracial space of solidarity, where Punjabi men and Mexican women could be business owners, land owners, and independent farmers, having their own families and building their own spaces of safety and agency. This was also where Saund himself first became politically active, and where he remained committed to local organizing and advocacy, even as he became more and more successful as a politician.

With California as ground zero for over a century of mono-, bi-, and multiracial South Asian resilience, resistance, and activism, it is clear that Kamala Harris is part of this legacy. Though she, like Saund, has conceded to aspects of the black-white racial binary and rhetoric of Americanism, while also dealing with the "one drop rule," South Asian respectability politics, and anti-blackness, she has persevered through others' challenges to her identity, asserting herself

³⁸ Devarajan, "Claim Us If You're Famous;" Chittal, "Why Kamala Harris Shouldn't Have to Choose between Identifying as Black or South Asian."

as the first biracial South Asian *and* African American Vice President. She serves as a much-needed biracial figure who not only can provide representation for peoples from various racial backgrounds, but also create new spaces for meaningful discussions and investigations into racial identity that resist racial thinking grounded in white supremacy and oppression. Ultimately, the intersecting historical and contemporary experiences of these mono-, bi-, and multiracial South Asians empower all Americans to strive for and build a more free, just, and equitable world.

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Part 4

Foreign Policy & National Security

THE ROLE OF THE U.S. PRESIDENCY IN THE MAINLAND CHINA - TAIWAN CONFLICT: LESSONS TO LEARN FROM PAST DIPLOMATIC ACHIEVEMENTS

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This research paper aims to find out, using the evidence of former diplomatic achievements, what the position of the United States and, in particular, the Presidency, should be in the conflict between Mainland China and Taiwan. The research aims to understand the position of the Presidency in resolving international conflicts through mediation. It will seek to gather recent experience in the role of mediation and conflict resolution played by the Presidency. Considering this experience, and the interests and alliances that the United States has with both actors in the dispute, I will design a diplomatic strategy to settle the conflict in a way that guarantees peace and favors the interests of the United States. The ultimate goal of this paper is to be able to explain what conditions must be met to ensure the effectiveness of this mediation process.

INTRODUCTION

For years, Washington has maintained a one-China policy. Relations with the Asian nation are established with the People's Republic of China (P.R.C.). Beijing, however, defends a different one-China tenet. The communist regime claims that there is only one China in the world, and that both the island of Taiwan — formally the Republic of China (R.O.C.) — and the mainland are the same People's Republic of China. The Chinese authorities also defend that Chinese sovereignty and territory cannot be divided. For of Beijing, Taiwan is a province gone rogue that emerged from the Chinese civil war. Therefore, the P.R.C. insists on a reunification as the only option to confirm their one China policy. While the Taiwanese Government claims its status as a sovereign state, Beijing has long been requesting a reunification, arguing that if a peaceful union cannot be achieved, the use of force cannot be ruled out against Taiwan.

Since the establishment of diplomatic relations with the P.R.C., Washington has pursued a policy seeking to involve China in international relations, encouraging Beijing to play a constructive role in the world. Thus, Sino-American relations, generally speaking, have been positive and will continue to be as long as both parties consider that it is in their national interest to maintain that good understanding.

THE STORY OF THE TWO CHINAS

We must look back to the 1940s to witness the Chinese Civil War that divided the Central Empire into two regimes. The P.R.C., dominated by Mao Tsé-tung and the Chinese Communist Party (CCP), had the vast continental territory under control from 1949. The second territory resulting of that division was the R.O.C., which with the military and economic aid of the United States settled in the territory of the former island of Formosa, that is, Taiwan. Ever since the Kuomintang nationalists fled from mainland China in October 1949, Taiwan has been under their effective control.

Faced with the new scenario of national rupture, the side of the Government of the R.O.C. defeated by Mao tried to stabilize its command institutions under the tutelage of the United States in the island of Taiwan. The Administration of the nationalist Chiang Kai-shek, after his flight from the mainland, was formally replaced by the Government of the P.R.C. on October 1, 1949. The former leadership of China, fleeing to Taiwan, soon recognized the fact that it would be unable to control the policies launched from Beijing by the new People's Government and with it the international agreements that China had signed with other countries or organizations.

General Chiang's Kuomintang, among other measures, decided to notify the international community that it was withdrawing China from the General Agreement on Tariffs and Trade (GATT) – that later became the World Trade Organization (WTO). That message from those who fled to Taiwan was not trivial, because it clearly showed that the leadership of the Kuomintang Nationalist Party recognized its defeat in the Civil War. Surprisingly, despite this loss and its flight to the island of Formosa, and even after communicating its resignation from various international agreements, the Taiwanese leadership claimed the sovereignty of the country and jurisdiction over the international agreements that had previously been signed by the Chinese Government.

The fact is that, with the communication issued from Taipei, the mainland of the P.R.C. was not only outside the General Agreement on Tariffs and Trade, but also the United Nations (UN) and its Security Council (UNSC). Little by little, the governments of the contracting parties were making effective the withdrawal of China from the GATT. Thus, for example, on June 12, 1950, the Union of South Africa made public its decision to apply the maximum tariffs to Chinese products immediately. At the same time, the African country declared that

the list number XVIII of the General Agreement negotiated with China was without effect after its withdrawal from the GATT.

But not all countries reacted in the same way to the announcement of the Chinese Nationalist Party flight to Taiwan. On June 27, 1951, the Czechoslovak Government reaffirmed itself in the statements made by its delegate in the Torquay Round on November 6, 1950. On that date, Czechoslovakia had publicly declared that it did not recognize the validity of the notification of China's withdrawal from the GATT, since the order had been given by persons without legal capacity to act on behalf of China.

Some fringes of China's abandonment of the GATT remained pending until 1958, when the United Kingdom finally announced that it was also withdrawing tariff concessions from the P.R.C.¹ For its part, the Netherlands had also doubted until 1957 the legitimacy of Chiang Kaishek's representatives to remove China from the GATT.² In any case, the Netherlands ended up withdrawing its tariff concessions from China. Despite the declarations of some countries of the socialist bloc or the belated reaction of few Western governments, China's exit from the GATT and the UN was definitive. At the same time, the economy of the Asian country under the direction of Mao was turning towards autarky, and in international forums the debate arose about the existence of two Chinas: the P.R.C., governed by communist forces, and the R.O.C. China, ruled by the defeated nationalist general Chiang Kai-shek.

WASHINGTON AND TAIPEI

Thanks to the support that the United States gave to the Kuomintang government after the outbreak of the Korean War in 1950, the Formosan government was able to retain its seat in the United Nations (UN) and its Security Council (UNSC). During the 1950s and 1960s, the newly founded P.R.C. tried to have its case reviewed at the UN. However, it was not until the beginning of the seventies when the favorable situation arose for the rapprochement between the P.R.C. and the United States. Following that, Taiwan was finally expelled from the UN, with the P.R.C. taking its seat. Taiwan only remained in the International Monetary Fund (IMF) and the World

¹ GATT, L/786, 14 January 1958.

² GATT, L/658, 9 August 1957.

Bank (WB). Consequently, several countries that had diplomatic relations with Taiwan progressively broke them to establish them with the P.R.C.

Surprisingly, these diplomatic failures of Taiwan contrast with the economic upswing that the country experienced during the following decades. Since the 1950s and for almost four decades the Taiwanese economy grew at an average rate close to 9% per year. In addition, its trade surplus also began to increase significantly and steadily since 1970, just as its international diplomatic status began to deteriorate irretrievably.³ This means that, since the late eighties, Taiwan can be defined as an economically rich country. However, it has an undeniably poor diplomatic history: it does not have international sovereignty as it is not recognized as an independent State by most subjects of international law. This situation makes it difficult to sign certain transactional agreements and any type of Treaty. Nevertheless, many states recognize the effective government of Taiwan and establish trade relations with that state. However, in the international arena it is understood that the concept of ‘Recognition of Government’ and that of ‘Statehood’ are very close, yet they are not the same.

The position maintained by the United States in respect to the legal status of China and Taiwan is essential to address a plausible diplomatic strategy with both countries. Washington does not seem to want to make reunification impossible if both parties agree, but a peaceful and mutually agreed reunification does not look probable. The United States has already proclaimed on numerous occasions that it will not accept unilateral changes in Taiwan's status quo. With this policy of ambiguity Washington persuades Taiwan not to take steps that will lead it to cross the red line of a declaration of independence and, at the same time, it warns Beijing that the use of force of the People's Liberation Army (PLA) against Taiwan could lead the United States to a military intervention in the area.

A DIPLOMATIC APPROACH TO THE DISPUTE

Behind the term diplomacy lays a diversity of forms and techniques of international relations between States that have undergone substantive changes over the centuries. Perhaps for this reason it is not easy to find a definition, sufficiently general and precise, that covers the

³ Directorate-General of Budget, Accounting and Statistics, Executive Yuan, R.O.C. (Taiwan), <https://eng.dgbas.gov.tw/mp.asp?mp=2>.

diverse activities that have existed or are developed in the field of diplomatic relations. In a first approximation, we could agree with the somewhat simplifying formula developed by Sir Ernest Mason Satow when he stated that diplomacy is “the conduct of business between States by peaceful means.”⁴

Of course, given the weight that economic or ideological issues have acquired and the influence that technological changes have on inter-state relations, one might wonder whether the peaceful management of such matters also corresponds to diplomacy. For his part, French lawyer Paul Pradier-Fodéré tried to make this definition more precise, stating that “Diplomacy effectively awakens the idea of managing international affairs, conducting foreign relations, managing the national interests of the peoples and their governments in their material contacts, whether peaceful or hostile.”⁵

In any diplomatic relationship, and whatever the immediate objective of the foreign action for which said relationship has been established, the ultimate purpose that justifies its existence and gives it full meaning is to achieve or maintain peaceful international relations. The conflict between mainland China and Taiwan also poses a threat to international relations. A dispute between two actors with powerful economic allies as the Chinese and Taiwanese governments are could escalate into a multilateral conflict. While the interest of both parties must be to maintain their positions and use their strategies to consolidate the posture they defend, international actors, including the United States, must respond to this call that involves a conflict that may soon erupt. Returning to the aforementioned, the ultimate purpose of diplomacy should be the maintenance of peaceful relations. This, then, must be the role to be played by the United States in the Sino-Taiwanese conflict. However, it is not a role that the United States should play for the first time. Throughout history, the U.S. Government has deployed enormous efforts to end conflicts, to mediate national and international disputes, and to defuse tensions in wartime and postwar periods. Two of the most recent examples are the 2018 North Korea – United States Singapore Summit and the Abraham Accords signed in September 2020.

In June 2018, President Trump and the Supreme Leader of the Democratic People's Republic of Korea (D.P.K.R.) met at the Cappella Hotel in Singapore. In one of the most

⁴ Cahier, Philippe. *Le Droit Diplomatique Contemporain*. Publications de l'Institut Universitaire des Hautes Etudes Internationales (Geneva, 1962) (translation from French).

⁵ Pradier-Fodéré, P. *Cours de droit diplomatique*. (Paris, 1899) vol. I; 2 (translation from French).

anticipated summits of the last decades, the leaders of two countries that in recent years have been threatening each other were able to sit down together and formalize one of the greatest triumphs of diplomacy in recent times. At the Singapore Summit, both leaders agreed to carry out a definitive denuclearization of the D.P.K.R. and, together, normalize relations between two countries that have been enemies for a long time.

The Singapore Summit was instrumental in advancing one of the United States' goals: neutralizing a serious enemy by ensuring that its territory is a nuclear-weapon-free zone.

However, many other steps are still necessary to consolidate this objective and must necessarily involve other Asian countries. The normalization of D.P.K.R. relations must also be a normalization of D.P.K.R.'s relations with the United States allies. Indeed, in April 2018, the Inter-Korean Summit took place; another historic meeting that served as a consolidation of the mutual intentions to denuclearize the Korean peninsula.

Keeping our focus on our objective of drawing the most important lessons from recent diplomatic successes, we must consider what elements that were observed in that diplomatic process we can apply to address Cross-Strait relations.

The other diplomatic success that must be examined is the Israel–United Arab Emirates (U.A.E.) normalization agreement. On September 15, 2020, before the eyes and the flashes of journalists in the White House South Lawn, President Trump, Israeli Prime Minister Benjamin Netanyahu, Bahraini Foreign Minister Abdullatif Al Zayani, and Emirati Foreign Minister Abdullah bin Zayed signed a historic agreement to normalize relations in the Middle East between Israel, the U.A.E. and Bahrain, under the mediation of the United States. Despite not being the first agreement to normalize relations in the area, it is the first pact between the Israeli and Emirati nations. Thus, they join the previous ones by Israel with Egypt and Jordan, signed in 1979 and 1994 respectively. The so-called Abraham Accords were the main foreign policy victory of President Trump's only term. Considering the deep division on Capitol Hill at the time, it was a deal with significant bipartisan support.

The objective of the Abraham Accords was none other than the Arab-Israeli rapprochement in the region, both in political, economic, and cultural matters. The parties to the treaty reiterated the benefits of the agreements on tourism and trade between the territories. If the parties respect the deal in the future, Israel would increase its counter of diplomatic relations with Arab countries, adding the pact with the Emirates to the aforementioned treaties with Jordan

and Egypt. This advance in Arab-Israeli relations suggests that other countries in the region may join this select club in the future, putting Iran in more and more trouble.

These agreements were a significant diplomatic milestone, although it must be recognized that the parties had been negotiating for years on similar terms outside the mediating role of the United States. Therefore, we need to ask ourselves to what extent a mediator in a conflict of this significance can interfere without parties first showing a mutual willingness to negotiate. It is true, as we will explore later, that the conflict between the P.R.C. and the R.O.C. involves a fairly new unrecognized territory and statehood dispute, while the Middle East conflict is much older and with many more edges. However, as in any conflict, the willingness of the parties to initiate a dialogue seems to be essential for the mediator's task to be fruitful.

To finish understanding what lessons we can draw from the Abraham Accords, we must understand what the United States intended to achieve with the role of mediator they played. The answer seems clear: this multilateral agreement between actors in the Middle East stops the influence of the Islamic Republic of Iran in the region, strengthening the alliance between countries that opposed the Iranian nuclear agreement of 2015. Indeed, the opposition of the different allies of the United States to Iran has been going on in recent years. The formalization of these relations consolidates this alliance against Iran in the region. In this sense, strong opposition to the Tehran regime in the Middle East is essential to weaken one of the main enemies of the United States. Therefore, we can conclude that the main objective of the United States in signing the Abrahamic Accords was strategic. We must ask ourselves if this attitude can be maintained in an intermediation in the conflict between China and Taiwan, in which there is a clear ally in the area and a totalitarian regime opposed to the interests of the United States, which has proven to be a threat to the stability of the region.

A DIPLOMATIC SOLUTION: HOW TO APPROACH THE CROSS-STRAIT CONFLICT?

In the conflict between mainland China and Taiwan, there are two main courses of action to follow, which can then be widely developed. On the one hand, one of the options is to promote dialogue and conflict resolution between both actors. Playing an external mediator role, without hiding one's interests, is a less intrusive way in the national interests of both countries in the conflict. However, if Beijing and Taipei maintain a castling position in their demands, as has

been the case in recent decades, this path can lead to a deadlock. That is why the other option that arises is the clear adoption of a position regarding the conflict. Taking sides in the territorial dispute would imply moving away from the position of mediator. Although it should not necessarily suppose the entry into the conflict as an ally of one of the parties, the territory that maintains a position opposite to that adopted by the United States would very possibly increase hostilities towards the U.S. Government. This option would involve recognizing the One China policy that Beijing maintains, or firmly opposing it and recognizing both countries as equally valid interlocutors in the international sphere. Let us then develop these two possible courses of action.

Encouraging and enabling dialogue between the R.O.C. and the P.R.C. is undoubtedly a preferable option if one wants to avoid meddling in a conflict that can lead to war. Staying on the sidelines could mean saving millions of dollars in taxpayer money, as well as American lives and military potential. However, if we pay attention to the current context, we will see that the chances of success of this strategy may be limited. Both parties have been deadlocked for a long time and calls to dialogue seem to have no effect. On the one hand, the Taiwanese government maintains its intention to dialogue with Beijing. In the 2021 New Year's Address, Taiwanese President Tsai Ing-wen criticized the constant military movements of the People's Liberation Army (PLA) and, in turn, repeated Taiwan's intention to enable a fruitful dialogue.⁶ On the other hand, however, the Chinese government keeps to a straight path in not wanting to sit down and talk until Taipei accepts the One-China policy. Specifically, the CCP maintains that the CrossStrait dialogue will be impossible if Taiwan does not adhere to the 1992 Consensus.⁷ The 1992 Consensus refers to the political concept developed jointly by delegations from the P.R.C. and the R.O.C. at a summit in 1992. Although Taiwan now stands out from the outcome of that summit, it defined the concept of One-China under the foundation of the "Mutual nonrecognition of sovereignty and mutual non-denial of governing authority." The Chairman of the New American Institute in Taiwan (AIT) Raymond Burghardt said in 2006 that he did not believe in

⁶ Horton, Chris. *Taiwan President Urges China to Pursue Dialogue, Not Conflict*. Bloomberg, January 1, 2021.

⁷ Xinhua. *Cross-Strait dialogue impossible without adherence to 1992 Consensus: spokesperson*. China Daily, December 16, 2020.

the so-called 1992 Consensus.⁸ Indeed, in the international sphere, the confusion of this term has meant that it is not a sufficiently strong political element beyond a clear disposition to dialogue.

But the reality is that in recent decades, successive governments in the White House have been in favor of shaking hands with Taiwan. Thus, at the beginning of January 2021, Secretary of State Mike Pompeo announced that he would lift the restrictions that impeded diplomatic relations between the United States and Taiwan.⁹ That is why we must consider the second scenario that we mentioned earlier as the most likely for now. However, the United States deciding to move towards dismantling One-China policy from its foreign policy agenda may not be the only solution to the conflict at this point, nor may it be the best.

The alternative option to fostering dialogue is to officially express rejection of the One-China Policy and, therefore, consider Beijing and Taipei as valid interlocutors. This movement would not require agreements with any of the governments in conflict, but rather it would involve the establishment of a new policy on the United States' Foreign Affairs agenda. Despite being, a movement that would certainly enrage the communist government in Beijing, proposals have appeared in Congress to advance in this direction. On September 16, 2020, Rep. Tom Tiffany from Wisconsin introduced a bill to end the “One-China policy” and to normalize ties with Taiwan.¹⁰ Rep. Tiffany argued in his statement that relations with Taiwan were severed under the presidency of Jimmy Carter “without legislative approval,” referring to the time when the United States made the decision to consider the government of Beijing as the only valid interlocutor. The statement from Rep. Tiffany, in short, argues that despite the progress made by successive administrations to strengthen relations with Taiwan, Washington D.C. still does not formally recognize it as a sovereign country. Rep. Tiffany, a Republican, harshly criticizes this situation, arguing that a democratically elected government such as Taiwan and authoritarian regimes such as Iran or the D.P.K.R. are treated in the same way.

Rep. Tiffany's proposal would be to formally resume diplomatic relations with Taiwan, negotiate a Free Trade Agreement, and work for Taiwan to be represented in the UN and other international organizations. As I pointed out at the beginning of this section, this would be a

⁸ AIT pans “1992 Consensus.” Taipei Times, February 28, 2006.

⁹ Manson, Katrina. “US risks enraging China by easing limits on Taiwan relations.” Financial Times, January 10, 2021.

¹⁰ Tom Tiffany (WI-07), September 17, 2020.

movement that the United States would carry out on its own, without the need for pacts. This is what Rep. Tiffany points out, in a rather undiplomatic fashion, when he affirms that “America doesn’t need a permission slip from the Chinese Communist Party to talk to its friends and partners around the world.”

Equally interesting is the reference made by Rep. Tiffany to one of the peace agreements that at the beginning of this paper indicated that they could inspire the path to take in the cross strait conflict. In the statement, Tiffany stated that “If the United Arab Emirates and Bahrain can normalize relations with Israel, certainly we can formalize our enduring friendship with Taiwan.” In my opinion, the simile could not be less accurate, but it is easily correctable. Rep. Tiffany should have asserted that if the UAE and Bahrain have been able to normalize relations with Israel, a country that has significant support from Washington D.C., China should also be able to normalize relations with a formally independent Taiwan. We know, however, that the reality of the Middle East conflict is radically different and, in my opinion, the option of breaking the One-China policy by taking the path that Rep. Tiffany has proposed is too risky.

THE THIRD WAY

Given that neither of the two options we have discussed offers a possible and realistic solution, at least in the short term, we must explore what other alternatives the United States can provide to solve the Cross-Strait conflict. Indeed, the indefinite position on the conflict that the United States has always maintained has favored the maintenance of peace. Therefore, a radical turn in the strategy that implies a clear positioning in the conflict could light the fuse of war.

The movements carried out by China in recent times have abandoned a position of tense calm and are on a much more aggressive plane towards Taiwan, in the form of military movements in the strait and disinformation campaigns against the island and the United States.¹¹ In addition, the meteoric modernization of the PLA in recent decades suggests that China would be prepared to clearly fight a war of annexation.¹² That is why the commitment to a diplomatic solution that involves all possible actors in the region and in the international arena is necessary.

¹¹ FT Series, *New Cold War*. Financial Times, October 6, 2020. <https://www.ft.com/video/68c9ddea-636a-4b27a443-c2da2eec1436>.

¹² Marcus, Jonathan. “The ‘globalisation’ of China’s military power.” BBC, February 13, 2018.

A more interesting solution to the conflict is to give a twist to the concept of sovereignty, and for this, the work carried out by the Chinese academic He Baogang is essential. The alternative that he proposes in several of his academic works consists of a paradigm shift in the concept of One-China policy that makes possible both the inclusion of Taiwan in the United Nations General Assembly (UNGA) and the unification with the Mainland. Over the past few decades, China has led the opposition at the UN to Taiwan's numerous attempts to win a seat in the great league of nations. This opposition has been joined by powers such as the United Kingdom, France, or the United States itself. Professor He is betting that in the medium term, Taiwan will end up obtaining this seat in the UN given the efforts it makes in diplomacy and the constant increase in countries that recognize the island as an independent nation. However, Professor He's thesis is that this will come at the cost of destroying the attractiveness that the Taiwanese may see to the idea of reunification given the strong opposition from Beijing.¹³ Professor He sums up this thesis very aptly: "There is every reason to explore flexible options that are sympathetic to the will of the Taiwanese people while at the same time laying an inclusive political foundation for reunification."

This alternative route, which in theory should satisfy both nations, is not without doubts. The first one pointed out by the professor himself is whether China would voluntarily accept Taiwan's entry into the UN. Certainly, this change could not happen overnight. Taiwan should enter first with observer status, and then in a few years obtain an associate membership. If the climate were favorable in the future, one could effectively talk about obtaining a seat in the UNGA. But let's not forget that this will not be possible without the approval of Beijing and its allies.

As I pointed out at the beginning of this section, Professor He's thesis requires rethinking the concept of sovereignty. In his paper he introduces the idea that the assumption of one sovereignty-one seat is outdated and that if we leave it out of the equation we can include diverse political realities such as China in the UN, understanding China as an eventual union of the P.R.C. and the R.O.C.¹⁴ Many authors have proposed alternatives to the classic concept of sovereignty that is studied in international relations schools. The brilliant French professor

¹³ He, Baogang. "Power, responsibility and sovereignty: China's policy towards Taiwan's bid for a UN seat." *Power and Responsibility in Chinese Foreign Policy* (2014). 199.

¹⁴ Baogang. "Power, responsibility and sovereignty," 201.

Bertrand Badie can shed light on us when it comes to rethinking the idea of which entities really exercise their power in the international sphere. The Cross-Strait conflict is just one more episode that illustrates how the sovereignty of the state as the foundation of international relations is very weak if it ever existed.

As a permanent member of the UNSC, the American delegation should work to make this path possible. It is the diplomatic solution that can offer the most to both parties and, possibly, the most effective in avoiding an armed conflict. But we should not think that Beijing will make any attempt to obtain a status similar to statehood by Taiwan easy. This is, in my opinion, the most important job that diplomats from the United States, and from other countries, have in the coming decades.

STRATEGIC PARTNERS

The alliances that the United States has forged from its inception as a nation until today have made it possible for the country to lead today the main blocs of allies in the West. The two great wars and the following decades of the Cold War proved that no matter how great the military and political might of a nation, it is essential to have allies with whom to share interests and objectives. In 1848, defending his foreign policy strategy in the House of Commons, British Prime Minister Lord Palmerston declared: “We have no eternal allies, and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow.”¹⁵

This should not make us think that in times of peace we can do without allies. On the contrary, it is at times like today when it is even more necessary to maintain those partners who collaborate in maintaining peace, democracy, and freedom around the planet. That is why when the United States works to defend democratic nations against authoritarian rivals, it needs the support of its allies in the region. Two of the main partners of the United States in the Indo-Pacific region are Australia and Japan. Beyond the political understanding between Washington and the governments of these powers, the collaboration agreements in military matters place these three countries as a true extension of the same objective. On April 17, 1996, President

¹⁵ Temple, Henry John. “Remarks in the House of Commons Defending His Foreign Policy,” *Hansard’s Parliamentary Debates*, 3rd Series, Vol. 97, Col. 122, March 1, 1848, <http://www.bartleby.com/73/42.html> (accessed January 10, 2021).

Clinton signed with Prime Minister Hashimoto a Joint Declaration on Security, formalizing one of the most important military agreements in recent times. When we analyze the document signed by both leaders, agreement 5. (b) that establishes the following should call our attention:

The two leaders agreed on the necessity to promote bilateral policy coordination, including studies on bilateral cooperation in dealing with situations that may emerge in the areas surrounding Japan and which will have an important influence on the peace and security of Japan.¹⁶

This commitment is of great importance given the interests of the United States in a conflict close to Japanese territory and can be interpreted in two ways. On the one hand, it can be thought that given this agreement Tokyo should limit itself to accepting and going hand in hand with the strategy chosen by Washington to face the Cross-Strait conflict. However, the inclusion of allies in conflict resolution must be enriching and not forced, so a conflict resolution strategy must be discussed and agreed upon with the Japanese government. In fact, according to a survey in Japan by the Taipei Times in 2010, almost 60 percent of respondents believed Japan should support the United States in defending Taiwan.¹⁷ Therefore, considering the military accords linking both nations, and the shared objective of promoting peace and democracy in the region, Japan must be considered an essential partner in this endeavor.

The alliance with Australia is different, possibly not as close as with Japan as has been observed in recent years. In August 2004, Australian Foreign Minister Alexander Downer, referring to the ANZUS treaty, said while in Beijing that this document did not oblige Australian forces to militarily assist the United States in Taiwan.¹⁸ These claims were nuanced in later times by other members of the government and the U.S. Ambassador in Australia, but the reality is that the Australian government's close collaboration in resolving the cross-strait conflict will not be easy. China is Australia's main trading partner, and even though its geopolitical position is undoubtedly closer to that of Washington or Tokyo than to that of Beijing, the reality

¹⁶ Japan-U.S. Joint Declaration on Security – Ministry of Foreign Affairs of Japan.

¹⁷ Taipei Times – “Japanese support helping US defend Taiwan: survey,” December 25, 2010.

¹⁸ “The Australia, New Zealand and United States Security Treaty, or ANZUS Treaty, was an agreement signed in to protect the security of the Pacific. Although the agreement has not been formally abrogated, the United States and New Zealand no longer maintain the security relationship between their countries.” - Office of the Historian, Department of State; The Age- “Downer flags China shift,” August 18, 2004.

is that members of the Australian government continue to tread warily when responding to imperialist and tyrannical movements of the CCP. In the words of Hugh White, from the Australian National University, “Australia will want to be very careful not to be seen to become a puck in the ice hockey of American presidential politics.”¹⁹ But this reluctance to clear positioning can go beyond that. Naturally, Australia does not want to jeopardize its main commercial alliance and, in turn, wants to maintain a liberal approach in the field of international relations. When it comes to assessing the various interests at stake, Australia prefers to remain in the background so as not to excessively anger the Chinese government. We must assume that in the event of conflict the Australians would possibly position themselves more clearly against China if Taiwan had strong support from Washington. However, to start a process of diplomatic resolution of the conflict it is not so clear that Canberra can be counted on.

Working with allies in the Asian region is essential not only to keep the peace in the Formosa Strait. In the trade war with China, the United States maintains the commitment to neutralize the Belt and Road Initiative (BRI). This commercial megaproject launched in 2013 by Xi Jinping and the CCP poses a great risk to the economic and commercial future of the United States, since its purpose is none other than to achieve global sino-centrality of commercial relations. For this reason, in November 2019 the United States, Japan and Australia announced the Blue Dot Network, whose objective is to neutralize the magnitude of the BRI. It is important to reinforce this alliance that these three nations have forged and confirm that they not only share commercial interests, but also geopolitical ones. The diplomatic might of the United States in the Asian region will be strong as long as this alliance is maintained and strengthened.

CONCLUSIONS

Taiwan's fit into the world political system is an uncomfortable issue for the United States. Despite being a perfect shadow ally, it remains impossible to maintain a close relationship with the Taiwanese government until the territory resolves its status with respect to China. It has been shown that Washington cannot stay out of this conflict. Support for Taiwan is not only

¹⁹ Manson, Katrina and Smyth, Jamie. “Australia treads careful line on China in US meeting,” *Financial Times*, July 28, 2020.

necessary for the promotion of democracy and freedom, it should also serve to curb the totalitarian and expansionist aspirations of the Chinese communist government.

In a context of post-Cold War and trade war with the Asian giant, it is more necessary than ever to develop a solid diplomatic strategy that provides a solution to the conflict that is aligned with the interests of the United States government and, simultaneously, avoids a direct confrontation with China leading to armed conflict. Recent history is on our side and shows us that it is possible. The Abraham Accords established peace and fostered a future based on fellowship between nations who have clashed for centuries, but who also feared the despotism displayed by a common adversary in the region. The United States must enable a conflict resolution that is commercially attractive, counting on the support of allies and partners in the region, and that has enough legitimacy to flourish in the United Nations. This must also be a bipartisan endeavor in which members of the legislative and executive branches go hand in hand to show that there are no differences in working to promote peace and freedom.

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LYNDON JOHNSON'S NUCLEAR CROWN: EXPLORING THE 36TH PRESIDENT'S ARMS CONTROL LEGACY¹

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Lyndon Baynes Johnson's (LBJ) legacy on issues of foreign affairs is often associated with his mishandling of the Vietnam War. However, LBJ's contribution to the development of global nuclear arms control regimes is significantly understated. This paper reviewed the works of scholars and witnesses to LBJ's Presidency and a variety of primary source documents in order to develop a more comprehensive picture of his influence on U.S. nonproliferation policy. The analysis found that LBJ played a significant role in supporting the bureaucratic and diplomatic process that led to the negotiation of the Nuclear Nonproliferation Treaty (NPT) as well as through his personal negotiations with other world leaders. This was due both to LBJ's own experience and decisions as president, as well as developments in the Cold War that necessitated greater attention to nonproliferation.

OVERVIEW AND REVIEW OF LITERATURE

Ratified by 191 state parties, the Nuclear Nonproliferation Treaty of 1968 is the cornerstone of international nuclear consensus. The Treaty legally recognizes five nuclear powers, who agreed to gradually reduce their nuclear arsenals. Non-nuclear members of the pact committed not to pursue nuclear weapons in exchange for receiving support on peaceful nuclear programs from the five established powers. Both contemporary and Cold War arms control agreements have been inspired by the goals of the NPT. While the 1968 agreement is hailed as a multilateral achievement and a major component of the United Nations (UN) system, the

¹ Glenn Seaborg and Benjamin Leob, *Stemming the Tide: Arms Control in The Johnson Years*. (Lexington, Lexington Books, 1987), 446. Title is a reference to LBJ's August 26, 1996 remark that "Uneasy is the peace that wears a nuclear crown."

² **Acknowledgements:** This paper was written with mentorship from James Kitfield of CSPC, whose insights were incredibly helpful in identifying high quality sources on LBJ and offering thoughts on this paper's contemporary connection. A number of other Fellows in my class and CSPC staff were generous in offering their thoughts on the paper during peer review sessions. The opportunity to write this paper would not have been possible without CSPC's facilitation of the fellowship program and Paul Hoyt O'Connor of George Washington University's Center for Undergraduate Fellowships & Research, who first made me aware of the opportunity. Finally, many thanks to my parents, Ed Chang and Susan Sylligardos, for always encouraging my intellectual curiosity. Any errors within the paper are exclusively the author's responsibility.

administration of LBJ played a major role in promoting the NPT and a broader political culture of arms control. LBJ's Presidency is often associated with the disastrous Vietnam War, but his advancement of John F. Kennedy's (JFK) nonproliferation vision and ability to improve relations with the U.S.S.R following the Cuban Missile Crisis is noteworthy.³ This paper examines LBJ's experience during his tenure as president and vice president (VP) to better understand the 36th commander-in-chief's legacy on arms control. Sources show that LBJ played a significant role in making nonproliferation part of his geopolitical agenda and setting the stage for the 1972 SALT I and Anti-Ballistic Missile (ABM) treaties. His personal experiences, retention of JFK staff, and the geopolitical environment of the mid-1960s all made the 36th president a strong and influential advocate for arms control.

This paper straddles a number of different areas of scholarship, including LBJ's foreign policy, nuclear history, and the effects of Nuclear Nonproliferation Treaty. Research specifically examining LBJ's nonproliferation policy, however, is relatively limited. Thomas Alan Schwartz argues persuasively that LBJ played a major role in pushing the Kremlin and U.S. allies to place greater emphasis on arms control, and effectively juggled many conflicting interests within the North Atlantic Treaty Organization (NATO).⁴ LBJ's Atomic Energy Commission (AEC) Chairman Glenn T. Seaborg leverages his personal experience in government to make a similar argument.⁵ A number of articles by Hal Brands support these perspectives, suggesting LBJ's nonproliferation initiatives served as an early precursor to the Detente era.⁶ Complementing

³ Thomas Schwartz, "Lyndon Johnson as The Ugly American," *Lyndon Johnson and Europe: In the Shadow of Vietnam* (Cambridge: Harvard University Press, 2003). 1-8. ; "Lyndon Johnson Reassessed," 223-237. ; Seaborg and Leob, "Preface," *Stemming the Tide: Arms Control in The Johnson Years*, x-xxi.

⁴ Schwartz, *Lyndon Johnson and Europe: In the Shadow of Vietnam*.

⁵ Seaborg and Leob, *Stemming the Tide: Arms Control in The Johnson Years*.

⁶ Hal Brands, "Non-Proliferation and the Dynamics of the Middle Cold War: The Superpowers, the MLF, and the NPT," *Cold War History* 7, no. 3 (July 2007): 389-423.

<https://www-tandfonline-com.proxygw.wrlc.org/doi/pdf/10.1080/14682740701474857?needAccess=true> ; Hal Brands, "Progress Unseen: U.S. Arms Control Policy and the Origins of Détente, 1963–1968," *Diplomatic History* 30, no. 2 (April 2006): 253-285. <https://www-jstor-org.proxygw.wrlc.org/stable/pdf/24915093.pdf> ; Hal Brands, "Rethinking Nonproliferation: LBJ, the Gilpatric Committee, and U.S. National Security Policy," *Journal of Cold War Studies* 8, no. 2 (Spring 2006): 83-113. <https://muse-jhu-edu.proxygw.wrlc.org/article/196269/pdf> <https://search-proquest-com.proxygw.wrlc.org/docview/302808829?pq-origsite=summon> ; Christian MacDonald, "Picking up the pieces: The Johnson administration and the changing orientation of NATO, 1963--1968" (PhD diss., University of New Brunswick, 1976).

Schwartz's work, James Stanley's dissertation offers a more contemporaneous perspective on LBJ's European diplomacy, arguing that LBJ worked to advance detente with the Soviets without excessively damaging European interests.⁷ Christian MacDonald's 1999 dissertation also supports this view.⁸ William Ansberry, Francis Gavin, Shane Maddock, and Dane Swango all examine changes to the global nuclear order that motivated Washington and Moscow to support worldwide nonproliferation. Maddock notably acknowledges that while the United States played a major role in making the NPT possible, inconsistent American support for the broader norms it established have undermined the agreement's modern effectiveness.⁹ William Burr and Jeffrey T. Richelson discuss documents that reveal the JFK administration attempted to enlist the U.S.S.R. in a joint military action against the People's Republic of China's (P.R.C.) nuclear program in the early 1960s; LBJ considered this option, but ultimately decided against it.¹⁰ Articles by Gene Gerzhoy, John Krige, and Jayita Sarkar address U.S. nonproliferation efforts in the 1960s and 1970s more broadly and highlight the combination of incentives and threats Washington utilized to ensure its allies did not pursue nuclear arms.¹¹ Some of James Lebovic's chapters also address

⁷ James Grosvenor Stanley, "United States Foreign Policy Vis-a-Vis Western Europe During The Johnson Administration: A Change In Priorities?" (PhD diss., American University, 1976). <https://search-proquest-com.proxygw.wrlc.org/docview/304565368?pq-origsite=summon>.

⁸ Christian MacDonald, "Picking up the pieces: The Johnson administration and the changing orientation of NATO, 1963—1968" (PhD diss., University of New Brunswick, 1996). <https://search-proquest-com.proxygw.wrlc.org/docview/304565368?pq-origsite=summon>.

⁹ William Ansberry, "Arms Control and Disarmament: A Study of Problems In a World of Nation-States" (PhD Diss., University of Cincinnati, 1968). <https://search-proquest-com.proxygw.wrlc.org/docview/302302498?pq-origsite=summon> ; Francis Gavin, "Blast from The Past: Proliferation Lessons from The 1960s," *International Security* 29, no. 3 (Winter 2004/2005): 100-135. ; Shane Maddock, "The nth country conundrum: The American and Soviet quest for nuclear nonproliferation, 1945-1970" (PhD diss., University of Connecticut, 1997). <https://search-proquest-com.proxygw.wrlc.org/docview/304341485?pq-origsite=summon> ; Eugene Swango, "The Nuclear Nonproliferation Treaty: Constrainer, screener, or enabler?" (PhD diss., University of California, Los Angeles, 2009). [https://search-proquest-com.proxygw.wrlc.org/docview/304856627/fulltextPDF/474DECE27C9B4571PQ/1?account id=11243](https://search-proquest-com.proxygw.wrlc.org/docview/304856627/fulltextPDF/474DECE27C9B4571PQ/1?account%20id=11243)

¹⁰ William Burr and Jeffrey T. Richelson, "Whether to Strangle The Baby in The Cradle," *International Security* 25, no. 3 (Winter 2000/2001): 54-99. <https://www-jstor-org.proxygw.wrlc.org/stable/pdf/2626706.pdf?refreqid=excelsior%3A4a4ae3c73359217fa00f7693a7938606>.

¹¹ Gene Gerzhoy, "Alliance Coercion and Nuclear Restraint: How the United States Thwarted West Germany's Nuclear Ambitions," *International Security* 39, no. 4 (Spring 2015): 91-129. <https://muse-jhu-edu.proxygw.wrlc.org/article/580832/pdf> ; John Krige & Jayita Sarkar, "US technological collaboration for nonproliferation: key evidence from the Cold War," *The Nonproliferation Review* 25, no. 3-4 (2018): 249-262. <https://www-tandfonline-com.proxygw.wrlc.org/doi/pdf/10.1080/10736700.2018.1510465?needAccess=true>.

JFK and LBJ administration's contributions to arms control.¹² While not an author that addresses LBJ's role on arms control directly, Robert A. Caro gives readers a rich personal picture of the president, offering insight into his thinking both before and during his presidency, while highlighting important decisions such as his choice to retain many of JFK's advisors.¹³ Finally, additional context is provided by high-quality primary and secondary sources. Government papers from the JFK and LBJ Libraries, the Department of State's *Foreign Relations of The United States*, and the *Digital National Security Archive* are integrated into analysis; and recent news reports and think-tank pieces illustrate how LBJ's nonproliferation achievements have both endured and suffered to this day.

KENNEDY'S NUCLEAR FEARS AND LBJ'S HOLLOW VICE PRESIDENCY

Near the conclusion of the Cuban Missile Crisis, the Executive Committee of the National Security Council (EXCOMM-NSC) was inclined to accept a proposal by Soviet premier Nikita Khrushchev to remove missiles from Cuba in exchange for the reciprocal withdrawal of U.S. Jupiter missiles from Turkey. When JFK and his brother—Attorney General Robert F. Kennedy (RFK)—briefly left the meeting, however, LBJ began to forcefully argue against the proposal, saying that the deal did not guarantee the removal of conventional Soviet forces from the island. JFK and RFK returned to a committee that had quickly become more skeptical of the missile trade, with a number of officials having been convinced by LBJ's point of view. The irony of this moment was that despite the VP's seniority, he was not influential in JFK's circle.¹⁴ Nonproliferation, like many of LBJ's initiatives, originated with his predecessor.

JFK entered the White House with a strong desire to reduce the risk of nuclear war. "We must begin to develop new, workable programs for peace and the control of arms," JFK said in a June 1960 speech. "[a nuclear test ban treaty] must only be the first step toward halting the spiraling arms race that burdens the entire world with a fantastic financial drain, excessive military establishments, and the chance of an accidental or irrational triggering of a worldwide

¹² James Lebovic, *Flawed Logics: Strategic Nuclear Arms Control from Truman to Obama* (Baltimore: Johns Hopkins University Press, 2013). 41-64.

¹³ Robert Caro, *The Passage of Power* (New York: Vintage Books, 2012).

¹⁴ Caro, "Cut," *The Passage of Power*, 218-223.

holocaust.”¹⁵ The negotiation of the Limited Test Ban Treaty with Moscow, which banned underground testing, embodied this sentiment. JFK also established the Direct Communications Link with his Soviet counterpart to ensure there would be a way to defuse tensions should another situation like the Cuban Missile Crisis arise. The administration also helped establish the Eighteen Nation Disarmament Conference (ENDC) at the UN, an early recognition of the superpower’s shared interests in combating proliferation. Domestically, JFK created the Arms Control and Disarmament Agency (ACDA), an office tasked with advising the president on nonproliferation issues. JFK’s fear of nuclear weapons becoming normalized was fundamental to these initiatives. “I see the possibility in the 1970s of the president of the United States having to face a world in which 15 or 20 or 25 nations may [have] these weapons, JFK said. “I regard that as the greatest possible danger and hazard.”¹⁶ LBJ however—selected as VP primarily for his utility in the 1960 election—did not play a role in these arms control efforts.

LBJ gained a reputation for great legislative ability as Senate Majority Leader. While VP, however, he was rarely invited to White House meetings by JFK loyalists, who looked down on his non-Ivy-League credentials and resented his comments years earlier critical of the Kennedy family. RFK despised LBJ particularly strongly and denied him access to important meetings.¹⁷ During gatherings of the Cabinet and NSC—where LBJ was present—the VP was quiet and intimidated. These “were particularly terrible hours for Lyndon Johnson,” Caro writes. “Not just desire, his *need* to dominate [were offended], but also his need to decide—his will for decision, his will to *act*...[these characteristics] were fundamental to his inner being.”¹⁸ LBJ’s ostracization rendered his vice presidency inconsequential, but it does offer some insights into his exposure to nonproliferation policy. Chairing the National Space Council was one of the VP’s few responsibilities, an assignment with significant nuclear overlap. In his frustration, LBJ

¹⁵ What Missile Gap?” The Atlantic JFK Issue. <https://www.theatlantic.com/magazine/archive/2013/08/what-missile-gap/309484/>; John F. Kennedy, [remarks on U.S. foreign policy and arms control], John F. Kennedy Presidential Library and Museum (June 14, 1960). <https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/united-states-senate-u-2-incident-1960-0614>.

¹⁶ Lebovic, Flawed Logics: Strategic Nuclear Arms Control from Truman to Obama. ; Leon Ratz, “Organizing for Arms Control: The National Security Implications of The Loss of An Independent Arms Control Agency,” Belfer Center for Science and International Affairs (September 2013). <https://www.belfercenter.org/sites/default/files/legacy/files/Organizing%20for%20Arms%20Control%20-%20Web%203.pdf>.

¹⁷ Caro, “Cut,” The Passage of Power, 199-208.

¹⁸ Caro, “Cut,” The Passage of Power, 202.

was not always active as Chair, but he and his aides were keenly aware of the body's importance. In the Senate, LBJ had also formed a strong rapport with Georgia Senator Richard Russell—known as “Mr. Defense”—and conducted oversight of Korean War spending. In 1954, LBJ and Russell advised President Dwight Eisenhower not to intervene on France's behalf against Vietnamese nationalist forces in the Battle of Dien Bien Phu—which potentially could have included using nuclear weapons.¹⁹ These experiences show that LBJ was cognizant of atomic risks and had exposure to nuclear issues.

LBJ's most notable moment as VP came during the Cuban Missile Crisis. After he learned of Soviet missile site construction in Cuba on October 16, 1962, JFK quickly convened a meeting of EXCOMM. The Joint Chiefs of Staff (JCS) advocated for attacking the missile sites, but JFK did not definitively order a strike, stating he wanted more photos of the sites before taking action. Disobeying JFK's additional instruction to exercise discretion, LBJ phoned Senator Russell, a notable member of the “war party” faction in Congress. Russell viewed leaking as unseemly, but instead would use the information to confront JFK at a congressional briefing on the crisis. Following his call to the senator, LBJ left Washington for campaign duties. In his absence, RFK passionately argued that a surprise attack was immoral, persuading EXCOMM to impose a naval quarantine instead. Immediately upon being briefed by CIA Director John McCone on the quarantine decision when he returned, LBJ expressed his opposition. This “attitude can be partly explained,” Caro writes, “by the fact that he had not been sitting in on the deliberations in the intervening days.” Being shut out of decision-making at a meeting where he was a participant must have been particularly infuriating to LBJ. Nevertheless, JFK publicly announced the quarantine on December 22, setting off a public and military standoff that would bring the world to the brink of nuclear holocaust.

¹⁹ Michael Beschloss, “We Got Slapped” in *Presidents at War: The Epic Story, From 1807 To Modern Times* (Broadway Books: New York, 2018), 500-502, 515. ; Caro, “Cut,” *The Passage of Power*, 205. ; Jeff Shesol, “Lyndon Johnson's Unsung Role in Sending Americans to the Moon,” *The New Yorker*, July 20, 2019. <https://www.newyorker.com/news/news-desk/lyndon-johnsons-unsung-role-in-sending-americans-to-the-moon>; [LBJ 1961 National Space Council documents], JFK Presidential Library, <https://www.jfklibrary.org/asset-viewer/archives/JFKPOF/030/JFKPOF-030-019>; Murrey Marder, “When Ike Was Asked to Nuke Vietnam,” *The Washington Post*, August 22, 1982. <https://www.washingtonpost.com/archive/opinions/1982/08/22/when-ike-was-asked-to-nuke-vietnam/305c4152-202e-4303-9bdc-3424f4f7376b/>.

The Crisis' second week is well-known for the correspondence between JFK and Khrushchev. The Soviet Premier first sent a letter on October 26 offering to remove missiles from Cuba in exchange for an American commitment not to invade the island, but in a second October 27 letter also demanded that Jupiter missiles in Turkey also be removed. Critically, October 27 was also the day a U-2 plane was shot down by a Surface-to-Air Missile (SAM) battery over Cuba, an action to which EXCOMM had earlier resolved to retaliate militarily. RFK initially persuaded EXCOMM not to attack, but then left the room with JFK. It was at this point LBJ took over the meeting. "I think you're going to have a big problem right here...in a few more hours in this country," he told the committee. "The President made a fine speech. What else have you done...They see that there's some ships coming through. There's a great feeling of insecurity." He also told members that the U-2 incident required a response. "Ask yourself what made the greatest impression on you today, whether it was his [Khrushchev's] letter last night or whether it was his letter this morning, or whether it was that U-2 boy going down?" LBJ's words swayed a number of EXCOMM members. Surprised by the new militaristic sentiment, JFK quickly adjourned the meeting and initiated a smaller discussion in the Oval Office without LBJ. In that latter meeting, Secretary of State Dean Rusk proposed informing the Kremlin that "while there could be no [public] deal over the Turkish missiles, the President was determined to get them out and would do so once the Cuban crisis was resolved."²⁰ Caro writes that "[this] most important decision[s] of the JFK administration was made without Lyndon Johnson's knowledge," but Rusk's addendum may have had some connection to LBJ's arguments. Caro writes that the Secretary of State was one of the cabinet members closest to LBJ, with the VP using him as an intermediary to the president.²¹ It is also not unreasonable to assume—given LBJ's political instincts and poor standing in the administration—that he sought to pressure JFK indirectly by leaving information to Russell and making arguments to EXCOMM members other than the president himself. The VP's strong action-bias makes LBJ's vocal dissents likely less of a substantive policy disagreement than an implicit push to ensure the Crisis' resolution was not labeled as appeasement in the international community. JFK's staff officials, however, used

²⁰ Caro, "Cut," *The Passage of Power*, 209-224. ; "Timeline of The Cuban Missile Crisis", [atomicarchive.com](https://www.atomicarchive.com/history/cuban-missile-crisis/timeline.html), <https://www.atomicarchive.com/history/cuban-missile-crisis/timeline.html>.

²¹ Caro, "Cut," *The Passage of Power*, 206-208.

LBJ's actions only as justification to bar him from future meetings. LBJ seemed poised to fall out of the spotlight permanently—until the shocking events of November 1963.

FROM OUTCAST TO COLD WARRIOR: LBJ'S ARMS CONTROL PRESIDENCY

In a perverse twist of fate, the tragic assassination of JFK instantly reversed LBJ's sputtering political career. The November 22, 1963 killing had been carried out by a deranged shooter, but many officials immediately speculated that it might be part of a "conspiracy." This speculation was heightened by the fact that the attack occurred on a day when JFK and LBJ were travelling together and half the U.S. Cabinet was flying together to a conference in Japan. LBJ was "disturbed" that the assassination's coincided with the travel schedules of so many senior American officials. Staff around LBJ alluded to the partially successful 1865 Confederate decapitation attack that killed Lincoln, fearing that U.S. enemies were again trying to cripple the government. Returning to Air Force One, LBJ and his allies decided "that [if] a wider conspiracy might be involved...the need to establish a sense of continuity of stability, [is] more urgent; should the Russians try to take advantage of the situation, there should not be the slightest doubt about who was in command."²² This war scare was the second in just over a year that LBJ had witnessed. Fortunately, the assassination was not tied to any foreign threat, and the Cuban Missile Crisis was similarly revealed to have been exacerbated by a series of miscommunications. Had LBJ been convinced JFK's killing was a Soviet attack, however, he could have accidentally started a shooting war. His unsure expressions of both aggression and restraint during the 1962 Crisis, coupled with the benefit of hindsight, inevitably would have impressed upon LBJ the potentially disastrous implications of miscalculation. It was now his responsibility alone to avert nuclear catastrophe.

LBJ once remarked that "I don't believe I'll ever get credit for anything in foreign affairs, no matter how successful it is, because I didn't go to Harvard."²³ Indeed, the fact that JFK aides pioneered an increased nonproliferation focus may contribute to the lack of recognition LBJ receives on arms control. The new president's surprising ascension meant he had few loyal allies

²² Caro, "Aboard Air Force One," *The Passage of Power*, 339-344. ; "Taking Charge," 319-324 ; *The Crucible*," 307-308.

²³ Schwartz, "Prelude," *Lyndon Johnson and Europe: In the Shadow of Vietnam*, 7.

in the White House. Despite their caustic relationship, however, LBJ rallied many of JFK's staff to continue serving—he believed that he had an obligation to fulfill JFK's legacy:

Rightly or wrongly, I felt from the very first day in office that I had to carry on for President Kennedy. I considered myself the caretaker of both his people and his policies. He knew when he selected me as his running mate that I would be the man required to carry on if anything happened to him. I did what I believed he would have wanted me to do.²⁴

Shortly after becoming president, LBJ received a grim military briefing warning him that forty million would die in the first hour of a nuclear war—a fact that would have validated LBJ's prior experiences in the Cuban Missile Crisis and early hours after the JFK assassination. During the first NSC meeting of his administration, LBJ declared that “the greatest single requirement [of today] is that we find a way to ensure the survival of civilization in the nuclear age.” He also quickly approached AEC Chairman Seaborg to express interest in slowing U.S. production of fissionable materials.²⁵

Another pressing concern for LBJ was the upcoming 1964 Election. Senator Barry Goldwater of Arizona was an extremely hawkish opponent who argued for greater NATO tactical control of atomic weapons and nuclear warfighting as a viable military strategy. LBJ campaigned on avoiding nuclear brinkmanship—with the “Daisy” ad. juxtaposing a young girl picking flowers with a mushroom cloud being perhaps the most enduring example. Some staff supported focusing on domestic issues, but LBJ believed that highlighting differences on nuclear policy was important. “A mother is pretty worried if she thinks her child is drinking contaminated milk or that maybe she's going to have a baby with two heads,” he remarked. LBJ also declined to take up a proposal discussed during the JFK administration to attack P.R.C. nuclear facilities, a move historians argue was consistent with his “peace platform” during the election.²⁶

²⁴ Caro, “EOB 274,” *The Passage of Power*, 409-414. ; Seaborg and Leob, “The Best Way to Begin...Is to Begin,” *Stemming the Tide: Arms Control in The Johnson Years*, 3-15.

²⁵ Seaborg and Leob, “President Johnson's Bold Start,” *Stemming the Tide: Arms Control in The Johnson Years*, 19-23. ; “The Arms Control Connection,” 39-50.

²⁶ Burr and Richelson, “Whether to Strangle The Baby in The Cradle,” 54-99. ; *Destruction of Chinese Nuclear Weapons Capabilities*. (1964, December 14). *Digital National Security Archive (DNSA)*. (China and the United States: from hostility to engagement, 1960-1998). Retrieved from Digital National Security Archive Database.

The uncertain international environment also influenced LBJ's nuclear policy. The P.R.C. detonated their first nuclear device on October 16, 1964, becoming the world's fifth atomic power. This sent shockwaves throughout the U.S. foreign policy establishment. Many U.S. officials viewed Beijing as an irrational actor that would set off a chain reaction of Asian neighbors developing atomic arms. The European climate was similarly volatile. Since the late 1950s, the Federal Republic of Germany (F.R.G.) had devoted enormous political capital towards implementing the Multilateral Force (MLF), a proposed fleet of nuclear armed ships that would be jointly operated by multiple NATO countries. The memory of Nazi aggression during the Second World War was still fresh in the U.S.S.R, however, which feared the MLF would effectively create a nuclear-armed Germany. While both the United States and U.S.S.R. acknowledged general agreement on nonproliferation objectives, Moscow categorically refused to participate in any global arms control initiatives unless the MLF was terminated.²⁷ French President Charles DeGaulle's simultaneous efforts to decouple his country's foreign policy from the United States and exit NATO's strategic command threatened to weaken the Western alliance. U.S. officials estimated that nearly a dozen countries in addition to the F.R.G. could conceivably develop nuclear arms. Both Washington and Moscow were now facing the possibility of a multipolar nuclear order where many regional powers could promote their agendas and fight catastrophic wars using the ultimate weapon.²⁸

(Accession No. CH00022). https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/1679040500/fulltextPDF/D77F815992C34177PQ/1?ac_countid=11243; Schwartz, "Retreat from The Grand Design," *Lyndon Johnson and Europe: In the Shadow of Vietnam*, 19-21, 30. Pp. 30 quoted in Michael Beschloss, *Taking Charge* (Simon & Schuster, 1998), 465.

²⁷ Schwartz, "Retreat from The Grand Design," *Lyndon Johnson and Europe: In the Shadow of Vietnam*, 39-46. "Policy In The Shadows," 49-63. ; The French Challenge," 92-139.; [Notes of President's Meeting with Consultants on Foreign Policy, October 21, 1964 in the Cabinet Room \(Includes Participant List; Statement Not Included\) \[McNamara says seven-nine could build weapons\]](#). (1964, October 21). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01061). ; Seaborg and Leob, "The MLF Before Johnson," *Stemming the Tide: Arms Control in The Johnson Years*, 83-93. ; "The MLF, 1964: A Sea of Troubles," 94-110.

²⁸ Gavin, "Blast from The Past: Proliferation Lessons from The 1960s; Evan Gerakas et. al, 44. Draft Position Paper [Evaluation of nonproliferation objectives], Foreign Relations of The United States, 1964-1968, Volume XI, Arms Control and Disarmament. August 14, 1964. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d44>; Schwartz, "The French Challenge," *Lyndon Johnson and Europe: In the Shadow of Vietnam*, 92-139. ; Seaborg and Leob, "And Then There Were Five," *Stemming the Tide: Arms Control in The Johnson Years*, 111-118. ; "Proliferation Threats," 249-266. ; Value and Feasibility of a Nuclear Non-Proliferation Treaty [Draft of Non-Proliferation Treaty Attached]. (1964, December 10). Digital National Security Archive (DNSA). (U.S. nuclear non-proliferation policy, 1945-1991). Retrieved from Digital National Security Archive Database. (Accession No.

Warned by his advisors of these concerning forecasts, LBJ established the Committee on Nuclear Proliferation (the Gilpatric Committee) to analyze how the United States should change its nuclear policy in response to the increased threat. Over the course of about a year, the Committee evaluated four varying degrees of intensity with which the United States could promote arms control, ultimately recommending the United States more aggressively advocate for nonproliferation. Following a January 1965 briefing LBJ and his national security team received on the Committee's findings, Dean Rusk remarked that “the report was as explosive as a nuclear weapon.” LBJ ordered all meeting attendees not to discuss the Committee’s conclusions. Seaborg argues this was in large part due to the Gilpatric Report’s endorsement of abandoning the MLF in favor of cooperating with the Soviets to achieve a global nonproliferation agreement.²⁹ Indeed, high-level diplomatic documents from 1964 and 1965 indicate an increased recognition of shared U.S.-Soviet ambitions on arms control.³⁰ LBJ once remarked that the United States and U.S.S.R were “the two eldest children in a large family...with the

NP01070). https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/1679139306/fulltextPDF/B2E0FBC3283F4F63PQ/1?a_ccountid=11243.

²⁹ Evan Gerakas et. al, Report by the Committee on Nuclear Proliferation [Gilpatric Commission Report], Foreign Relations of the United States, 1964–1968, Volume XI, Arms Control and Disarmament, January 21, 1965. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d64>; Seaborg and Leob, “A Tale of Two Committees,” *Stemming the Tide: Arms Control in The Johnson Years*, 136-152. ; Tentative Thoughts on Certain Proliferation Problems (Cover Sheet Attached) [Gilpatric on importance of nonproliferation]. (1964, December 4). Digital National Security Archive (DNSA). (U.S. nuclear non-proliferation policy, 1945-1991). Retrieved from Digital National Security Archive Database. (Accession No. NP01058). https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/1679139568/fulltextPDF/4DF4B42058C54531PQ/1?a_ccountid=11243 ; Thursday, January 21, 1965--D.C. Office (Soviet Venting Incident and Report on President Johnson's Meeting with Gilpatric Committee) [Johnson says findings will consume 'great deal of personal attention']. (1965, January 21). Digital National Security Archive (DNSA). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01152).

³⁰ Evan Gerakas et. al, 15. Oral Message From Chairman Khrushchev to President Johnson [February 28, 1964], Foreign Relations of the United States, 1964–1968, Volume XI, Arms Control and Disarmament, February 28, 1964. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d15>; Evan Gerakas et. al, 97. Memorandum of Conversation [Rusk-Gromyko concerns on non-aligned proliferation], Foreign Relations of the United States, 1964–1968, Volume XI, Arms Control and Disarmament, October 1, 1965. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d97>; Evan Gerakas, et. al, 104. Memorandum of Conversation [December 8, 1965 Thompson-Dobrynin Talks], Foreign Relations of the United States, 1964–1968, Volume XI, Arms Control and Disarmament, December 8, 1965. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d104>. Evan Gerakas et. al, 116. Letter From President Johnson to Chairman Kosygin, Foreign Relations of The United States, 1964-1968, Volume XI, Arms Control and Disarmament. [Undated]. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d116>; Evan Gerakas et. al, 152. Memorandum of Conversation [Rusk-Gromyko discussion of NPT], Foreign Relations of the United States, 1964–1968, Volume XI, Arms Control and Disarmament, September 22, 1966. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d152>; Evan Gerakas et. al, 239. Memorandum of

responsibility of keeping peace and order in the family.” However, “The younger children were now too old and independent to take orders, so the two nations had to fulfill their role by other methods, including setting a good example in their own relations...and trying to settle conflicts where they broke out.”³¹ The observation was highly intuitive. Although the United States and U.S.S.R. were fierce geopolitical rivals, they had developed an increasingly strong understanding of each other’s equities. Both superpowers also feared that their allies would acquire nuclear weapons and upset the status quo. The F.R.G. threatened to provoke Moscow with its nuclear aspirations and drag the United States into conflict with the U.S.S.R.; Beijing’s development of nuclear weapons came during the Sino-Soviet Split. U.S. and Soviet leaders alike feared the country’s lack of restraint when it came to nuclear weapons. The view of the Americans and Soviets as peacemakers in a changing global order led the LBJ administration to adopt the recommendations of the Gilpatric Committee. LBJ also established the Thomson Committee and Nuclear Planning Group. The Thomson Committee, focused on NPT negotiations—with India in particular—recommending that the United States “induce an appropriate UN member, ‘probably Ireland,’ to introduce a nonproliferation resolution the United States could accept.” The Nuclear

Conversation [Rusk-Kuznetsov conversation on non-aligned nations], Foreign Relations of the United States, 1964–1968, Volume XI, Arms Control and Disarmament, May 17, 1968. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d239>, The Non-Proliferation Treaty. (1968, December 24). Digital National Security Archive (DNSA). (U.S. nuclear non-proliferation policy, 1945-1991). Retrieved from Digital National Security Archive Database. (Accession No. NP01237). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/1679139775/fulltextPDF/B2978EDA79784F7APQ/1?aaccountid=11243>; Non-proliferation [LBJ confidence in staff, condemnation of nuclear weapons]. (1966, October 10). Digital National Security Archive (DNSA). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01568). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246165472/fulltextPDF/B71BD23083154F5CPQ/1?aaccountid=11243>; [President Johnson's Views on Nonproliferation] [President Johnson's declaration of no nuclear sharing]. (1966, October 3). Digital National Security Archive (DNSA). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01564). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246168016/fulltextPDF/553AC9542057476FPQ/1?accountid=11243>; Seaborg and Leob, “NPT: First Draft Treaties,” Stemming the Tide: Arms Control in The Johnson Years, 153-168. ; “Drawing Closer to an NPT,” 169-187. ; “Agreements on Article I and II,” 189-198. ; “Slow Progress on Safeguard,” 267-285. “The Superpowers Agree,” 287-306.; “The End of The Story,” 341-352. ; “Rounding Out The Treaty,” 357-370. ; “Approval Amid Doubts,” 371-387. ; Soviet Scenario for Post-Cuban Negotiations with the U.S. [Analysis of the Crisis from the Soviet Perspective - Includes Four Cover Memos], Digital National Security Archive (DNSA). (The Cuban Missile Crisis, 1962). Retrieved from Digital National Security Archive Database. (Accession No. CC01903). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/1679064866/1574483F8D6D4243PQ/169?accountid=11243>.

³¹ Schwartz, “Retreat from The Grand Design,” Lyndon Johnson and Europe: In the Shadow of Vietnam, 20. Quoted in Walt Rostow, *The Diffusion of Power* (New York: Macmillan, 1972), 390.

Planning Group was a multilateral forum tasked with discussing possible nuclear sharing options for the Western alliance, an initiative Schwartz credits with allaying the F.R.G.'s fear of being excluded from nuclear decision-making. The most significant display of LBJ's commitment to making the NPT a reality came during a summit with Soviet premier Alexi Kosygin at Glassboro State College. Kosygin and LBJ agreed to jointly support a draft of the NPT containing language similar to Articles I and II, which addressed the status of nuclear powers and broad commitments to nonproliferation by non-nuclear states. However, they decided to defer the question of nuclear inspections and safeguards, where the two sides had clashed over whether America's European allies should enforce the NPT through the European Atomic Energy Community instead of the International Atomic Energy Agency. This accomplishment demonstrated LBJ's newfound maturity as a statesman—as well as his ability to work with leaders with very different viewpoints.³²

LBJ's charismatic diplomatic style also played a significant role in his ability to navigate complicated international rivalries. This was especially true of his relationship with F.R.G. Chancellor Kurt Kiesinger, whose reputation suffered within the U.S. government because of his past Nazi Party affiliation and criticism of U.S. foreign policy. Kiesinger, however, found LBJ's personable demeanor and Texan drawl disarming during their early meetings. LBJ reassured Kiesinger over American-Soviet collaboration on the NPT and emphasized that concessions such as the stalling of the MLF did not represent an American abandonment of its defense commitments. VP Hubert Humphrey described LBJ's negotiations with Kiesinger as “a cowboy making love.” A slew of other diplomats and world leaders recall a similar level of comfort

³² Non-Proliferation of Nuclear Weapons (Thompson Committee Report; Two Draft Resolutions for the United Nations General Assembly Included) [U.S. negotiating strategy and foreign opinions]. (1964, November 9). Digital National Security Archive (DNSA). (U.S. nuclear non-proliferation policy, 1945-1991). Retrieved from Digital National Security Archive Database. (Accession No. NP01040). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/1679111628/fulltextPDF/6CF4EB1EEA641C8PQ/1?accountid=11243>; The Indian Nuclear Problem: Recent Changes and Effect on U.S. Policy [Attached to Cover Memorandum]. (1965, October 25). Digital National Security Archive (DNSA). (China and the United States: from hostility to engagement, 1960-1998). Retrieved from Digital National Security Archive Database. (Accession No. NN01354). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246168845/fulltextPDF/CA7F10DC435C4C2EPQ/1?accountid=11243>; Schwartz, “Policy In The Shadows,” Lyndon Johnson and Europe: In the Shadow of Vietnam, 49-63. ; Evan Gerakas et. al, 45. Editorial Note [Committee on Nuclear Weapons Capabilities Establishment], Foreign Relations of The United States, 1964-1968, Volume XI, Arms Control and Disarmament. [Undated]. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d45>.

negotiating with LBJ. The president frequently used these meetings to express strong support for nonproliferation. He pleaded with Israeli Prime Minister Levi Eshkol, for example, not to develop nuclear weapons, stating that their introduction to the Middle East would be an “irreversible tragedy.” His public statements also display his continued interest in arms control. LBJ emphasized the importance of containing the American-Soviet arms race during his 1964 State of The Union Address, while also delivering messages to the ENDC encouraging international cooperation on the issue.³³

Finally, in addition to cementing the NPT’s success, LBJ’s negotiations with the U.S.S.R. also set the stage for the SALT I and AMB Treaties of 1972. LBJ told Kosygin at Glassboro that “great pressures” compelled him to develop ABM systems. Because of both the cost and potential arms race that defensive weapons could spark, he said, it would be more sustainable to negotiate a “mutually acceptable and stable balance of forces.” Secretary of Defense Robert McNamara concurred, arguing that Multiple Independently Targetable Reentry Vehicle (MIRV) technology—which allowed nuclear missiles to carry multiple warheads—would be more useful

³³ Alternative Approaches to the Non-proliferation Problem (Attachments Not Included) [U.S. negotiating strategy]. (1966, August 30). Digital National Security Archive (DNSA). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01537). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246165456/fulltextPDF/231AFDB6FFA441B4PQ/1?accountid=11243>; Evan Gerakas et. al, 87. Record of Meeting of the Committee of Principals [Discussion of ENDC remarks], Foreign Relations of The United States, 1964-1968, Volume XI, Arms Control and Disarmament. [Undated]. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d87>. Evan Gerakas et. al, 302. Airgram From the Mission to the United Nations to the Department of State [Discussion of NPT negotiations], Foreign Relations of The United States, 1964-1968, Volume XI, Arms Control and Disarmament. December 24, 1968. <https://history.state.gov/historicaldocuments/frus1964-68v11/d302>. Evan Gerakas et. al, NSC Principals Committee Meeting: January 21, 1966 [Discussion of Seventh ENDC Message], Foreign Relations of The United States, 1964-1968, Volume XI, Arms Control and Disarmament. [1966, January 21]. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d114>; (Nuclear Nonproliferation Treaty) [Johnson-Moro discussion on NPT]. (1967, April 26). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01851). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246167955/fulltextPDF/A682C31693DF409EPQ/1?accountid=11243>; [NSC Meeting on] Monetary Issues, Vietnam, UN, 11/25/1968, LBJ Presidential Library, <https://www.discoverlbj.org/item/nsf-nscm-b2-f43>; Revision of Presidential Message to Prime Minister Eshkol on NPT [Includes Attachment]. (1968, November 13). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN02285). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246164848/fulltextPDF/B958DA788F9C40AEPQ/1?accountid=11243>; Reply to Chancellor Erhard (Includes Attachments) [Reassurances on MLF]. (1966, February 28). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01420). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246168621/fulltextPDF/F00E3025CC4B4849PQ/1?accountid=11243>; Schwartz, “The Year of Achievements,” Lyndon Johnson and Europe: In the Shadow of Vietnam, 143-159, 181-186. Pp. 184 quoted in Hubert Humphrey’s third oral history interview, LBJ Presidential Library, 5.

to the United States than developing an ABM umbrella. This closely resembled the ultimate text of the SALT I Treaty, where the United States accepted a lower number of delivery vehicles than the U.S.S.R. knowing that MIRV technology would still create a “stable balance of forces” that ensured neither side felt significantly behind the other. LBJ briefed President-Elect Richard Nixon on the issue in 1969, demonstrating that the basis for Nixon’s SALT negotiation was partially due to these early discussions between LBJ and Kosygin.³⁴

A NEW 1964 AHEAD?

On January 27, 2021, a week-old Biden administration accepted Russia’s proposal to extend the landmark New START Treaty by five years.³⁵ Yet the development came too late to reverse the now-bleak trajectory of global nonproliferation efforts. Days earlier, the Kremlin had announced its intention of withdrawing from the Treaty on Open Skies, following the Trump administration’s May 2020 declaration that the United States would also exit the agreement.³⁶ The Open Skies decision was emblematic of broader disdain for nuclear arms control within the 45th president’s circle. In his first campaign, Trump made waves by seemingly expressing his support for U.S. allies such as Japan, Saudi Arabia, and South Korea acquiring nuclear weapons—a possibility that Saudi Arabia in particular has strongly entertained. Trump’s withdrawal from the Intermediate-Range Nuclear Forces (INF) Treaty and discussion of resuming nuclear testing were both also highly controversial. Additionally, he advocated for modernizing the nuclear weapons arsenal at a time when Russia and the P.R.C. have increasingly

³⁴ Evan Gerakas et. al, 202. Memorandum From the Acting Director of the Arms Control and Disarmament Agency (Fisher) to Secretary of State Rusk, Secretary of Defense McNamara, and the President’s Special Assistant (Rostow) [Concerns on ABM Escalation], Foreign Relations of The United States, 1964-1968, Volume XI, Arms Control and Disarmament. [1967, August 28]. Retrieved from <https://history.state.gov/historicaldocuments/frus1964-68v11/d202>; (Nuclear Nonproliferation and Arms Control; Includes Attachment) [Bundy ABM Concerns]. (1966, August 12). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN01528). <https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246168810/fulltextPDF/4F6E3F53FECD428CPQ/1?aaccountid=11243> ; Seaborg and Leob, “Towards SALT,” Stemming the Tide: Arms Control in The Johnson Years, 391-402. ; “Ascent to Glassboro,” 413-421. ; “The Summit,” 423-430. ; “Twit Cup and Lip,” 431-443. ; Schwartz, “The Long 1968) Lyndon Johnson and Europe: In the Shadow of Vietnam, 210-222.

³⁵ David M. Herszenhorn, “Putin and Biden confirm extension of New START treaty,” Politico EU, January 27, 2021. <https://www.politico.eu/article/putin-and-biden-confirm-extension-of-new-start-treaty/>.

³⁶ Justin Key Canfil, “The U.S. Will Exit the Open Skies Treaty and It’s Unclear Why,” Lawfare, June 3, 2020. <https://www.lawfareblog.com/us-will-exit-open-skies-treaty-and-its-unclear-why>; Russia withdraws from Open Skies Treaty after U.S. departure, Politico (via AP), January 15, 2021. <https://www.politico.com/news/2021/01/15/russia-open-skies-treaty-459597>.

expanded the numerical and technological strength of their missile forces—with the latter’s efforts in particular providing additional justification for arms control opponents seeking to withdraw from treaties on the issue.³⁷ The most significant recent multilateral effort to combat proliferation, the UN Treaty on The Prohibition of Nuclear Weapons, was entirely symbolic and was not supported by any nuclear weapons power. Even with this significant moral statement of over 120 countries, the last few years have represented a steady erosion of the agreements that actually take practical steps to reduce the risk of nuclear confrontation.³⁸

Trump’s abandonment of arms control may have been particularly egregious, but the demise of this part of LBJ’s foreign policy legacy has been at least two decades in the making. In the late 1990s, the U.S. Senate began to lose many major arms control advocates such as Mark Hatfield (R-OR), Sam Nunn (D-GA), and Claiborne Pell (D-RI). Simultaneously, Jesse Helms (R-NC) became chairman of the powerful Senate Foreign Relations Committee, a position he used to promote his avowedly anti-arms control agenda. Helms successfully used the Reinventing Government Initiative to subordinate the ACDA under the State Department hierarchy, eliminating the independence of arms control advocates. In 1999, Helms and his allies also defeated the Comprehensive Test Ban Treaty (CTBT)—the first time the body had rejected a national security agreement since the Treaty of Versailles—arguing that a moratorium on testing would endanger the quality of the U.S. arsenal. Opposition to the CTBT and its protocols remain popular within the Republican caucus, despite a resumption of testing being both questionably beneficial and completely unfeasible. Arms control suffered an additional blow in the intervening years when the Bush administration withdrew from the ABM Treaty. Selig Harrison aptly points out that many of these actions and other aspects of U.S. nuclear doctrine

³⁷ Aaron Mehta, “Trump seeks \$46 billion for nuclear weapons programs in budget request,” *Defense News*, February 10, 2020. <https://www.defensenews.com/smr/federal-budget/2020/02/10/trump-budget-requests-46-billion-for-nuclear-weapon-s-programs/>; James Kitfield, *America Adrift: ‘Bringing The World To Crisis,’* *Breaking Defense*, August 20, 2019. <https://breakingdefense.com/2019/08/america-adrift-bringing-the-world-to-crisis/>; Kingston Reif, *Saudi Arabia Threatens to Seek Nuclear Weapons*, *Arms Control Today* (Arms Control Association), June 2018. <https://www.armscontrol.org/act/2018-06/news/saudi-arabia-threatens-seek-nuclear-weapons>; *Reaction to White House Nuclear Testing Proposal Strongly Negative*, *Arms Control Association* Volume 12, 4, June 16, 2020. <https://www.armscontrol.org/issue-briefs/2020-06/reaction-white-house-nuclear-testing-proposal-strongly-negative>; Zack Beauchamp, “Donald Trump: make America great again by letting more countries have nukes,” *Vox*, March 30, 2016. <https://www.vox.com/2016/3/30/11332074/donald-trump-nuclear-weapons-japan-south-korea-saudi-arabia>.

³⁸ Edith Lederer, “First-ever treaty to ban nuclear weapons enters into force,” *Associated Press*, January 22, 2021. <https://apnews.com/article/international-news-nuclear-weapons-international-law-united-nations-gun-politics-7d4f3e3339a735919f9299b0414f9d0a>.

undermine the compromises LBJ and the Soviets achieved in the NPT. The United States cannot continue to enhance its own arsenal and abandon arms control agreements, he argues, while expecting other countries to refrain from developing nuclear weapons.³⁹ Yet strong opposition to any kind of arms control continues, and the ability of presidents to promote nuclear nonproliferation as a global agenda item remains diminished.⁴⁰

Arms control might enjoy greater universal support if more policymakers had firsthand experience. LBJ was not a particularly zealous devotee to nonproliferation principles, but he evolved after the Cuban Missile Crisis and the confusion after JFK's assassination. He confronted a geopolitical environment in which failure to address proliferation would have had a profoundly negative effect on regional and international security. The world of the mid-1960s has some important parallels to the present day. In both periods, traditional U.S. allies considered pursuing an independent foreign policy and questioned their relationship with Washington. LBJ faced an F.R.G. aggressively pursuing a nuclear weapons capability, an eventuality that threatened to make the Cold War hot. However, he also benefited from the fact that the U.S.S.R. faced a similar dilemma when dealing with the P.R.C. and shared a number of common views on nonproliferation. LBJ's early decisions to prioritize the issue—and retain many JFK advisors that cared about arms control—created an effective policy process that elevated nonproliferation as a national security goal and addressed various emerging proliferation threats.⁴¹ His personal

³⁹ Selig S. Harrison, "The Forgotten Bargain: Nonproliferation and Nuclear Disarmament," *World Policy Journal* 23, 3 (Fall 2006): 1-13. <https://www-jstor-org.proxygw.wrlc.org/stable/pdf/40210027.pdf?refreqid=excelsior%3A7eb1828c1005ccf2c41ad3dd4531f7f5>

⁴⁰ Julian Borger, "US arms control office critically understaffed under Trump, experts say," *The Guardian*, July 1, 2019. <https://www.theguardian.com/world/2019/jul/01/us-arms-control-office-understaffed-trump>; Lynn F. Rusten, "U.S. Withdrawal from the Antiballistic Missile Treaty," National Defense University Center for The Study of Weapons of Mass Destruction, Case Study Series. https://ndupress.ndu.edu/Portals/68/Documents/casestudies/CSWMD_CaseStudy-2.pdf; Ratz, "Organizing for Arms Control: The National Security Implications of The Loss of An Independent Arms Control Agency."; Senate Rejects Comprehensive Test Ban Treaty; Clinton Vows to Continue Moratorium, *Arms Control Today* (The Arms Control Association), <https://www.armscontrol.org/act/1999-09/press-releases/senate-rejects-comprehensive-test-ban-treaty-clinton-vows-continue>; Steven Pifer, "What's the deal with Senate Republicans and the test ban treaty?" The Brookings Institution, 'Order from Chaos,' September 26, 2016. <https://www.brookings.edu/blog/order-from-chaos/2016/09/26/whats-the-deal-with-senate-republicans-and-the-test-ban-treaty/>.

⁴¹ 584th NSC Meeting, 1:00 p.m., Wednesday, March 27, 1968 [Johnson questions on NPT]. (1968, April 4). (U.S. Nuclear Nonproliferation 2, Part I: From Atoms for Peace to the NPT, 1954-1968). Retrieved from Digital National Security Archive Database. (Accession No. NN02178). https://search-proquest-com.proxygw.wrlc.org/dnsa/docview/2246164877/fulltextPDF/368D0D4374F34252PQ/1?ac_countid=11243.

diplomacy was also critical, with the president effectively balancing both the hesitancy of U.S. allies to work with Moscow and the Soviets' interest in cooperating on the NPT. LBJ deserves more credit for successfully navigating a highly uncertain period in Cold War history and advancing a valuable aspect of his predecessor's legacy. JFK's rhetoric and desire for more peaceful cooperation with the U.S.S.R. receives particular public live on for attention—yet it was LBJ who quietly carried the mission out, and ensured it would live on for decades to come.

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MARCH OF PRESIDENTIAL POWER: WITNESSING TREATIES FROM CAMP DAVID TO THE ABRAHAM ACCORDS

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The United States government has been privy to thousands of treaties since its founding, and the majority of scholarly study has been focused on those treaties and executive agreements created by the president. Yet three modern presidents have negotiated treaties that the United States was actually not subject to but only served as the chief negotiator. “Witnessed” treaties are those in which the United States has been instrumental in treaty negotiations, even though the United States government is not actually entering into an agreement with either of the two sovereign nations. These treaties are essential aspects of the president’s foreign policy agenda. This “Witnessing Power” is never specifically addressed in the Constitution, but the President’s role as chief diplomat has led to essentially zero concerns or complaints from Congress. Building directly from the texts of these witnessed treaties and the archival documents available will help us understand how and why these presidents chose to use this unwritten power and how the treaty addressed the U.S. foreign policy goals of its day.

INTRODUCTION

The study of these witnessed treaties by Presidents of the United States, from President Carter and the Camp David Accords to President Trump and the Abraham Accords, will help to provide the historical and political context that drive these foreign policy decisions. “Witnessed” treaties exemplify the march of presidential power in the modern era, where presidential foreign policy goals can be accomplished through diplomatic mediation, rather than direct negotiation. Presidents of both political parties over four decades have witnessed treaties, a process that has become a new presidential norm, a norm that Congress does not question. What is surprising is that the witnessing of these treaties makes the United States inextricably linked to a treaty agreement that Congress itself may not agree with. When a President “witnesses” a treaty they are putting their seal of approval on its contents, and the outcome of such a treaty is then inextricably linked to their foreign policy agenda, and their legacy in the White House, something that should not be ignored.

CAMP DAVID ACCORDS

President Carter was committed to pursuing peace between Israel and Egypt very early into his term, sending both President Anwar al-Sadat of Egypt and Prime Minister Yitzhak Rabin of Israel letters mere weeks after being inaugurated on February 14, 1977.¹ This would cement in the signing of the Camp David Accords in 1979 between Israel and Egypt. After the failed pursuit of the Geneva Middle East Peace Conference, which would be co-hosted by the United States and the Soviet Union, which would bring together multiple Arab States, Israel, and Palestinians the opportunity for direct negotiations between Israel and Egypt occurred following the surprise election victory of Israeli Prime Minister Menachem Begin.² President Sadat of Egypt visited Israel after a speech given by Prime Minister Begin, breaking with a decade of norms that did not see Arab leaders visit or enter into negotiations with Israel following the adoption of the Khartoum Resolution of 1967 after the Israeli victory in the Six-Day War. The talks that were born out of this visit unfortunately quickly fell apart, showing that for any real progress to occur there would have to be a diplomatic mediator present that could help resolve the language of any agreement or treaty that would be developed. In response to these events, President Carter wrote letters to both President Sadat and Prime Minister Begin that were to be delivered directly by his Secretary of State Cyrus Vance proposing a meeting of the three men to resolve the disputes and animosity between the two nations that had been festering since Israel's founding in 1948.³

President Carter's mission to pursue a comprehensive plan for Middle East Peace received support from the United States Senate prior to the invitations to meet at Camp David were even sent out, with nine Senators regarded as having some of the best foreign policy legislative success of their decade signing onto a letter applauding President Carter's pursuit of peace and saying that they were ready for the challenge.⁴ This is not surprising given that one of the presidents primary duties outlined in the Constitution is the negotiation of treaties on the behalf of the United States government, yet what is significant of the Camp David Accords is

¹ "Camp David Accords: Twenty-Five Documents after Twenty-Five Years - Research - the Jimmy Carter Presidential Library and Museum." 2020. *JimmyCarterLibrary.Gov*. Accessed December 1. https://www.jimmycarterlibrary.gov/research/twenty_five_documents_after_twenty_five_years.

² Berenji, Shahin. 2016. "Jimmy Carter's Role in Securing Middle East Peace." *E-Ir.Info*. April 21. <https://www.e-ir.info/2016/04/21/the-camp-david-accords-jimmy-carters-role-in-securing-middle-east-peace/>.

³ "Camp David Accords."

⁴ *Ibid.*

that it is the first example of president actively negotiating and discussing terms of a treaty that the United States is not subject to. The exact wording next to President Carter's signature is "Witnessed by" in the treaty while the signatures of Egyptian President Sadat and Israeli Prime Minister Begin denotes that they are the active parties in the agreement.⁵ The details of the accord covered Israel allowing for the formation of transitional governments in both the West Bank and Gaza Strip in return for Egypt making peace with Israel and recognize Israel's right to exist.⁶

President Carter's motivations to pursue peace in the Middle East, following failed attempts by the previous six administrations, seems to have stemmed from both a recognition that a stabilization of the regions suits the interests of the United States and from his faith as an Evangelical Christian. President Carter's "Evangelical Personalism" allowed for him to create a uniquely faith-based relationship with Egyptian President Sadat, a relationship described as being one of the strongest ever between a president and another foreign leader, or at least the strongest between a president and a non-European leader.⁷ Carter recognized the unique opportunity presented to him when President Sadat visited Israel, and while the United States was never an official party of the Israel-Arabian conflicts, this of course was not entirely true given Israel's close relationship to the United States. President Carter could not negotiate peace between the United States and these two nations, but he understood that there was nothing in the constitution that prevented him from serving as a diplomatic mediator, something that would help conflicting nations come together due to his stature of being the leader of the free world. It also helped to alleviate concerns that either party would renege on an agreement due to the fact that the United States would look very unfavorably on whichever party went back on their word first. It was also not lost on President Carter than only six years prior the United States was subject to an oil embargo by the organization of countries known as OPEC which was the direct result of the United States' support of Israel during the Yom Kippur Wars. A more stable region meant a stable flow of oil, and even environmentally friendly President Carter, famous for

⁵ "The Avalon Project : Camp David Accords; September 17, 1978." 2020. *Yale.Edu*. Accessed December 1. https://avalon.law.yale.edu/20th_century/campdav.asp.

⁶ Ibid.

⁷ Berggren, D. J. 2014. "Carter, Sadat, and Begin: Using Evangelical-Style Presidential Diplomacy in the Middle East." *A Journal of Church and State* 56 (4): 732–56.

installing solar panels on the roof of the White House before President Reagan would remove them, knew that cheap crude oil flowing was good for the nation.

Since the signing of the Camp David Accords, a number of laws has been passed by multiple different Congresses in support of the Accords. The fact that these laws have been passed in the decades since the original passage of the 1979 peace treaty shows that Congress was not only initially supportive of this exercise of power by President Carter but was supportive of the plan decades after President Carter was no longer in office. The first law passed, known as Public Law 96-35 or “The Special International Security Assistance Act of 1979” of the 96th Congress, which “authorized supplemental international security assistance for the fiscal year 1979 in support of the peace treaty between Egypt and Israel, and for other purposes.”⁸ This law allowed for the building of air bases in Israel for use of the United States and also permitted the sale of arms from the United States to both Israel and Egypt in order to secure both of their assistance needs. This would be the most substantive law passed as a result of the treaty, and shows that while the United States was not a direct party to the treaty outside of President Carter working as a mediator, it did garner multiple benefits as a result which may help to explain the Congressional support for the Accords at the time of the signing. The second law passed in 1989, known as Public Law 101-8 of the 101st Congress was “a joint resolution to commend the Governments of Israel and Egypt on the occasion of the tenth anniversary of the Treaty of Peace between Israel and Egypt.”⁹ The law would go on to urge that other Arab nations and specifically Palestine would enter into peace negotiations with the State of Israel.¹⁰ The final law passed was passed only three years ago by the 115th Congress in 2018 and was known as Public Law 115-310 or the “Anwar Sadat Centennial Celebration Act.”¹¹ Anwar Sadat, as noted previously, was the President of Egypt when the Accords were signed, and in recognition of his efforts to pursue peace the 115th Congress posthumously awarded him the Congressional Gold Medal which

⁸ Church, Frank. “S.1007 - 96th Congress (1979-1980): An Act to Authorize Supplemental International Security Assistance for the Fiscal Year 1979 in Support of the Peace Treaty between Egypt and Israel, and for Other Purposes.” Congress.gov, July 20, 1979. <https://www.congress.gov/bill/96th-congress/senate-bill/1007?s=7&r=1007>.

⁹ Boschwitz, Rudy. “S.J.Res.87 - 101st Congress (1989-1990): A Joint Resolution to Commend the Governments of Israel and Egypt on the Occasion of the Tenth Anniversary of the Treaty of Peace between Israel and Egypt.” Congress.gov, March 29, 1989. <https://www.congress.gov/bill/101st-congress/senate-joint-resolution/87>.

¹⁰ Ibid.

¹¹ Stewart, Chris. “H.R.754 - 115th Congress (2017-2018): Anwar Sadat Centennial Celebration Act.” Congress.gov, December 13, 2018. <https://www.congress.gov/bill/115th-congress/house-bill/754>.

would go on to be presented to his next of kin. While the majority of these laws are toothless, their passage into law proves that Congress was more than happy to allow the President to pursue this plan in support of his foreign policy agenda.

ISRAEL-JORDAN PEACE TREATY

The treaty between Israel and Jordan in 1994 arose following the discovery by the Jordanian King that Israel and the Palestinian Liberation Organization had been conducting peace talks without informing the Jordanians. This was seen as a betrayal by King Hussein who had been conducting talks with Israel regarding peace without knowing they had been trying to make a deal with the Palestinians behind his back, and felt even more betrayed by the Palestinians who didn't share information about the talks even though he had been trying to negotiate a peace partly on their behalf.¹² Yet this revelation also revealed an opportunity for Jordan to pursue a peace deal with Israel alone without worrying about the repercussions of going alone as Egypt had done in the Camp David Accords as the Palestinians had broken ranks first. What was unique about this peace process is that unlike the Camp David Accords it was the nation of Jordan that reached out to the United States to help with the mediation rather than President Clinton reaching out himself to pursue the expansion of peaceful relations within the Middle East.¹³ President Clinton was able to take advantage of shifting relationships within the region to enact American foreign policy without needing Congress to do so.

Even though Jordan had initially reached out to enter into a peace agreement with Israel the United States and President Clinton still exerted its diplomatic and economic influence in order to keep Jordan at the table to enter into the peace agreement. Most notably, this was the agreement to cancel all of Jordanian debts to the United States to the tune of \$700 million, encourage other Western nations to cancel Jordanian debt, provide support for joint Israeli-Jordanian infrastructure projects, and a recommendation to Congress to pass a large foreign aid package to Jordan after the signing of an official peace treaty with Israel.¹⁴ In this it was very

¹² Riedel, Bruce. 2019. "25 Years on, Remembering the Path to Peace for Jordan and Israel." *Brookings*. October 23. <https://www.brookings.edu/blog/order-from-chaos/2019/10/23/25-years-on-remembering-the-path-to-peace-for-jordan-and-israel/>.

¹³ Riedel, "25 Years on."

¹⁴ Ripsman, Norrin M. 2016. *Peacemaking from above, Peace from below: Ending Conflict between Regional Rivals*. Ithaca, NY: Cornell University Press.

evident that President Clinton was appealing to Jordan with a carrot, offering advantageous opportunities if they were to sign onto the treaty, as opposed to a stick which would be a continuance of soured relations following Jordan's refusal to join the Gulf coalition following the first Persian Gulf War.

Clinton's motivations to pursue and secure a peace treaty between Israel and Jordan were similar to those of President Carter in that he recognized a more stable region was both advantageous to the United States and allowed for the formation of new allies in the region. Iraq was still a pariah following the first Persian Gulf War and strengthening ties between Israel, Jordan, and the United States helps to create greater cooperation in the name of mutual security. Jordan was designated a major non-NATO US ally following the signing of the treaty, much like Egypt before it had entered into a peace agreement with Israel.¹⁵ The treaty also permitted Israel and Jordan to, albeit briefly, resolve territorial disputes involving both land and water that had remained since the Six-Day War, resulting in Jordan leasing land to Israel so that Israeli farmers could continue growing crops and Jordan receiving a massive increase in fresh water from the Jordan River Valley and the Sea of Galilee.¹⁶ The signing of the treaty also allowed the Clinton Administration to address the issue of Israeli-Palestinian conflict without needing to worry about the Jordanian angle, which would culminate in what would be called the "Clinton Parameters" in the year 2000.¹⁷ Unfortunately, this peace plan failed, most likely due to the fact that it was proposed during the transition process between outgoing President Clinton and incoming President George W. Bush who had shown no interest in the pursuit of this deal at the time of its release.

The deal also came after a rise in tensions due to Iraq refusing to comply with its agreement to allow for United Nations Inspectors to enter the nation to examine weapons following the first Persian Gulf War and a movement of Iraqi troops to the Kuwaiti border. This would result in Operation Vigilant Warrior which would see pre-placed equipment and forces from the United States mobilized and placed on alert until Iraqi forces would eventually disengage following an agreement reached with the United States Security Council.¹⁸ President

¹⁵ Riedel, "25 Years on."

¹⁶ Ibid.

¹⁷ Database, ECF. Clinton Parameters (2000), 2000. <http://ecf.org.il/issues/issue/165>.

¹⁸ Pike, John. "Military." Operation Vigilant Warrior. Accessed February 16, 2021. https://www.globalsecurity.org/military/ops/vigilant_warrior.htm.

Clinton, in the pursuit of this deal, helped to ensure that there would be one less flashpoint for the United States to have to regularly monitor in the direct defense of her allies.

ABRAHAM ACCORDS

As noted previously, relations between Israel and the rest of the Middle East States have historically not been friendly. However, in recent years there has been a shift in tension where Arab States are significantly more divided now than they were back in 1948 after Israel had been founded. Most notably, the regional cold-war between Saudi-Arabia and Iran that has developed due to the Sunni-Shia divide in Islam and Saudi Arabia's relationship with the United States that emerged following the first Gulf War.¹⁹ Following the Iranian revolution of 1979 that saw the return of Ayatollah Ruhollah Khomeini. Iran became a nation that was governed by and promoted Shia Islamic beliefs.²⁰ Saudi Arabia, on the other hand, was a majority Sunni nation, whose most followed and promoted version of Islam was known as Wahhabism which was almost in direct opposition of the Shia teaching of Ayatollah Khomeini in Iran.²¹ This led to Saudi Arabia's implicit support of Iraq during the Iran-Iraq war that broke out in 1980, in an attempt to help contain both Iranian influence and the spread of Shia Islamic teachings.²² It also directly predicated the creation of the Gulf Cooperation Council in 1981 that had Saudi Arabia culturally align itself with a number of neighboring Gulf States to ensure that the regional power vacuum would not be filled by a resurgent Iran.²³ The overall relationship between Iran and Saudi Arabia has developed into both a religious and strategic rivalry, with both nations attempting to maintain a power parity over the other to ensure its religious beliefs won't be threatened.²⁴

On the other side of the equation the United States' role in the Middle East has been ingrained since the State of Israel was declared, when President Truman immediately recognized

¹⁹ CFR. 2020. "The Sunni-Shia Divide." *Cfr.Org*. Accessed November 19. <https://www.cfr.org/interactives/sunni-shia-divide#!/sunni-shia-divide>.

²⁰ Maloney, Suzanne, and Keian Razipour. 2019. "The Iranian Revolution—A Timeline of Events." *Brookings*. January 24. <https://www.brookings.edu/blog/order-from-chaos/2019/01/24/the-iranian-revolution-a-timeline-of-events/>.

²¹ CFR, "The Sunni-Shia Divide."

²² Entessar, Nader. 1984. "External Involvement in the Persian Gulf Conflict." *Conflict Quart*, 41–56.

²³ Galeeva, Diana. 2018. "The Gulf Cooperation Council (GCC): A Comprehensive View." *Mesbar.Org*. April 9. <https://mesbar.org/the-gulf-cooperation-council-gcc-a-comprehensive-view/>.

²⁴ Litvak, Meir. 2017. "Iran and Saudi Arabia: Religious and Strategic Rivalry."

the State as the de facto government of the region previously known as British Palestine in 1948.²⁵ The United States government recognized that having a close relationship with Israel was paramount to having a reliable ally in the region, as Israel was a democracy that espoused an adherence to Western values. This, coupled with the CIA backed coup in Iran that saw the implementation of a Shah that would be overthrown in the Iranian Revolution of 1979, placed the United States at direct odds with Iran. Even more recent tensions can be connected to the decision by the Trump Administration to leave the Iran Nuclear Deal and re-implement the crippling sanctions against Iran that has seen their economy stagnate and cause general unrest throughout their nation.²⁶ Despite this policy decision, clearly made to weaken a resurgent Iran, Iran has still been able to stockpile the nuclear material necessary to develop and deploy and nuclear device, an outcome that the United States wants to avoid to prevent the continued proliferation of those weapons throughout the world.²⁷

Israel has been engaged in a total of eight wars since its founding in 1948, the majority of which had been to defend its very right to exist after being attacked by overwhelming Arab forces from neighboring states.²⁸ Due to its relation with conflict the young state has developed one of the most technologically advanced and elite fighting force in the Middle East, greatly outpacing many of their neighboring states in a bid to ensure that the cost is far too high to have to engage in another conflict.²⁹ Yet this massive development does not change the fact that relations between Israel and Iran are still at some of their most volatile in decades, with Iranian officials openly calling for the “annihilation” of Israel along with threatening those nations that have begun to enter into diplomatic relations with the Jewish State.³⁰ These openly brazen verbal attacks by Iran are done in an attempt to ensure that Israel remains diplomatically cut off from the rest of the region, helping Iran to paint the Jewish State as occupiers of stolen land being

²⁵ National Archives. 2016. “U.S. Recognition of the State of Israel.” *Archives.Gov*. August 15. <https://www.archives.gov/education/lessons/us-israel>.

²⁶ Landler, Mark. 2018. “Trump Abandons Iran Nuclear Deal He Long Scorned.” *The New York Times*, May 8. <https://www.nytimes.com/2018/05/08/world/middleeast/trump-iran-nuclear-deal.html>.

²⁷ Lynch, Colum. 2020. “Despite U.s. Sanctions, Iran Expands Its Nuclear Stockpile.” *Foreign Policy*. May 8. <https://foreignpolicy.com/2020/05/08/iran-advances-nuclear-program-withdrawal-jcpoa/>.

²⁸ Israel Ministry of Foreign Affairs. 2013. “Israel’s Wars.” *Gov.II*. <https://mfa.gov.il/MFA/AboutIsrael/History/Pages/Israel-Wars.aspx>.

²⁹ Oren, Michael. 2019. “The Coming Middle East Conflagration.” *Atlantic Monthly (Boston, Mass.: 1993)*, November 4. <https://www.theatlantic.com/ideas/archive/2019/11/israel-preparing-open-war/601285/>.

³⁰ Hafeez, Kasim. 2018. “Iran Threatens to ‘Annihilate’ Israel, as Hezbollah Boasts of Reach of Rockets.” *Cufi.Org*. April 22. <https://www.cufi.org/iran-threatens-to-annihilate-israel-as-hezbollah-boasts-of-reach-of-rockets/>.

supported by the same American imperialists that had attempted to subvert the will of the Iranian people just years ago. To recognize Israel would cause Iran to admit defeat on a number of political issues that have put the two nations at odds for decades, such as the Palestinian refugee crisis which Iran directly blames Israel as perpetuating due to their practice of building settlements within territory recognized by the United Nations as belonging to a Palestinian State.³¹

President Trump's motivation to pursue these normalization treaties between Israel and a number of other Arab States through witness treaties is a result of political expediency and to strengthen relations between Israel and other Gulf States to stop a resurgent Iran. Relations between Iran and the United States have been historically cold and hostile. Now with the implementation of the Abraham Accords Iran has threatened any nation that signs onto the agreements. President Trump has also used this opportunity to circumvent needing to address the Palestinian Question following his decision to move the U.S. embassy from Tel Aviv to Jerusalem and declaring that city as the official capital of Israel, going against the majority of global opinion and international law at the time. Appeasements were needed to be made to Bahrain, the United Arab Emirates, and Sudan to ensure that they would sign onto the treaty. For example, Sudan's agreement to sign onto the accords was predicated on the decision that the State Department would remove them from a list of nations that sponsor terrorism. Unlike Carter or Clinton, Trump's engagement in this process seems to be solely predicated on securing greater military security for the United States and Israel rather than out of any great desire for peace.

Given this being the most recent Witness treaty access to Congressional Representatives statements on the Abraham Accords was much greater. The House Foreign Affairs Committee and the Senate Foreign Relations Committee were each looked at specifically as those Representatives would realistically have access to the most information and investment into the proceedings of these Accords. After analyzing the press releases and statements by the House Foreign Affairs Committee, a forty-nine member body, it became increasingly apparent that these Representatives were either increasingly supportive or did not care for the Accords. A total of twenty-six, more than half, had no published statements regarding their support or disagreement of the Abraham Accords, signifying their willingness to allow President Trump to

³¹ AFSC. 2013. "Israel's Settlement Policy in the Occupied Palestinian Territory." *Afsc.Org*. August 13. <https://www.afsc.org/resource/israel%e2%80%99s-settlement-policy-occupied-palestinian-territory>.

expand his power through these negotiations.³² The Senate Foreign Relations Committee had even more support for the signing of these Accords, with fourteen out of the twenty-two seat body releasing statements of support and the other eight releasing no statements either for or against.³³ Along with this multiple Senators on the Senate Foreign Relations Committee Co-Sponsored a Resolution by Senator Graham that the signing of these Accords are a historic achievement and should be recorded as such by Congress, in total the resolution received ninety-four co-sponsors meaning it had almost universal bipartisan support in the Senate.³⁴ The argument could be made that these Senators and Congressmen truly believe that these Accords are beneficial and should be supported but the lack of concern arising for how this deal implicates the United States, especially in the form of its transactional agreements, is alarming. In a way it appears that the United States is paying for these nations to make peace with or normalize relations with Israel, and practically rewarding them for their bad-faith actions in the past.

CONCLUSION

The pursuit of “Witnessed Treaties” by Presidents of the United States seem to have arisen out of a desire of political expediency and overall Congressional Support to pursue these treaties outside of their direct involvement. President Carter was committed to peace as a result of his faith and a recognition that the United States economic and domestic stability was precariously linked to the Middle East’s supply of oil. He was benefitted by having large amounts of Congressional support on both sides of the aisle, as noted by laws passed decades after the Accords that were supportive of the peace agreement. President Clinton, on the opposite end of the spectrum, was not pursuing a peace deal between Jordan and Israel but was presented the opportunity after the groundwork was laid by Jordan following their change in relationship with the Palestinians. Following the first Persian Gulf War this treaty would help to serve as one

³² “House Foreign Affairs Committee.” 2021. *House.Gov*. Accessed March 15. <https://foreignaffairs.house.gov/>.

³³ “Committee Membership.” 2021. *Senate.Gov*. Accessed March 15. <https://www.foreign.senate.gov/about/membership>.

³⁴ Graham, Lindsey. 2020. “S.Res.709 - 116th Congress (2019-2020): A Resolution Expressing the Sense of the Senate That the August 13, 2020, and September 11, 2020, Announcements of the Establishment of Full Diplomatic Relations between the State of Israel and the United Arab Emirates and the State of Israel and the Kingdom of Bahrain Are Historic Achievements.” <https://www.congress.gov/bill/116th-congress/senate-resolution/709>.

less flashpoint that the United States would need to focus resources on in the region, turning back to a resurgent Iraq under Saddam Hussein. Finally, President Trump's massive support of Israel has resulted in a series of transactional deals between that nation and her enemies that saw many receive monetary or diplomatic benefits in return of normalizing relations or declaring peace. This was done to create a sort of unified front to prevent a resurgent and hostile Iran from attaining a hegemony in the Middle East, which would prevent the United States from having access to vital strategic positions. Congressional Representatives time and time again either voiced support or were silent when these treaties were signed, signaling that they feel that these treaties negotiated by the President do not need their oversight or approval regardless of the consequences that they may cause. These three "Witnessed Treaties" have been viewed favorably, and given the lack of any opposition it is likely that future presidents will continue to use this power, the only question that remains is to what extent they will do so.

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HACKING THE CONSTITUTION: PRESIDENTIAL POWER TO LAUNCH OFFENSIVE CYBERATTACKS

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The need for the president to order offensive cyberattacks to maintain deterrence and meet national security objectives is growing beyond the power delegated to the president under current law or the president's limited constitutional authority to launch defensive or preemptive attacks. Due to their ability to cause significant damage and trigger escalation, some offensive cyberattacks are military actions that must be analyzed within the constitutional division of war powers. The best reading of the Constitution is that the president does not have plenary power over the military, so Congress will need to authorize additional authority to the president to meet operational necessities while upholding the rule of law.

INTRODUCTION

In June 2019, Iran launched a surface to air missile and destroyed a US military drone operating over international waters.¹ This was one of the few recent direct attacks by a nation state against the US military. Yet, the US did not respond with force. In addition to symbolic targeted sanctions, President Donald Trump ordered cyberattacks against Iran in retaliation.² Fatigued by decades of war in the Middle East and pushing back against the constraints of an increasingly multipolar world, the United States is more often turning to non-conventional forms of power to achieve its objectives and safeguard its security.³ An emerging tool of US national power—with the ability to inflict economic, social, and military damage—is cyberwarfare.

This novel form of national power blurs the line between war and peace. Cyber power differs from other non-conventional forms of power, like economic sanctions. It can be used for espionage, targeted attacks, and other activities that are not part of traditional warfare. It is also employed to support America's "light footprint" military operations—as when the United States

¹ Idrees Ali and Phil Stewart, "U.S. carried out secret cyber strike on Iran in wake of Saudi oil attack: officials," *Reuters*, October 16, 2019, www.reuters.com/article/us-usa-iran-military-cyber-exclusive/exclusive-u-s-carried-out-secret-cyber-strike-on-iran-in-wake-of-saudi-oil-attack-officials-idUSKBN1WV0EK.

² *Ibid.*

³ Joseph Nye, "Is Military Power Becoming Obsolete?," Belfer Center, last modified January 2010, <https://www.belfercenter.org/publication/military-power-becoming-obsolete>.

paired airstrikes, special operations raids, and cyberattacks to fight ISIS.⁴ These types of operations are often a part of warfare but on a much smaller scale than the conventional, large scale, symmetrical wars the United States previously fought in the 20th century. Yet, cyber power is increasingly a core component of modern interstate warfare. Countries like Russia have initiated or escalated conflicts using cyberattacks on internet connected critical infrastructure.⁵

Notably, the United States has enacted a national security strategy that employs cyber power in all of these ways. The United States has adopted an overarching policy of defending forward in which it will engage in pre-emptive cyberattacks against adversaries to deter cyberattacks.⁶ The operations involve infiltrating, surveilling, and, sometimes, disabling adversarial computer networks. The United States is also thought to utilize cyber power to conduct espionage activities, like intelligence gathering.⁷ It has also launched offensive cyberattacks against the Iranian nuclear program and against ISIS.⁸

Even as cyberwar power takes on a clearer and more prominent role in U.S. foreign affairs, its position under the U.S. constitutional system remains unclear. This paper explores the president's domestic legal authority to order military conducted offensive cyberattacks that cause significant material or non-material damage to an adversary akin to a kinetic attack when a conflict or war has not already been commenced. These types of offensive attacks include some pre-emptive strikes, like the alleged Stuxnet operation, when they initiate a conflict. They do not include strikes that are pre-emptively taken in response to an imminent threat of attack, which are defensive in nature, or offensive attacks conducted by the military once Congress has already declared war or otherwise initiated a conflict. Thus, this paper does not consider the use of cyber operations for mere espionage, which are covered under certain espionage and covert action statutes because they do not rise to the level of warfare.

As the executive branch increasingly engages in offensive cyber operations for geopolitical and military goals, the scope of the commander-in-chief's authority to initiate these

⁴ David Sanger, *Confront and Conceal: Obama's Secret Wars and Surprising Use of American Power* (New York: Broadway Paperbacks, 2013), digital file.

⁵ Max Gordon, "LESSONS FROM THE FRONT: A CASE STUDY OF RUSSIAN CYBER WARFARE," Air Command and Staff College Air University, last modified December 2015, www.hsdl.org/?view&did=816673.

⁶ Erica Borghard, "Operationalizing Defend Forward," *Lawfare* (blog), entry posted March 12, 2020, <https://www.lawfareblog.com/operationalizing-defend-forward-how-concept-works-change-adversary-behavior>.

⁷ Zach Dorfman, "In cyber espionage, U.S. is both hunted and hunter," *Axios*, last modified January 27, 2021, www.axios.com/american-cyber-warfare-solarwinds-d50815d6-2e03-4e3c-83ab-9d2f5e20d6f5.html.

⁸ Sanger, *Confront and Conceal*.

operations remains unclear. Cyberwar is a novel means for exercising state power, and there is an ongoing dispute as to whether cyberwarfare operations count as the type of warfare activities that the Constitution subjects to Congressional control.⁹ While the president has limited statutory authorization to engage in defensive and preemptive cyber operations against particular states and actors, some offensive cyberattacks appear to not fall within this authorization.

This paper addresses the practical need for clarifying the scope of presidential power over offensive cyber operations for maintaining deterrence and the credibility of American soft power by upholding the rule of law. It then addresses three leading perspectives of presidential national security power. The strong unitary executive theory favors broad unliteral constitutional authority for the president in foreign affairs. Another perspective emphasizes that the president needs Congressional authority for offensive actions only if they rise to the level of war. A third perspective maintains that the president cannot initiate offensive hostilities with a foreign nation without prior or retroactive congressional approval. Given the serious legal issues with the first two views, this paper concludes that the most defensible legal grounding for offensive cyber operations that enhance the deterrence power of U.S. offensive cyber power and soft power is for Congress authorize, by statute, flexible authority for the president to engage in offensive cyber operations that are in the national interest.

A NEW ERA OF WARFARE

Two main factors are pulling the United States towards a greater reliance on offensive cyber operations. First, the United States is increasingly cultivating its offensive cyber to balance against foreign adversaries as they use their own technologies to target the United States and its interests.¹⁰ For instance, following the 2016 Russian interference with U.S. presidential election, the United States cultivated and utilized offensive cyber capabilities to take Russian hackers offline in the days preceding the 2018 midterm elections.¹¹

⁹ Matthew Waxman, "Cyberattacks and the Constitution," SSRN, <https://ssrn.com/abstract=3728829>.

¹⁰ Matthew Crandall and Bradley Thayer, "The Balance of Cyberpower," *The National Interest*, November 25, 2018, <https://nationalinterest.org/feature/balance-cyberpower-36637>.

¹¹ Ellen Nakashima, "U.S. Cyber Command operation disrupted Internet access of Russian troll factory on day of 2018 midterms," *The Washington Post*, February 27, 2019, https://www.washingtonpost.com/world/national-security/us-cyber-command-operation-disrupted-internet-access-of-russian-troll-factory-on-day-of-2018-midterms/2019/02/26/1827fc9e-36d6-11e9-af5b-b51b7ff322e9_story.html.

Second, the structure of the international system and realities of domestic politics are increasingly incentivizing a greater reliance on these offensive tools. The currently multipolar international system is reducing the relative superiority of traditional U.S. military power, reducing the ease and effectiveness with which the United States can employ it, just as a war-weary public deters leaders from turning to force as a first option.¹² The United States is more often turning to offensive cyber operations as an alternative to traditional military combat that can still produce similar material effects on an adversary.

For instance, in *The Perfect Weapon*, New York Times journalist David Sanger details how the United States turned to offensive cyber strikes on North Korean missile control facilities as an alternative to military action that produces similar practical and material effects to bombing those facilities.¹³ In this way, offensive cyber operations are increasingly a core component of U.S. national security strategy.

There are three main types of cybersecurity operations: computer network defense, computer network attack, and computer network exploitation. Although the definition of an offensive cyber operation is not settled, this paper takes offensive cyberattacks to entail computer network attacks or computer network exploitation that seeks to disable or commandeer an enemy computer network to cause significant material damage—either directly to the computer network or the critical infrastructure it controls—at a level akin to a traditional military operation. Thus, this paper is not exploring computer network attacks or exploitations that merely seek to harvest intelligence (espionage) or lay the infrastructure for a future offensive.

These types of offensive cyber operations appear in three aspects of foreign policy. First, the United States has used offensive cyberattacks to bolster its traditional military activities. For instance, the United States launched offensive cyber operations against ISIS to complement its airstrikes.¹⁴ Since they occur as part of a military campaign, they are subsumed by the legal authorization for that campaign. These activities are not this paper's focus.

¹² Amitai Etzioni, "The Devolution of American Power," *Fletcher Forum of World Affairs* 37, no. 1 (Winter 2013), <https://ssrn.com/abstract=2274335>; Richard Sisk, "China's Military Has Surpassed US in Ships, Missiles and Air Defense, DoD Report Finds," *Military Times*, Sept. 1, 2020, <https://www.military.com/daily-news/2020/09/01/chinas-military-has-surpassed-us-ships-missiles-and-air-defense-dod-report-finds.html>; Jason Brownlee, "U.S. military confrontation with Iran would be unpopular. Here's why.," *Washington Post*, August 20, 2019, www.washingtonpost.com/politics/2019/08/20/us-military-confrontation-with-iran-would-be-unpopular-heres-why/.

¹³ David Sanger, *The Perfect Weapon* (Crown, 2018), 274, digital file.

¹⁴ Dina Temple-Raston, "How the U.S. Hacked ISIS," NPR, last modified September 26, 2019, <https://www.npr.org/2019/09/26/763545811/how-the-u-s-hacked-isis>.

Second, the United States has established cyberspace as a new domain of international competition by which it uses cyberwarfare tools to advance its cybersecurity and defend its cyber connected infrastructure from computer network attacks and exploitation.¹⁵ Although specific operations are almost always covertly conducted, offensive cyber operations, in principle, would be reasonably expected to be part of this effort. Offensive operations—which go beyond mere surveillance and infiltration—could be part of this strategy because the United States will offensively attack adversarial computer network “threats before they reach U.S. networks.”¹⁶

The United States has developed a policy of defend forward by which it proactively infiltrates, persistently engages, and sometimes attacks the computer networks of adversaries who threaten U.S. cybersecurity in order to deter and disrupt their malicious activity by imposing cyber or other costs on their threatening behavior.¹⁷ In addition to directly deterring harmful activity, this persistent engagement with threatening actors seeks to “reinforce favorable international norms of behavior in cyberspace.”¹⁸ A key international norm, or standard, the United States appears to be interested in promoting is that major, unprovoked cyberattacks can trigger military responses and be treated as acts of war. For instance, the United States has expressed through NATO, the National Security Council, and its alliance with Japan that a major cyberattack could be viewed as an act of war triggering an alliance response.¹⁹

Third, the United States also utilizes offensive cyber operations as an alternative to traditional military force to achieve geopolitical goals beyond deterring cyberattacks and strengthening international norms in cyberspace. The United States engages in offensive cyber operations to disrupt the weapons systems and critical infrastructure of foreign adversaries. Public source media reports indicate that the United States has conducted major offensive cyberattacks against two other nations that caused damage akin a kinetic military strike.

¹⁵ Borghard, "Operationalizing Defend," *Lawfare* (blog).

¹⁶ Department of Defense, "2018 DoD Cyber Strategy and Cyber Posture Review," news release, 2018, https://media.defense.gov/2018/Sep/18/2002041659/-1/-1/1/Factsheet_for_Strategy_and_CPR_FINAL.pdf.

¹⁷ Borghard, "Operationalizing Defend," *Lawfare* (blog).

¹⁸ DOD, "Summary Department of Defense Cyber Strategy 2018," Department of Defense, last modified 2018, 5, media.defense.gov/2018/Sep/18/2002041658/-1/-1/1/CYBER_STRATEGY_SUMMARY_FINAL.PDF.

¹⁹ Daniel Wolfe, "A cyber-attack in Japan could now bring the US into war," *QZ*, last modified April 20, 2019, <https://qz.com/1600574/a-cyber-attack-in-japan-could-now-bring-the-us-into-war/>; "NATO will defend itself," NATO, last modified August 27, 2019, https://www.nato.int/cps/en/natohq/news_168435.htm?selectedLocale=en; Jessica Feil, "Cyberwar and Unmanned Aerial Vehicles: Using New Technologies, from Espionage to Action," *Case W. Res. J. Int'l L.* 45, no. 1 (2012): 535, <https://scholarlycommons.law.case.edu/jil/vol45/iss1/17>.

The Stuxnet virus was reportedly authorized by President Barack Obama to cause “substantial damage to key infrastructure” of the Iranian nuclear program, which rendered hundreds of Iranian computers useless and required Iran to replace key nuclear centrifuges. The Pentagon also reportedly launched cyberattacks to disable North Korean missiles on the launchpad before they could be launched. These so-called “left of launch attacks” were so effective that they would “likely trigger a war” if they were effectuated through traditional kinetic military means.²⁰ Admittedly, open-source reporting is always subject to error, but Sanger’s reporting of these attacks has been independently confirmed by other media outlets.

Taken together, these examples, based on open-source reporting, indicate the increasing tendency of the United States to utilize substantially destructive offensive cyberattacks against foreign actors that go beyond mere infiltration, espionage, or low level or symbolic damage to computer networks. These reports indicate that the executive branch has conducted several cyberattacks that have caused damage akin to a kinetic military strike, and the ability to conduct these types of strikes is essential to pursuing geopolitical interests and ensuring that the deterrence sought by defend forward is credible.

Although Congress has passed legislation directing broad goals and rules for cyber operations, and reports are required to be made to certain Congressional Committees, particular offensive strikes conducted by the Department of Defense are authorized directly by the commander-in-chief or their subordinate.²¹ Successful cyber operations require secrecy to successfully occur and minimize attribution (and, thus, the justification for retaliation). Moreover, dynamics can shift rapidly during a cyber operation due to the rapid nature of computing, which requires a rapid decision-making command structure. Thus, the executive branch has ordered offensive cyberattacks conducted by the Department of Defense.

THE LEGAL BASIS FOR OFFENSIVE CYBERWAR

Despite the increasing importance and frequency of offensive cyberattacks, the current legal foundations for launching these attacks do not extend far enough to unquestionably support their rapid and dynamic deployment by the executive branch. Many cyber operations are

²⁰ Sanger, *The Perfect*, 274.

²¹ Catherine Theory, "Defense Primer: Cyberspace Operations," Congressional Research Service, last modified December 15, 2020, <https://crsreports.congress.gov/product/pdf/IF/IF10537>.

conducted covertly to avoid attribution and minimize the justification for retaliation.²² Consequently, the legal justification for a particular cyberattack is rarely publicly detailed.

There are two possible sources of authority for conducting these offensive attacks: statutory authorization and the war making authority conferred by the Constitution. The president's statutory authority to engage in cyberespionage that causes damage "below the level of armed conflict" is clear.²³ Many cyber activities are authorized under various covert action or espionage statutes. For instance, Section 1632 of the 2019 National Defense Authorization Act permits the military to engage in clandestine cyber operations short of the level of hostilities—covert actions that are already governed under Title 50 of the United States Code.²⁴

Yet, it is clear that at least some offensive cyberattacks have caused significant damage to foreign adversaries on par with a kinetic military strike and cannot be considered espionage. Many of these strikes have been conducted directly by the Department of Defense—which operates under a different section of the U.S. Code (Title 10).²⁵ It is the legal authority for these more substantial offensive cyberattacks conducted by the military that this paper considers.

The president has limited statutory authorization to engage in these types of substantially damaging offensive operations. Section 954 of the 2012 National Defense Authorization Act (NDAA) recognized the authority of the president and the military statutory authority to engage in "offensive operations in cyberspace."²⁶ However, the Conference Report on this provision makes clear that this is not a new substantive grant of authority, but rather a recognition that the executive branch can engage in offensive cyberattacks as consistent with the "legal regimes" and War Powers Resolution "that governs kinetic capabilities."²⁷

The president is authorized to engage in defensive, proportional cyberattacks against Iran, Russia, North Korea, and China under Section 1642 of the 2019 NDAA.²⁸ The president is also authorized to engage in offensive cyberattacks against adversaries pursuant to the AUMFs against the 9/11 perpetrators and Iraq.²⁹ None of these laws likely permitted the offensive attacks

²² Wylie McDade, "Attribution, Delayed Attribution, and Cover Cyber-Attack.," abstract (doctoral thesis), apps.dtic.mil/dtic/tr/fulltext/u2/a607746.pdf.

²³ Theory, "Defense Primer," Congressional Research Service.

²⁴ Ibid.

²⁵ 10 U.S. Code § 394.

²⁶ Theory, "Defense Primer," Congressional Research Service.

²⁷ Conference Report (H. Rept. 112-329), (Dec. 2012) (Conf. Rep.). fas.org/irp/congress/2011_cr/cyberwar.html.

²⁸ Theory, "Defense Primer," Congressional Research Service.

²⁹ Ibid.

on North Korea reported by Sanger as these attacks were offensive, not directed against Iraq or the 9/11 perpetrators, and unrelated to malicious activity in cyberspace or election interference.

Outside of these limited contexts, there is no clear statutory authorization for the *offensive* cyberattacks that are increasingly central to foreign policy. Several legal scholars doubt that the War Powers Resolution (WPR)—the pre-eminent legal framework for the use of offensive force—applies or that the executive branch will apply it.³⁰ This is because WPR refers to the deployment of physical U.S. troops and kinetic forces overseas.

Congress attempted through Section 954 of the 2012 NDAA to assert that the WPR applies to offensive cyber operations. Yet, that provision did not alter the WPR's coverage. It simply says that offensive cyberattacks can be conducted "subject to" laws governing kinetic force and the WPR as if they were kinetic attacks.³¹ The lack of any definitive extension of the WPR's coverage by this provision is clear as the Conference Report stresses that the conferees believe the WPR "may apply" to offensive cyberattacks, "as with any use of force."³²

Given the gap between the president's limited statutory authority to launch offensive cyberattacks that cause substantial material damage to foreign nations and the practical need to utilize these attacks in United States strategy, the central legal and practical question is to what degree the president has unilateral constitutional authority to engage in offensive cyber operations without Congressional authorization. Executive branch lawyers have asserted that, under Article II, the "President has constitutional authority to order military cyber operations even if they amount to use of force in defense of the United States"—which could extend to the use of offensive force to pre-emptively defend the United States.³³ Should offensive cyberattacks be considered within a constitutional war powers framework, and, if so, what are the bounds of that power? If the president's constitutional authority is insufficient, then greater statutory authority is needed to give the president the needed flexibility in action.

³⁰ Alex Chance, "Fixing the War Powers Resolution in the Age of Predator Drones and Cyber-Warfare," *Journal of Air Law and Commerce* 78, no. 2 (2013): 471, <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1319&context=jalc>; Stephen Dycus, "Congress's Role in Cyber Warfare," *JOURNAL OF NATIONAL SECURITY LAW & POLICY* 4, no. 155 (2010): 162, https://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf.

³¹ Conference Report (H. Rept. 112-329), H.R. Rep. (Dec. 2012) (Conf. Rep.).

³² *Ibid.*

³³ Paul Ney, "DOD General Counsel Remarks...", last modified March 2020, www.defense.gov/Newsroom/Speeches/Speech/Article/2099378/dod-general-counsel-remarks-at-us-cyber-command-legal-conference/.

OFFENSIVE CYBERATTACKS AND CONSTITUTIONAL WAR POWER: IS OFFENSIVE CYBERWAR...WAR?

Matthew Waxman, a scholar at the conservative Hoover Institution, has argued that cyberattacks do not implicate the constitutional division of war powers because cyberattacks are below the level of war since they do not entail risk to U.S. troops and are unlikely to trigger a violent military escalation.³⁴ Yet, Waxman concedes *some* offensive cyberattacks may be so substantial in their impact that they constitute an initiation of hostilities and war for purposes of the Constitution.³⁵ Future research should define the bounds of what cyberattacks constitute acts of war, but this paper focuses on the subset of offensive cyberattacks conducted by the military that are likely to cause substantially likely to cause substantial material damage to a nation's computer networks, economy, critical infrastructure, military, or cause a loss of life. These types of attacks are the type of action the Framers sought to place under constitutional limits.

The ratification debates of the Constitution indicate that the Framers appeared to believe that democratic control over the decision to go to war would reduce conflict.³⁶ Their goal was to ensure that pointless wars of "personal glory" would no longer be fought by the chief executive without popular consent, which is why they placed the power to declare war in Congress.³⁷ Any offensive attack on a foreign nation that carries a substantial chance of military escalation implicates the constitutional division of war powers because the purpose of these provisions is to set democratic safeguards on the decision to go to war. Regardless of whether a cyberattack, in itself, rises to the level of war, it may implicate this constitutional framework because it entails a substantial risk of military escalation, which makes withdrawal difficult and draws in the United States without Congress authorizing the initiation of hostilities.

Waxman counters that the chance of violent escalation to military action that would endanger U.S. troops is remote with cyberattacks. This is incorrect. First, the United States believes that military escalation is so likely after a substantial cyberattack that it has worked to establish the position to deter cyberattacks that could force it into a military confrontation. NATO, the National Security Council, and the United States in the context of its alliance with

³⁴ Waxman, "Cyberattacks and the Constitution," SSRN, 5.

³⁵ *Ibid.*

³⁶ William Treanor, "Fame, the Founding, and the Power to Declare War," *Cornell L. Rev.* 82 (1997): 740, <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2052&context=facpub>.

³⁷ *Ibid.*

Japan have expressed that a substantial offensive cyberattack could be treated as an act of war and use of force.³⁸ Second, historically, devastating wars have been triggered by miscalculating how seriously an adversary will respond to an act of war whose direct material consequences appear limited. World War I was triggered by the killing of a single man, which shows that even supposedly limited operations can spiral into war.³⁹ Third, the limited evidence of escalation following cyberattacks is skewed by the fact that relatively few offensive cyberattacks have yet occurred and the normative landscape is changing. The increasing normative view—indicated by the United States’ stated options for response—that offensive cyberattacks can constitute an act of war may make states feel more justified in responding with kinetic force.

Fourth, there are unique technical aspects to offensive cyberattacks that make unexpected escalation uniquely possible and dangerous. The unintended spread of malicious code is a major concern. And it is not hypothetical. Indeed, the United States and Israel “lost control” of the Stuxnet virus deployed against Iran.⁴⁰ As James Acton of the Carnegie Endowment for International Peace explains, the potential for malware to “accidentally spread” from non-nuclear control computers across a connected network into the nuclear control systems of a target state presents an unprecedented risk of nuclear escalation.⁴¹ A state—fearing a cyberattack will disable its nuclear launch capabilities—might preemptively launch a nuclear strike before its capabilities are taken offline by the attack and its nuclear deterrence shield collapses.

The unintended spread of malicious code makes escalation uniquely likely with cyberattacks in two ways. First, it makes *de-escalation* difficult because the initiating state loses control of the code is causing escalation. Second, it increases the chance of the attacked nation miscalculating the attacker’s true intentions and preemptively escalating the conflict. In this way, it also makes a negotiated resolution difficult because accurate information will be lacking to both sides given that the code may spread without the knowledge of the attacking nation.⁴²

³⁸ Wolfe, "A cyber-attack," QZ; Feil, "Cyberwar and Unmanned," 535; "NATO will," NATO.

³⁹ Paul Miller-Melamed, "What everyone gets wrong about the start of World War I," *Washington Post*, November 12, 2018, www.washingtonpost.com/outlook/2018/11/12/what-everyone-gets-wrong-about-start-world-war-i/.

⁴⁰ Nate Anderson, "Confirmed: US and Israel created Stuxnet, lost control of it," *Ars Technica*, last modified June 1, 2012, <https://arstechnica.com/tech-policy/2012/06/confirmed-us-israel-created-stuxnet-lost-control-of-it/>.

⁴¹ James Acton, "Cyber Warfare & Inadvertent Escalation," *Daedalus, the Journal of the American Academy of Arts & Sciences*, Spring 2020, https://doi.org/10.1162/DAED_a_01794.

⁴² James Fearon, "Rationalist Explanations for War," *International Organization* 49, no. 3 (Summer 1995): 381, www.jstor.org/stable/2706903.

Fifth, structural dynamics of the international system that promote escalation apply equally to cyberattacks despite the fact that this interstate competition is occurring in a technically novel domain. Brandon Valeriano and Ben Jenson of the CATO Institute note that the increasing reliance on offensive cyberattacks may “increase the risk of escalation.”⁴³ Cyberattacks carry similar inherent risks of escalation as any form of offensive attack given the structural dynamics of the anarchic international system. Specifically, the “fear, suspicion, and misperception that characterize interstate rivalries exacerbate the risk” of escalation.⁴⁴ One might argue that, under this escalation rationale, *any* use of force would implicate constitutional war power because any activity—like espionage—*could* trigger military escalation. However, the key distinction is the likelihood of escalation and the normative understanding of offensive cyberattacks. Escalation is far more likely with offensive cyberattacks because of (1) the scope and magnitude of an offensive attack and (2) the fact that, as noted, offensive cyberattacks are normatively viewed as justifying kinetic responses if they cause damage akin to a kinetic strike.

Thus, at least some offensive cyberattacks that cause substantial damage to the adversary constitute acts of war that implicate the division of war authority between Congress and the president when they initiate a conflict that has not already been authorized or initiated by Congress or started by an actual or imminent attack from the adversary. This finding is affirmed by the fact that Section 1642 of the 2019 NDAA requires the executive branch to treat cyberattacks as the legal equivalent of a kinetic use of force.⁴⁵ So, it is necessary to determine if the president’s constitutional war authorities grant them enough unilateral authority to effectively conduct conflict-initiating offensive cyberattacks that are not justified by the limited statutory authorities.

THE PRESIDENT’S WARFARE AUTHORITY IS LIMITED

The core debate over the president’s power in foreign affairs concerns whether the president possesses “plenary, essentially unchecked, power over foreign affairs and the military” and can unilaterally initiate hostilities below the level of war, or if this power is limited,

⁴³ Benjamin Jenson and Brandon Valeriano, “The Myth of the Cyber Offense: The Case for Restraint,” Cato Institute, accessed 2019, www.cato.org/policy-analysis/myth-cyber-offense-case-restraint#the-myth-of-the-offense.

⁴⁴ *Ibid.*

⁴⁵ Theory, “Defense Primer,” Congressional Research Service.

constrained by checks and balances and the rule of law, and requires Congressional authorization before initiating non-defensive military action.⁴⁶ The Framers' intent and the structure and text of the Constitution strongly suggest that the president requires at least Congressional approval to initiate hostilities through offensive cyber operations. Consequently, there is not sufficiently stable and uncontested constitutional authority for the President to unilaterally authorize the type of substantial offensive cyberattacks that United States strategy may increasingly demand.

Congress has the sole power to declare war and initiate military hostilities. The president can receive additional authority to initiate conflict through offensive cyber operations when authorized by specific legislation. *Youngstown Sheet* held that President Truman lacked the unilateral authority to nationalize steel production to support the Korean War.⁴⁷ In his concurrence in that case, Justice Jackson explained a widely accepted view: that the president's power in foreign affairs is strongest when relying on an explicit grant of authority from Congress.⁴⁸ Once a conflict has begun or Congress has declared war, the president can authorize offensive cyber operations as the president has the exclusive command of the armed forces during war as commander-in-chief.⁴⁹

Once a nation makes the initiation of hostilities inevitable, the president has the unilateral constitutional authority to engage in offensive cyber operations to preempt or defend against an imminent attack. The president has implied unilateral authority as commander in chief to launch defensive strikes in response to an attack or to launch offensive, pre-emptive military strikes in response to an imminent threat to the United States. The *Prize Cases* held that the president has implied authority to respond to actual attacks or threats, because the Framers intended to give him this power and the power to command the military inherently involves using any means necessary for the military to defend itself from attack.⁵⁰ As the source of this defensive and preemptive strike authority stems from the president's authority to command the military and defend the nation, it applies regardless of the novelty of the tool (in this case, cyber power) that they command.

⁴⁶ Chris Edelson, *Power Without Constraint* (The University of Wisconsin Press, 2016), 12, digital file.

⁴⁷ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

⁴⁸ Edward Swaine, "The Political Economy of Youngstown," *SOUTHERN CALIFORNIA LAW REVIEW* 83 (2010): 320, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1017&context=faculty_publications.

⁴⁹ U.S. Const. art. II § 2, cl. 1.

⁵⁰ Chris Edelson, *Emergency Presidential Power* (The University of Wisconsin Press, 2013), 46, digital file; *Prize Cases*, 67 U.S. 635 (1862).

Yet, this unilateral authority does not provide a basis for the use of offensive cyberattacks that *initiate* hostilities or military action other than for defensive purposes to protect the United States. The *Prize Cases* recognized presidential power to engage in war without Congressional authorization only when the president does not “initiate” a war but responds to it.⁵¹ In that case, President Lincoln blockaded the South as secession had *already occurred*. Any offensive cyberattacks that *initiate* military action and are not statutorily authorized or taken to defend against an actual or imminent threat do not have a clear constitutional foundation.

THE OFFICE OF LEGAL COUNSEL’S VIEW IS INSSUFFICIENT

The currently accepted legal view of the executive branch is that the president has unilateral authority as commander-in-chief to offensively deploy forces for missions below the level of war. The Office of Legal Counsel (OLC) justified the United States intervention in Libya on the basis that it did not rise to the level of war because it was (1) limited in duration and scope to not include occupation of a territory, (2) did not entail substantial risk of escalation, (3) did not entail major risk to United States troops deployed on the ground (which makes withdrawal difficult), and (4) did not comprehensively involve the full military.⁵² The general counsel for the Department of Defense has suggested this is the legal framework that ordinarily guides analysis of cyberattacks.⁵³

Regardless of the constitutional merits of this theory, it is not sufficient for justifying the spectrum of offensive cyberattacks the United States may need to engage in for the reasons discussed previously as to why offensive cyberattacks implicate the division of war initiation powers. Although cyberattacks do not entail *direct* risk to troops, it is more difficult to keep them limited in duration and scope and prevent them from escalating into a full-scale military confrontation due to the risk of malicious code spreading out of control beyond its intended target and the structural dynamics (discussed above) of international conflict that encourage states to escalate a conflict out of fear, misperception, or miscalculation. Thus, some offensive cyberattacks—like the Stuxnet attack—may entail far less controllable dynamics and a higher risk of escalation than the Libya intervention, which would make their justification under this

⁵¹ Justice Grier, Majority, *The Prize Cases*, 277.

⁵² Memo by C. Krass, "Authority to Use Military Force in Libya," April 2011, fas.org/irp/agency/doj/olc/libya.pdf.

⁵³ Ney, "DOD General," Department of Defense.

legal framework at least debatable. Consequently, this framework does not provide a sufficiently solid justification for the range of offensive cyberattacks the United States may need to leverage.

THE STRONG UNITARY EXECUTIVE THEORY VIOLATES THE CONSTITUTION

The leading theory favoring the president's ability to use offensive force and initiate hostilities without Congressional approval—the unitary executive theory (UET)—is legally flawed and violates the overlapping checks and balances that organize the federal government.

The “strong” version of the UET accepts plenary presidential power over foreign and military affairs.⁵⁴ It was deployed during the Bush administration and has become “institutionalized and normalized” in presidential conduct in foreign affairs, even when not explicitly invoked.⁵⁵ As John Yoo of the OLC wrote in 2001 memo, UET rejects checks and “any limit” on presidential power as he has “plenary control over the conduct of foreign affairs.”⁵⁶

Yoo contends the power to initiate military action is an inherent power of the president. First, he notes that the president is the commander-in-chief: this power is assigned “solely to the [p]resident” and is a “very broad,” “substantive grant of authority” to initiate military action.⁵⁷ Second, foreign affairs and military matters are chiefly the responsibility of the executive, and any foreign affairs powers not explicitly granted to Congress belong to the president, as Article II vests the president with all the executive power, while Congress is limited to powers “herein granted.”⁵⁸

Third, Yoo claims that Congress's power to declare war is a formality as the Framers changed the text from “make” war to “declare” war. Fourth, Congress—a separate set of constitutional officers—has historically accepted wars initiated by the president.⁵⁹ Fifth, the

⁵⁴ Jen Kirby, “7 legal experts on how Kavanaugh views executive power...,” Vox, last modified July 11, 2018, www.vox.com/policy-and-politics/2018/7/11/17551648/kavanaugh-mueller-trump-executive-power-legal.

⁵⁵ Jeffrey Crouch, et al. “The Law: The Unitary Executive Theory and President Donald J. Trump,” *Presidential Studies Quarterly*, August 9, 2017, 571, <https://onlinelibrary.wiley.com/doi/pdf/10.1111/psq.12401>.

⁵⁶ Edelson, *Emergency Presidential*, 134; 138.

⁵⁷ *Ibid*, 138.

⁵⁸ *Ibid*, 133-134.

⁵⁹ *Ibid*, 134-137.

Supreme Court in *Curtis-Wright* (1936) recognized that the president is the sole organ of international affairs, so the president can initiate conflicts.⁶⁰

First, however, the commander-in-chief clause is not a vast grant of power over policy decisions. Yoo claims it is a “substantive grant” of power to start war (among other powers). Yet, Hamilton flatly rejected this in Federalist 70, explaining that this power resembles the power of the British king over military affairs, but it is “in substance much inferior to it,” for it is “nothing more than the supreme command and direction of the military,” while the King could declare war and raise and regulate armies and navies (Congress’s powers).⁶¹

Second, Yoo’s conclusion that the broad vesting clause in Article II grants the president any foreign affairs power not textually delegated to Congress relies on the false premise that Congress’s powers over foreign affairs are confined to its enumerated powers. Congress possesses implied powers via the Necessary and Proper Clause, as accepted since *McCulloch v. Maryland*.⁶² Even Congress’s enumerated powers—like the power to declare war—are core powers over foreign affairs. The existence of these substantial powers rebuts the theme of the UET that the president receives plenary foreign affairs powers because some branch has to.

Third, Congress’s power to declare war is not a formality. The Framers merely changed the language from “make” to “declare” war to enable the president to defend against attacks—not initiate hostilities.⁶³ Declare war was understood at the time of the Constitution’s creation to “broadly encompass . . . the power to initiate war” as attacks committed absent a formal declaration were regularly regarded as a declaration of war.⁶⁴ The text of the Constitution is clear: Congress authorizes engaging in war. Article I, Section 10 states that “No State shall, without the Consent of Congress . . . engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”⁶⁵ If the president decides when to engage a foreign power in war, the states should need the consent of the president—not Congress.

⁶⁰ Ibid, 134.

⁶¹ Alexander Hamilton, "The Federalist Papers: No. 70," The Avalon Project, last modified March 18, 1788, http://avalon.law.yale.edu/18th_century/fed70.asp.

⁶² Martin Flaherty, "John Marshall, *McCulloch v. Maryland*, and 'We the People': Revisions in Need of Revising," *William and Mary Law Review* 43, no. 4 (2002): 1383, scholarship.law.wm.edu/wmlr/vol43/iss4/3/.

⁶³ Louis Fisher, "Teaching the Presidency; Idealizing a constitutional Office," *Political Science and Politics* 45, no. 1 (January 2012): 18, https://www.jstor.org/stable/41412717?seq=1#metadata_info_tab_contents.

⁶⁴ Michael Ramsey, "Textualism and War Powers," *The University of Chicago Law Review* 69, no. 4 (2002): 1543, <https://chicagounbound.uchicago.edu/uclrev/vol69/iss4/1/>.

⁶⁵ U.S. Const. art. I § 10.

Congress's power to declare war is also a substantive power because it is part of the broader overlapping power structure of checks and balances that the Constitution establishes and the strong UET wrongly ignores. The Framers explicitly rejected the notion of one branch exercising power unilaterally. Indeed, James Madison dismissed the notion that the Constitution was supposed to ensure a total separation of powers between completely "separate and distinct" branches because "the accumulation of all powers . . . may justly be pronounced the very definition of tyranny."⁶⁶ As explained in Federalist 51, the Constitution instead embodies a system of overlapping powers in which each branch possesses "the necessary constitutional means and personal motives to resist encroachments of others."⁶⁷

The structure of the constitution codifies this public promise, especially for foreign and military matters. The Senate must approve treaties, the Congress must declare war, and Congress possesses the sole power to fund or defund the military, raise the militia, create an Army and Navy, make regulations governing the military, declare war, etc.⁶⁸ The Framers explicitly feared a king-like figure who would pursue wars of personal aggrandizement, so they created "layers of checks" on the president's command of the military by granting substantive powers to Congress alone.⁶⁹ One such check is the power of controlling the budget by limiting military appropriations to two years and deciding when to raise the militia to respond to an invasion.

For over 200 years since *Marbury v. Madison*, the judiciary has decided whether the actions of other branches are constitutional when relevant to cases before it, and this authority was upheld in *Cooper v. Aaron*.⁷⁰ The strong UET places the president outside the rule of law as it grants him, admittedly, unlimited authority in a certain area and unlimited discretion in deciding the appropriateness of his action. There is no foreign-affairs exception to the constitutional structure the Framers created to safeguard liberty and democratic accountability.

Fourth, Congress's acquiescence to executive initiated wars does not justify plenary presidential power. Some scholars argue that "[p]articularly because so few judicial decisions address war powers, the original understanding and historical practice provide the best guidance

⁶⁶ James Madison. "Federalist No 47." Avalon Project, Feb. 1788, avalon.law.yale.edu/18th_century/fed47.asp.

⁶⁷ Hamilton or Madison, "The Federalist Papers : No. 51," Avalon Project, last modified February 8, 1788, https://avalon.law.yale.edu/18th_century/fed51.asp.

⁶⁸ U.S. Const. art. I.

⁶⁹ Henry Waxman. "What's So Great About the Declare War Clause?" Lawfare, last modified January 29, 2018, <https://www.lawfareblog.com/whats-so-great-about-declare-war-clause>.

⁷⁰ David Coar, "It is Emphatically the Province and Duty of the Judicial Department to Say . . .," *Loyola U. Chicago L. J.* 34, no. 1 (Fall 2002): 125, lawcommons.luc.edu/luc/lj/vol34/iss1/6/; *Cooper v. Aaron*, 358 U.S. 1 (1958).

available.”⁷¹ Yet, just because something has been done before does not mean it is constitutional. Action or inaction cannot amend the Constitution. The Supreme Court has held that Congress cannot violate the constitutional balance of power to delegate its legislative power even if it so desires.⁷² That would gut its capacity to limit government power—a core reason for having it.

The precedent on presidential power is also contradictory. Even when the White House was burned, President Madison rejected the authority to unilaterally curtail civil liberties to wage the War of 1812.⁷³ President Washington also sought Congressional authorization before going to war with the Barbary Pirates.⁷⁴

It is hard for precedent to disprove broad presidential power. Even when presidents seek Congressional approval to wage war one can always say that they *could have* acted unilaterally. This logic works both ways: Congressional acquiescence does not constitutionalize presidential action: Congress could have opposed the president if it chose. It is difficult to disentangle precedent based on perceptions of constitutionality from adherence to norms and from governing choices.

Fifth, the sole organ doctrine is not an accepted or correct view of constitutional law. It is merely based on non-binding *dicta* in *Curtis-Wright* (1936).⁷⁵ This *dicta* was based on a misinterpretation of a speech made by John Marshall in the defense of John Adams’ execution of a treaty. Marshall admitted in this very speech that Congress “unquestionably may prescribe the mode” and alter the president’s actions in foreign affairs, so the president, at minimum, cannot legally contradict an act of Congress.⁷⁶ The Supreme Court explicitly rejected the “unbounded power” of the sole organ doctrine in *Zivotofsky v. Kerry* (2015).⁷⁷

⁷¹ Jane Stromseth, "Understanding constitutional War Powers Today," *Yale L. J.* 106, no. 3 (1996): 914, digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=7728&context=yjlj.

⁷² Cornell Law School, "Nondelegation Doctrine," Legal Information Institute, https://www.law.cornell.edu/wex/nondelegation_doctrine.

⁷³ James Madison, *Presidential Power, and Civil Liberties in the War of 1812: Chapter Five* (The Brookings Institution, 2012), 99, <http://lawfare.s3.amazonaws.com/staging/s3fs-public/uploads/2012/10/Chapter-5.pdf>.

⁷⁴ Timothy Hofman, "Project Report: Divergence of Congressional War Authority from the Founders' Intent," United States Army War College, last modified January 4, 2017, 5, publications.armywarcollege.edu/pubs/3430.pdf.

⁷⁵ Edelson, *Emergency Presidential*, 65.

⁷⁶ Louis Fisher, "The Law: Presidential Inherent Power: The 'Sole Organ' Doctrine," *Presidential Studies Quarterly* 37, no. 1 (March 2007): 147, <https://www.loc.gov/law/help/usconlaw/pdf/SoleOrgan-March07.pdf>.

⁷⁷ *Zivotofsky v. Kerry*, 576 U.S. ____ (2015).

APPLYING CONSTITUTIONAL WAR POWERS TO CYBERSPACE

For offensive cyber operations that cause significant damage or are foreseeably likely to trigger military escalation, neither the OLC framework nor the strong UET provide a sufficiently solid basis for justifying the offensive cyberattacks that are increasingly vital to ensuring the credibility of the nation's deterrence strategy and realizing its geopolitical goals. The most legally defensible view of the Constitution is that the president may order offensive cyberattacks if authorized by Congress or if in response to an imminent threat.

This limited constitutional authority paired with the currently limited statutory authority to engage in offensive cyberattacks means that Congress should, by statute, grant the president broader authority to engage in offensive operations if it wants to ensure that these operations are on unassailable legal footing. As Justice Jackson recognized in an often-cited concurrence in *Youngstown Sheet*, the president's power is at its "zenith" when utilizing their own authority alongside a power delegated by Congress.⁷⁸ Given the debatable and limited extent of the president's unilateral constitutional authority in this arena, Congressional delegation is the best way to ensure that the president has sufficient legal authority.

The scope of this grant of authority, and accountability measures, should be the subject of future research. What is clear is that the president is best positioned to decide when to initiate offensive cyber operations. Alexander Hamilton justified the creation of a single president of the United States because "decision, activity, secrecy, and dispatch" are attributes found only in a branch of government led by an individual—as opposed to an assembly of representatives.⁷⁹ These attributes of the president are all the more critical with offensive cyberattacks which need to be launched covertly in order to be successful, and which require rapid decision making because unexpected errors in coding can require rapid adjustments to the mission.

Ensuring that the president has sufficient and broad legal authority to utilize their discretion as to when to unilaterally order offensive cyber operations is important for realizing U.S. foreign policy goals. In order for defend forward policy to effectively establish deterrence, the threat of increasingly intense cyberattacks needs to be credible, which requires the president to have the authority to order such attacks. Similarly, for cyberattacks like Stuxnet to be leveraged to their full utility, the president needs the authority to order them.

⁷⁸ Swaine, "THE POLITICAL," 320.

⁷⁹ Hamilton, "The Federalist," The Avalon Project.

The goal for policymakers needs to be finding a way to achieve these operational needs while respecting the rule of law and the restraints of presidential war power. Respecting the rule of law is important for several reasons. First, respecting the rule of law is important for reinforcing democratic norms that there are constitutional and legal limits on the president's command of the military. Second, internationally, respecting the rule of law in U.S. cyber operations will promote U.S. foreign policy objectives by modeling democratic behavior to foreign countries. Third, by treating offensive cyber operations as subject to U.S. war powers laws, the United States will reinforce the norm that underpins U.S. deterrence strategy: namely that the United States will respond to offensive cyberattacks with substantial material impact as it would a kinetic attack.⁸⁰

This balance is unlikely to be achieved through litigation in the Federal Courts. Legal doctrines would likely prevent members of Congress or general citizens from having standing to bring such suits.⁸¹ The political question doctrine—which holds that certain disputes over powers delegated to other branches of government for which there is no judicially manageable standard cannot be reviewed by federal courts—has been a barrier to considering war powers issues.⁸²

Instead, the most efficient path forward is for Congress to pass legislation delegating broad authority to the president to engage in offensive cyber operations. Such a move would acknowledge the real and pressing needs for the president to utilize offensive cyber force while respecting the Constitution that both branches are sworn to uphold.

CONCLUSION

This paper has identified a gap between the increasing necessity for offensive cyber operations as part of the United States' national security strategy and the president's limited statutory and constitutional authority to engage in such actions when a conflict has not already been initiated. Congress should consider granting additional power to engage in such operations within a legally constrained context that increases accountability to Congress.

⁸⁰ Wolfe, "A cyber-attack," QZ; Feil, "Cyberwar and Unmanned," 535; "NATO will," NATO.

⁸¹ Michael Garcia, "War Powers Litigation Initiated by Members of Congress....," Congressional Research Service, last modified February 2012, <https://fas.org/sgp/crs/natsec/RL30352.pdf>.

⁸² Samuel Howe, "Congress's War Powers and the Political Question Doctrine After *Smith v. Obama*," *Duke Law Journal* 68, no. 6 (2019), <https://scholarship.law.duke.edu/dlj/vol68/iss6/4/>.

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FEDERALISM IN THE UNITED STATES: THE MISSING GEAR TOWARDS THE EFFECTIVE GLOBAL FIGHT AGAINST ILLICIT FINANCIAL FLOWS

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The global fight against illicit financial flows (IFFs) is failing. Financial institutions continue to fuel financial crimes through their channels, sponsoring corruption, organized crime and even terrorist activities. The United States is no outsider to this fight. This research aims to shed light on how federalism has become an impediment in America's efforts to combat IFFs. States have created lax regulations regarding beneficial ownership, shell corporations, and within the real estate industry, creating a set of loopholes that criminals take advantage of. By studying money laundering and corruption, this paper highlights the negative consequences that both of these phenomena have in exacerbating economic inequality and violence, promoting political and democratic instability. and creating an overall feeling of insecurity in foreign countries. The United States has to recognize the existence of these loopholes and all levels of government have to cooperate in order to effectively combat IFFs.

Illicit Financial Flows (IFFs) in the United States are increasingly prevalent. The recent global investigation, known as the “FinCEN files,” illustrated the *complicity* of banking institutions in money laundering schemes. Mexican drug trafficking organizations (DTO) have benefited from illicit cash flows all along the 1,900 mile U.S.-Mexico border and a significant number of shell companies are registered in the United States. But, how did this come to be? Internal institutional arrangements play a big role in allowing this money to circulate in the U.S financial system, causing negative effects beyond territorial boundaries.

It is estimated that 2% to 5% of the global GDP is lost to money laundering, and close to \$3.6 trillion dollars to corruption.¹ IFFs deeply affect society in several regards. Money laundering fuels criminal organizations involved in high levels of violence and illicit activities, such as drug and human trafficking. On the other hand, corruption has been one of the main impediments to economic progress in developing regions such as Latin America, where the misappropriation of public funds has a detrimental impact on fighting inequality, poverty, and

¹ Stephen Johnson, “Corruption Is Costing the Global Economy \$3.6 Trillion Dollars Every Year,” World Economic Forum, December 13, 2018, <https://www.weforum.org/agenda/2018/12/the-global-economy-loses-3-6-trillion-to-corruption-each-year-says-u-n/>.

security threats.² Thus, it is important to understand why the United States, which leads the global fight against these types of illicit flows, might also contribute to the problem through a set of internal dynamics that have its foundation on historical and legal grounds.

This paper aims to demonstrate that gaps in the federal anti-money laundering system in the United States create loopholes that allow IFFs to circulate, and hinder U.S. foreign policy goals of fighting global illicit financial flows. The main objectives of this research are to show the key gaps in the anti-money laundering system in the United States and explain the different ways in which the federal system fuels IFFs.

This research will first provide background on IFFs, explaining the concept and its importance to money laundering and corruption. Then, the paper will examine the historical and legal considerations around the execution of foreign policy. Explaining the different ways in which the executive and non-executive branches of power are involved in foreign policy will clarify the current dynamics of power. Finally, the paper will examine how states have created loopholes that have allowed vulnerabilities that adversely impact U.S. foreign policy goals.

BACKGROUND ON ILLICIT FINANCIAL FLOWS

The concept of IFFs is mostly attributed to Raymond Baker.³ He wanted to transition from the idea of illegal capital flight, which focuses on money that ‘left’ developing countries to western economies for several reasons. He differentiated between legal and illegal capital flight, which touches upon both the origin and method of money circulation. Nonetheless, Baker argued that the term ‘capital flight’ still attributed the blame on the developing countries, whereas the concept of IFFs implies a shared responsibility between countries that send and receive this type of money.

The official concept and definition of IFFs is debated. In a first approximation, it is important to talk about illicit finance, which mainly consists of the financing of illegal activities that do not cross borders. When these types of flows actually cross borders of any given country,

² Paolo Mauro, Paulo Medas, and Jean-Marc Fournier, “The True Cost of Global Corruption – IMF F&D,” Finance & Development, accessed December 1, 2020, <https://www.imf.org/external/pubs/ft/fandd/2019/09/the-true-cost-of-global-corruption-mauro.htm>.

³ Raymond Baker, ‘Illicit Financial Flows: A Note on Concepts’, in Dev Kar and Devon Cartwright-Smith, “Illicit Financial Flows from Developing Countries: 2002 - 2006,” Report (Global Financial Integrity, 2008), https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2014/05/IFFs_from_Developing_Countries_Report-Full-Economist-Final.pdf?time=1613259799.

is what it is typically referred as IFFs.⁴ This is the narrow definition of IFFs.⁵ A broader definition includes every transaction that is considered unethical, even if the action is legal. IFFs can be catalogued by the type of transfer (both money and with monetary value), the type and degree of illegality, the illegality of the source, and use of transfer *per se*.

Several international organizations have tried to define and discuss the concept of IFFs. Overall, the definitions share the importance of talking about a cross-border movement of financial capital, the criminal origin and end of those transactions and, the avoidance of legal regulations or anti-money laundering (AML) laws. Nonetheless, the lack of common definition (which is mainly attributed to the reluctance to tag tax-related financial capital movement within the IFFs concept), creates two important problems. First, it contributes to not having a coherent policy action to counter these types of financial flows, as it lessens its magnitude. And second, it creates ambiguity into identifying the responsible actors and methods, and motives of those involved.⁶

The missing universally accepted definition poses a challenge for any proposed policy action. This research will therefore start with the narrower definition. This allows a two-fold benefit: first, it simplifies (to some extent) the legal considerations regarding the legislation to fight them, especially in the United States; and the avoidance of the philosophical considerations around the “unethical actions,” as it can create confusion and even more ambiguity around IFFs.

Although there are more than just two kinds of IFFs, the importance of tackling money laundering and corruption is highlighted by a common set of issues: their effects on the United States are somewhat invisible but are intertwined with public health, economic performance, quality of democracy, and, most importantly, with global security. As such, these two phenomena are the main focus of this research. Both money laundering and corruption have deep effects globally and the United States remains a key actor in combatting some of its effects, but has also contributed (mostly indirectly) to the problem.

⁴ Peter Chowla and Tatiana Falcao, “Illicit Financial Flows: Concepts and Scope,” Working Paper (United States Financing for Development, December 5, 2016), https://www.un.org/esa/ffd/wp-content/uploads/2017/02/Illicit-financial-flows-conceptual-paper_FfDO-working-paper.pdf.

⁵ Irene Musselli and Elisabeth Bürgi Bonanomi, “Illicit Financial Flows: Concepts and Definition,” *Revue Internationale de Politique de Développement*, no. 12.1 (December 3, 2019), <https://doi.org/10.4000/poldev.3296>.

⁶ “Policy Coherence in Combating Illicit Financial Flows: PCSD Thematic Module,” Draft (OECD, 2015), https://www.oecd.org/gov/pcsd/IFFs%20thematic%20module%20v12cl_for%20web.pdf.

UNDERSTANDING CORRUPTION AND MONEY LAUNDERING AS ILLICIT FINANCIAL FLOWS

Corruption can be viewed as a system. First, it can be represented as a formula, equaling monopoly plus discretion minus accountability ($C = M + D - A$).⁷ This formula, designed by Kiltgaard in 1998, attempted to simplify a very complex problem, by explaining that no matter the time or place, if an individual or an organization had a monopoly over a good or service, with discretion and without being held accountable, there was a presence of corruption. Second, corruption is most prevalent when the risk of impunity is such that institutional arrangements are not strong enough to stay ‘inside of the law.’

Holmes explains five points to identify corruption as an action or omission (figure 1) and emphasizes six areas in which corruption has become a problem: society, environment, economy, political and legal systems, security, and international relations.⁸ First, within society, corruption negatively affects mostly *ordinary* people, exacerbating the gaps between elites and the public, increasing inequality and an overall feeling of distrust in the state and public officials. Second, corruption creates an increasing sense of insecurity that is seen in a decrease of the rule of law, proliferation of organized crime and in different sectors of the government. Environmental policies are affected by corruption by allowing the misuse of public resources and lack of transparency in the licensing and exploitation of natural resources, especially in forestry, oil exploitation, and endangered species.

Figure 1. Indicators of corruption

It involves an individual or a group in public office (it can be elected or appointed)
The individual involved has a degree of authority related to: decision making, law enforcement, or defense of the State.
The official acts (or omits) on its own personal interest or that of the organization to which they belong to, and these counter directly to the State and society
The official acts (or omits) in a clandestine manner and is conscious of doing so.
It is perceived by an important proportion of the population or the state as corrupt.

Source: Holmes, 2015. “Criteria for identifying Corruption”, p. 85.

⁷ Robert Klitgaard, “International Cooperation Against Corruption,” *Finance & Development International Monetary Fund*, March 1998, 4.

⁸ Leslie Holmes, *Corruption: A Very Short Introduction*, First edition, Very Short Introductions 426 (Oxford, United Kingdom: Oxford University Press, 2015).

Corruption's negative economic effects include decreased investment and economic growth, low foreign direct investment, and reduced state revenue, which can lead to an economic crisis. In the political and legal system, corruption can be involved in: increase of power and influence of legislators that result in favoritism practices or pork-barreling, funding of parties, undermining of electoral competition, drawing citizens to extreme forms of government and decreasing the overall legitimacy of the system. In security, corruption minimizes the state's defense as well as law enforcement capabilities to fight security threats, and increases the risk of public officials getting involved in schemes with organized crime. Finally, corrupt practices in one state can 'pour over' to another, having effects on global issues such as human, drugs, weapon, human trafficking and is closely linked to money laundering⁹.

Money laundering, on the other hand, is an issue that has only recently been addressed on the international stage. Despite being formally criminalized recently (2001) in the Palermo Convention against Organized Crime, money laundering has been present since the Middle Ages. First denominated during the prohibition era with the New York mafias trying to conceal their earnings, it has become one of the main objectives to fight criminal activities. Money laundering encompasses all the processes "criminals use to obscure the real origin of the proceeds which have been derived from criminal activity and to make illegal proceeds appear as if they were legitimate property."¹⁰ The objective of fighting this activity focused on preventing criminal revenue and thus enjoying the benefits accompanied with this money.

The consequences of money laundering is mostly economic and political. Economically, it is seen in two ways: when a state loosens its control over criminal action and the distortion of market mechanisms. The decline of state control comes mainly from the sophistication of tactics and transactions by criminals, which blurs AML policies and further enhances impunity. This has consequences as businesses increasingly turn to private security as an alternative to the state, jobs are lost due to integral migration, and tax money is wasted in made-up bids.¹¹

Secondly and closely related, money laundering distorts market mechanisms in allocating licit money, affecting economic growth. The dirty money is invested in sectors where the risk of

⁹ Ibid.

¹⁰ Waleed Alhosani, *Anti-Money Laundering: A Comparative and Critical Analysis of the UK and UAE's Financial Intelligence Units*, Palgrave Studies in Risk, Crime, & Society (London: Palgrave Macmillan, 2016).

¹¹ Christine Jojarth, "Money Laundering: Motives, Methods, Impact, and Countermeasures," in *Transnational Organized Crime: Analyses of a Global Challenge to Democracy* (Bielefeld: Transcript Verlag, 2013).

identification and subsequent seizure is minimal, benefiting those sectors and damaging the prospects of business that use legal money to exist.¹²

The political and legal impact is fairly similar to corruption, showing that both of these IFFs have to be treated hand-in-hand. Just as with corruption, money laundering can harm the government's legitimacy and increase criminal activity that directly damages security and economic growth. Second, it alters political competition by fueling financial transactions with illicit money, and third, it undermines the effectiveness of international sanctions against non-democratic governments.

A wide revision of these IFFs is not the main objective, but highlighting the negative consequences contributes to taking the right policy actions and enacting legislation to fight them. IFFs are a fairly new concept, but this should not be an obstacle to fighting them as a global objective. States ought to find common ground and understand that the effects of IFFs run deeper than just the economy, as they also harm society, political, and democratic principles.

FOREIGN POLICY: THE EXECUTIVE, CONGRESS AND FEDERALISM

Within the U.S political system, the Executive is empowered by the Constitution to be the main executor of foreign policy. Although highly studied, the extent to which Congress and the Supreme Court can effect foreign policy remains a gray area, but both have been recognized as important actors. Nonetheless, little attention has been paid to how federalism has become an obstacle to the implementation of U.S. foreign policy, hindering especially efforts to combat global illicit financial flows, including money laundering and corruption.

The Constitution gives the Executive power in making treaties (with the support of the Senate through ratification) and to appoint ambassadors, public ministers, and consuls in its Article II section 2.¹³ Congress is granted the power to lay and collect taxes, borrow money on behalf of the United States, regulate commerce, declare war, and several other powers related to the armed forces (Art. I, section 8).¹⁴ Nonetheless, the term 'foreign policy' is never explicitly mentioned. The Constitutional balance of power, seems to lean more towards the Congress. Still,

¹² Ibid.

¹³ *The Constitution of the United States of America at the National Archives*. (Bedford, MA: Applewood Books, 1995).

¹⁴ *The Constitution of the United States of America at the National Archives*.

the Executive has the authority to be the representative of the nation and has accumulated power in foreign policy matters through several key historical moments.¹⁵

Congress's involvement in foreign policy is commonly known as non-executive foreign policy. It has less power than the Executive, which has been reinforced by Supreme Court rulings; and is constrained by the structure of Congress. Seldom do foreign policy initiatives emanate from Congress, as both the House and the Senate rarely directly contest the president's power. Nevertheless, congressional action in foreign policy is not limited to legislation. Instead, public hearings, changes in the executive processes, and political grandstanding are all tools available to Congress that can lead to changes in foreign policy.¹⁶

In the United States' federal system, power is also shared between the federal government and the states. Can states pursue foreign policy goals as an independent actor? In the case of combating IFFs, federalism has created barriers to the implementation of foreign policy by the presidency and Congress, generating loopholes that undercut U.S leadership in this realm. In this sense, it is important to explore how federalism can be an actor within Foreign Policy.

Federalism in the United States refers to a political system in which authority is shared between the central government and the states. This system originated in the early history of the United States when framers sought to create a political system in which the risk of tyranny was reduced. Nevertheless, the first attempt resulted in a confederation that threatened to tip the balance of power in favor of the states. Thus, the objective was clear: create a system where the powers were shared but neither had supreme power over the other. After several historical events that shaped how federalism is represented now, a system was created in which states can have certain constitutional authority even above Congress in some spheres such as commerce and law enforcement.¹⁷

States and Congressional relations can be characterized as being in conflict or open to cooperation. States are entities that may pose challenges to the federal government, playing the role of a mostly autonomous actor. On the other hand, states are sometimes seen as a 'branch' of the federal government, carrying out federal programs and serving as an ally to the federal

¹⁵ Wirls, "The President, Foreign Policy, and Constitutional Government."

¹⁶ James M. Lindsay, "Congress and Foreign Policy: Why the Hill Matters," *Political Science Quarterly* 107, no. 4 (1992): 607–28, <https://doi.org/10.2307/2152287>.

¹⁷ James Q. Wilson, *American Government: Brief Version*, 10th ed, instructor's ed (Boston: Wadsworth/Cengage Learning, 2012).

government.¹⁸ Despite these two contentious views, individual states have recently been favored above Congress by the Supreme Court. The judicial branch has ruled that the states' sovereignty protects them from individuals attempting to sue them for breaking federal legislation.

Federalism remains a key component of the political and legal system in the United States.¹⁹

As autonomous actors, states have been involved in controversies regarding the conduct of foreign policy. Mainly connected to immigration, these cases have not provided a clear understanding of the State's role in foreign affairs. It is worth noting that the Supreme Court has indeed favored national authority over state regulations. Nonetheless, there remains areas where it is unclear if a state's actions are unconstitutional. Despite this grey area, state involvement in foreign affairs remains unavoidable, especially in economic issues, and, depending on the specific geopolitical circumstances the country is facing, conflict between the states and other government branches is often inevitable.²⁰

Understanding the effect of federalism on IFFs requires studying legislation that might cause federalism to clash with the U.S foreign policy goals. This requires not only looking at specific states but also at a wider range of issues that emerge under this system. Understanding how one of the main characteristics of the U.S political system interferes with wider global issues such as fighting money laundering and corruption, can shed light on the necessary changes needed to promote effective U.S. leadership in controlling IFFs.

THE UNITED STATES FEDERALISM AND ILLICIT FINANCIAL FLOWS

There are three main areas of legislation that have caused issues for the global fight against IFFs: beneficial ownership, the creation of shell corporations, and the lack of regulation of the real estate industry. Regarding the first area, the main state that has hindered the fight is Delaware. According to Transparency International, the United States does not comply with any of the 10 G20 principles regarding transparency. As a first problem, it lacks a definition of beneficial

¹⁸ Jessica Bulman-Pozen and Heather K. Gerken, "Uncooperative Federalism," *The Yale Law Journal* 118, no. 7 (2009): 1256–1310.

¹⁹ Norma M. Riccucci, "The U.S. Supreme Court's New Federalism and Its Impact on Antidiscrimination Legislation," *Review of Public Personnel Administration* 23, no. 1 (March 2003): 3–22, <https://doi.org/10.1177/0734371X02250108>.

²⁰ Daniel Abebe and Aziz Huq, "Foreign Affairs Federalism: A Revisionist Approach," *Vanderbilt Law Review* 66, no. 3 (April 1, 2013): 723.

ownership and the anti-money laundering laws have not been kept up to date in order to respond to the current methods through which criminals try to conceal their earnings.²¹

In Delaware, there is no clear definition of beneficial ownership, and it is only required to be proven in limited circumstances. Thus, there is no requirement to identify the real owner of the asset. This also contributes to the fact that U.S. authorities cannot access information in a timely manner, nor maintain a federal registry of authorities or entities, which causes the government to rely on the state's information. Moreover, even if the risks associated with money laundering are identified, clear counter-measures are still not deployed fully. Regarding trusts, even if there is legislation related to them, the outcome is not in-line with international standards.²²

Lack of compliance with international standards is also a problem for regulations regarding customer due diligence in financial institutions and in Designated Non-Financial Businesses and Professions (DNFBPs), which then correlates to the real estate industry and shell corporations. The lack of a common strategy to fight IFFs translates into the lack of shared databases. This complicates the prosecution of the offenses at the domestic and international level.²³ It is especially problematic as the global fight against organized crime requires international cooperation.

In 2006 the U.S. Treasury Financial Intelligence Unit (FinCen) highlighted the problems created by shell corporations. According to FinCen, these types of companies are used as a 'vehicle' for criminal schemes, including credit card bust outs, purchasing fraud, and fraudulent loans, which would then be the perfect mechanisms for hiding illicit money.²⁴ Moreover, they are used in international movements to unknown beneficial owners, which facilitates money laundering and the financing of terrorism. States (especially Delaware) do not impose effective safeguards.

10 years after the FinCen report was published, investigative journalists illustrated the complicity of some states in allowing the creation of shell companies that enabled illicit

²¹ "United States Beneficial Ownership Transparency" (Transparency International, 2015), https://www.transparency.org/files/content/publication/2015_BOCountryReport_US.pdf.

²² Ibid

²³ Ibid

²⁴ "The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies," Report (Financial Crimes Enforcement Network, November 2006), https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.

financing in an expose known as the Panama Papers. States such as Wyoming, Nevada, and Delaware failed to introduce proper regulations and were all linked to one individual: Mossack Fonseca. He was involved in the registration of about 2% of the companies in Nevada registered outside of the U.S and more than 2,000 foreign-based businesses in Wyoming. More than 50 firms in Nevada were involved in the creation of different companies that were linked to addresses in Panama or Europe. The states maintain loose regulations in order to encourage these types of activities and then profit from the taxes levied. Delaware raked in \$928 million in revenue in 2014. In Nevada, the earnings were \$138 million. Wyoming earned \$31 million in the 2013-2014 fiscal year.²⁵ This phenomenon shows how states have continued to legislate in favor of IFFs, allowing money to circulate in and out of the country without proper oversight or regulation.

Finally, the real estate industry has been used as a way to conceal millions of dollars from criminal investigations, tax and other money laundering related regulations. According to the intergovernmental watchdog, the Financial Action Task Force (FATF), close to 30% of criminal assets were confiscated within this industry during the 2010-2013 period. In the United States, just as with beneficial ownership regulations, states failed to comply with best practices in the real estate industry. Furthermore, existing legislation does not require real estate agents or lawyers to identify the beneficial owners of their customers.²⁶

Companies seeking to buy land or other properties in the United States do not have to disclose information on its owners, and only financial institutions have obligations in anti-money laundering legislation in the real estate sector. Politically exposed persons (PEPs) continue to be overlooked in the real estate industry, as professionals in real estate closings do not have to verify if their customers are PEPs or associated to them. This is largely due to a lack of awareness of the risks associated with money laundering within the industry. Real estate professionals receive little or no training, which then leads to a lack of supervision in the real estate closings. Finally, states do not pay enough attention to the industry and therefore, do not enact the proper regulations.²⁷

²⁵ Steve Reilly, "Dozens of Firms Creating Foreign-Based Shell Companies in Two U.S. States," USA TODAY, accessed February 15, 2021, <https://www.usatoday.com/story/news/2016/05/26/dozens-firms-creating-foreign-based-shell-companies-two-us-states/84222480/>.

²⁶ Maira Martini, "Executive Summary," DOORS WIDE OPEN (Transparency International, 2017), <http://www.jstor.org/stable/resrep20516.4>.

²⁷ Ibid.

Understanding these sectors in which states have created lax regulation that criminals take advantage of for their personal benefit is key in order to close the loopholes. The design of the legislation surrounding beneficial ownership, easy and unsupervised creation of shell companies, and the lack of awareness of the dirty money that circulates in the real estate industry has contributed to the United States not having a strong foreign policy to combat IFFs. It also complicates efforts to address a web of threats to global security, as the U.S financial system continues to be used in money laundering and corruption schemes.

Ukrainian tycoons Ihor Kolomoyskiy and Hennadiy Boholyubov took advantage of the lax regulation in Delaware to acquire business and property with stolen money from Privatbank. Other historical cases, including those involving Viktor Bout or former Ukrainian Prime Minister Pavlo Lazarenko, have identified bad actors who utilize shell companies and who are later prosecuted for crimes related to conspiring to kill U.S. nationals, selling weapons to terrorists, and money laundering.²⁸ The U.S system has also been used by the Iranian regime to avoid financial sanctions and to buy and profit off of properties in New York. More complex triangulations between Ukraine banks and companies in Europe have benefited Mexican Drug Trafficking Organizations, one of the key organized crime group involved in the opioid crisis in the United States.²⁹

FinCen Files, an investigative journalist report, was published in late 2020.³⁰ Through analyzing historical quantitative data of Suspicious Activity Report (SARs), it made clear an important fact of the anti-IFFs global fight: dirty money continues to circulate through U.S institutions. Out of the five global banks studied, three were U.S based, including JPMorgan, Standard Chartered Bank, and Bank of New York Mellon. These financial institutions defied U.S authorities, benefitting oligarchs, terrorist organizations and organized crime in countries such as Venezuela, Malaysia, Brazil and Ukraine.

²⁸ “Shining Light In A Black Box: Can The U.S. Slow The Flow Of Dirty Money From The Ex-U.S.S.R.?” RadioFreeEurope/RadioLiberty, accessed February 15, 2021, <https://www.rferl.org/a/can-the-u-s-slow-the-flow-of-dirty-money-from-the-ex-u-s-s-r-/30651938.html>.

²⁹ Kathleen Doherty, “Biden Can’t Fight Corruption Without Help From Europe,” *Foreign Policy* (blog), accessed February 15, 2021, <https://foreignpolicy.com/2021/01/14/biden-corruption-money-laundering-shell-companies-european-union/>.

³⁰ “Global Banks Defy U.S. Crackdowns by Serving Oligarchs, Criminals and Terrorists,” *ICIJ* (blog), September 20, 2020, <http://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/>.

U.S authorities continue to fail to reform and sanction these institutions. Banks have blindly transferred dirty money across territories for years now, fueling economic insecurity, social inequality and violence at a global scale. At the center of these failed-efforts is the fact that states in the U.S continue to have lax regulation regarding beneficial ownership, and fail to report and successfully prosecute money laundering and corruption crimes. Until the loopholes that the system has created are addressed, any type of global action against IFFs will fail, because the United States, through its foreign policy, remains the key player in a wider set of governance arrangements to fight global IFFs.

CONCLUSION

IFFs are create problems for both the private and public sectors. They promote economic and political instability, a sense of insecurity, and an overall poor relationship between the government and society. Understanding how IFFs are shaped, could lead to better policy actions to fight them. Globally, illicit money circulates through a limited number of very specific institutions. In this panorama, the United States has become one of the main territories of which criminal take advantage.

IFFs are characterized by ambiguity in practice and in theory. The lack of a common definition, philosophical considerations around the definitions, and tax-related advantages, have led to ineffective global policies to fight them. Corruption and money laundering have become the main objective for several governments, but policies aimed at fighting back have fallen short. As complex as both of these problems are, the United States remains one of the key actors to understand within the anti-IFFs governance system.

Recent corruption cases, as well as journalist investigations have shown how the United States fails to fully comply with anti-IFF efforts. The public and private sectors are involved in complex webs of dirty money. This contributes to a deterioration of the U.S image abroad and fuels a host of criminal activities that later continue to affect the country indirectly. But the origins of this lax system of regulations and oversight are complex and multifaceted.

Problems have emerged as a result of a combination of several historical factors. The exacerbated power that the executive had in some instances, as well as rulings of the Supreme Court have added layers to the conduct of U.S Foreign Policy. As a result, studies have focused

on the main motives that are attributed to non-executive conduct of foreign policy.

Understanding the dynamics of foreign policy means comprehending how states (and U.S federalism) pose a challenge to an effective global fight against IFFs as a part of U.S Foreign Policy.

States have gained power in certain sectors of the legal system. The regulation of IFFs prove this. Little by little, states have created a legal environment surrounding beneficial ownership, shell corporations, and real estate industry regulations that are hostile to foreign policy priorities. By creating loopholes that benefit criminals associated with corruption and money laundering practices, states such as Delaware, Nevada, and Wyoming have posed as an impediment to Congress and even the Executive in the global fighting of IFFs.

It is important to note that progress to eliminate these loopholes was made recently, with enactment of the Corporate Transparency Act in December 2020. As a part of an even wider set of regulations regarding anti-money laundering included in the National Defense Authorization Act, these new provisions are set to oppose states authority. It remains to be seen whether states will fight the new law in court and how the Supreme Court will rule. It would be interesting to study if IFFs turned out to be another example of uncooperative federalism, directly opposing the Congress and Executive. While a decision is made, the truth is that allowing dirty money to circulate in the financial system contributes to detrimental impacts in society, widening the gap of an already unequal world and adding to threats that endanger not only foreign governments, but also citizens within the United States.

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FOCUSED CENSORSHIP: COUNTERING CHINESE DIGITAL AUTHORITARIANISM

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The views reflected here are those of the author and do not represent the official position of the United States Naval Academy, United States Navy, or the Department of Defense.

INTRODUCTION

According to President Trump’s 2018 National Security Strategy (NSS), “China challenges American power, influence, and interests, attempting to erode American security and Prosperity.”¹ The strategy, primarily concerned with great power competition, cites China as the most critical threat to American power, and therefore, the direction of the U.S.-China relationship will be critical in determining the world’s future. While Presidents have vacillated in their approach to countering Beijing’s rise, with some favoring engagement and the current administration favoring a more confrontational approach, no leader has developed the perfect grand strategy to counter China’s rise, as China continues to grow economically, militarily, and in its ability to assert its dominance around the world. One of the determining factors as to whether or not China and the US will fall into the Thucydides trap, when a new power (China) rises to challenge the superiority of an existing power (the United States) which ultimately ends in confrontation, will be China’s future treatment of advanced technologies.² China uses advanced technology to support its digital authoritarian model which ultimately provides a model for dictatorial regimes to control their citizens.

In 2021, authoritarians like Xi Jinping can manipulate advanced technologies in numerous ways. Digital authoritarianism is the use of digital information by authoritarian regimes to surveil, repress, and manipulate domestic and foreign populations.³ Digital repression comprises six techniques: surveillance, censorship, social manipulation and harassment, cyber-

¹ United States, 2017, *National Security Strategy of the United States of America*, [Washington]: President Donald J. Trump, 25.

² Richard Haass, *The World: a Brief Introduction* (New York: Penguin Press, 2020), 95; Graham Allison, “The Thucydides Trap: Are the U.S. and China Headed for War?,” December 5, 2016.

³ Steven Feldstein, “When It Comes to Digital Authoritarianism, China Is a Challenge - But Not the Only Challenge,” February 12, 2020.

attacks, internet shutdowns, and targeted persecution against online users. This list is not all-inclusive but does comprise a specific toolkit for surveillance, repression, and manipulation. In 2018, a Freedom House report on digital authoritarianism declared China the worst abuser of internet freedom.⁴ Since 2018, China's digital authoritarian policies have only increased in severity. In recent years, Chinese companies have supplied telecommunications hardware, advanced facial recognition technology, and data-analytics tools to a variety of governments with poor human rights records. Because this is a relatively recent and ongoing operation, the United States is right to consider digital authoritarianism a central focus. The United States should place an even greater focus on monitoring digital trends in the COVID-19 era. China's extensive use of these technologies to manage its outbreak, to continue to suppress internal dissent, to reshape debates about the pandemic in the United States, and to make democracy look less attractive should bring increased attention to the topic. Authoritarian leaders in China and around the world have the incentive and the opportunity to survey their populations and collect large amounts of data and more reason to follow Beijing's example.⁵

Suppressing dissent and exporting this system of digital repression allows China to shape a world antithetical to U.S. values and interests, a key threat outlined in the National Security Strategy.⁶ Digital authoritarianism endangers democracy and simultaneously strengthens autocracy. Freedom House notes, "Securing internet freedom against the rise of digital authoritarianism is fundamental to protecting democracy as a whole."⁷

BACKGROUND

Through a series of economic and technological reforms and a variety of intellectual malpractices since the 1970s, China has gradually risen from technological irrelevance to technological prominence. From 1990 to 2010, Chinese enrollment in higher education rose significantly, and the number of college graduates grew from 300,000 to nearly 3,000,000 per year. Over the same period, China's share of total world higher education enrollment increased from six to seventeen percent. Today, under Xi's rule, investment in science in technology has

⁴ Adrian Shahbaz, "The Rise of Digital Authoritarianism," Freedom House, 2018.

⁵ Ibid.

⁶ United States, 2017, *National Security Strategy of the United States of America*, 25.

⁷ Ibid.

continued to soar. In 2017, eight million students graduated from Chinese universities - compared to three million students graduating from U.S. universities that year. In 1990, the United States graduated 20 times more science and engineering Ph.Ds. than China did, but by 2010, China surpassed the United States in this pursuit.⁸ To quantify China and the United States' technological paths using another metric, China's worldwide spending on research and development has increased twelvefold since 2000, while the United States as a percentage of global share has fallen from 37 to 25 percent.⁹

China's use of digital authoritarianism at home sets a dangerous precedent for its exportation of the practice. At home, China's intention for cyberspace is to limit access to information and ideas that run counter to the CCP's ideology.¹⁰ To do this, Xi implemented a surveillance state at home which tracks citizens and censors content, as he simultaneously invests in new technology to strengthen his ability to control his citizens. Domestically, China collects large amounts of data through tax returns, financial, criminal, and medical records to carry out its Social Credit System. The Party uses the system to exploit its citizens, banning those whom it deems untrustworthy from certain services. An extreme example of digital control exists in the Uyghur Autonomous Region in Xinjiang where the CCP has detained more than a million Uyghurs in reeducation camps based on cell phone data, genetic information, and religious information that does not align with party ideals.¹¹ China also uses surveillance technology to control government officials and to censor citizens through its great firewall which removes subversive content from the internet. All of these actions help form a picture of the Chinese model of internet control for Xi's attempts to export his system abroad.

China has recently undertaken operational plans to increase its digital reach worldwide. Made in China 2025 is a ten-year plan to transform China into a manufacturing power by reviving high tech industries. The plan focuses on new information technology, aerospace equipment, and increasing the number of R&D centers throughout China. The initiative, if successful, would ultimately allow it to be the main exporter of digital technology around the

⁸ Katherine Stapleton, "China Now Produces Twice as Many Graduates a Year as the US," April 13, 2017.

⁹ Jonathan Gruber and Simon Johnson, "To Counter China, Out-Invent It," *Foreign Affairs*, September 16, 2019.

¹⁰ U.S. Congress, Senate Committee on Foreign Relations. 2020. *The New Big Brother: China and Digital Authoritarianism*, Congressional Publications.

¹¹ Adrian Shahbaz, "The Rise of Digital Authoritarianism," Freedom House, 2018.

world.¹² The 2013 Belt and Road Initiative, a global infrastructure development strategy designed to promote Chinese investment in countries around the world, includes a Digital Silk Road of Chinese fiber-optic networks, which gives China outlets around the world to promote its technology in the global marketplace. The Digital BRI will allow China to meet its Made in China 2025 goals and to set the new technical standard for countries acquiring new surveillance technology.¹³ Beyond providing an outlet for China to globally export technology, the Belt and Road initiative includes exporting security apparatuses into unstable regimes and a push for countries to adapt and accept Chinese practices, making the Digital Silk Road doubly concerning.¹⁴¹⁵ When selling surveillance technology, China does not discriminate between countries that uphold human rights standards and those that do not. Beyond merely helping authoritarian governments exploit their own people, state run companies send this data back to China. To be clear, China is not the only country exporting surveillance technology to authoritarian regimes. The United States, Israel, and European countries have all sold similar technology to authoritarian regimes around the world. However, Chinese companies are the main exporters of surveillance technology worldwide and China is the largest exporter to authoritarian regimes.

While China has drastically expanded its technological capabilities through Research and Development funding and pursuits to export this technology, the United States has gradually cut federal funding for research and development, putting the United States at a disadvantage to propose an alternate model to Chinese digital technology. At its peak during the Cold War, the United States spent 2 percent of its GDP on R&D in the 1960s. As a result, the United States founded companies such as IBM, AT&T, and Xerox. Unfortunately, between the late 1960s and today, there has been a slow and steady decline of US federally funded R&D spending. As of 2017, R&D spending in the United States accounts for only .6 percent of GDP, and the United States risks losing international prominence in this arena, as nine countries currently outspend the United States. Although the United States still sees a significant amount of R&D funding from private industry, private research and development is fundamentally different from

¹² James McBride and Andrew Chatzky, "Is 'Made in China 2025' a Threat to Global Trade?," Council on Foreign Relations (Council on Foreign Relations, 2019).

¹³ "China's Digital Silk Road: Strategic technological Competition and Exporting Political Illiberalism," Council on Foreign Relations (Council on Foreign Relations, September 26, 2019).

¹⁴ . Zi Yang, *Securing China's Belt and Road Initiative* (Washington, DC: U.S. Institute of Peace, November 2018)

¹⁵ China's Belt and Road: The New Geopolitics of Global Infrastructure Development, 13.

federally funded research and cannot replace public sector investment.¹⁶ By 2029, China is projected to overtake the United States in federally funded research and development. Even with combined private and federal funding, the United States still lags behind many other countries

Past National Security Strategy Approaches

President Obama's 2010 National Security Strategy reflects his administration's "pivot to Asia" strategy, which involved engaging with China and building a deeper and more effective partnership. While the administration recognized China's worldwide reach was expanding, it believed as China became more engaged globally, international institutions would help facilitate good behavior and cooperation. The part of his strategy focused on protecting cyberspace included a variety of unilateral and multilateral strategies, some implicitly aimed at countering China, but never explicitly to counter the Chinese cyber threat.¹⁷ Though multilateral strategies included working with Asian allies who are geographically close to China, the President seemed most concerned with developing acceptable conduct in cyberspace, laws concerning cybercrime, data preservation, protection, and privacy. The President recognized this would be an effort across all national and international levels of government to investigate and organize the rules for cyberspace's future.¹⁸ However, none of this focused on digital infrastructure and was only limited to certain aspects of digital authoritarianism.

President Obama's National Security Strategy 2015 shares similar themes of engagement, and broad pronouncements about the cyber threat, with a focus on Russia's misconduct in cyberspace. The President once again noted cybersecurity as a transnational problem, which needed alliances and partners around the globe to solve.¹⁹ Overall, the President still sought engagement with China on most issues, hoping China would integrate into the U.S. led international order. While he recognized China's rise he still contended that the "scope of our cooperation with China is unprecedented."²⁰ Overall, the cyber strategy portion of the NSS heavily focused on Russian cyber-attacks and their information operations targeting public

¹⁶ James Manyika, Adam Segal, and William H. McRaven, "The U.S. Needs a New Strategy to Keep Its Edge in Innovation," Council on Foreign Relations (Council on Foreign Relations, September 2019).

¹⁷ *Ibid.*, 50.

¹⁸ *Ibid.*, 28.

¹⁹ United States, 2015, *National Security Strategy of the United States of America*, [Washington]: President Barack Obama, 4.

²⁰ *Ibid.*, 2.

opinion. For the first time in the 2015 NSS, the President used the words “China” and “cybersecurity” together in the same sentence, albeit only once when he stated, “On cybersecurity we will take necessary actions to protect our businesses and defend our network against cyber-theft of trade secrets for commercial gains whether by Chinese actors or by the Chinese government.”²¹ There was no broader mention of digital authoritarianism posing a threat to U.S. national security. The President mentioned surveillance technology’s threat, but only spoke about its threat domestically and did not link the practice to China.²²

Beyond the NSS, there are several individual policies and acts the Obama Administration carried out which helped shape the administration’s overall strategy to counter aspects of Chinese digital authoritarianism. When he first came into office, President Obama ordered a review of U.S. cybersecurity policy, which found that increasing American dependence on digital technology made the United States vulnerable in a way it was not prepared to handle. The report focused on vulnerabilities and on creating international norms for cyberspace, which guided much of the President’s strategy throughout the future of his administration.²³ In 2015, President Barack Obama and President Xi Jinping formally committed that “neither country’s government will conduct or knowingly support cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors.”²⁴ In his second term, Obama also tried to pressure China to engage in liberal trade behavior through alliances and international cooperation in the form of the trans-Pacific block.²⁵ While the President did attempt to secure American technology and American cyberspace, he did not focus on Chinese digital authoritarianism while he was in office. His historic deal with Xi and other presidential actions focused on U.S. intellectual property theft. While this is one of the root causes of China’s technological rise, it did not do much to directly deter Chinese surveillance, repression, or manipulation of domestic or foreign populations.

President Trump’s 2017 NSS directly confronts the China threat, framing the new age of great power competition primarily between China and the United States. The strategy effectively

²¹ *Ibid.*, 24.

²² *Ibid.*, 20.

²³ David P. Fidler, “Sidetracked: Obama’s Cybersecurity Legacy,” *World Politics Review*, December 15, 2015.

²⁴ “White House Office of Trade and Manufacturing Policy,” 2018, 4.

²⁵ Jonathan Gruber and Simon Johnson, “To Counter China, Out-Invent It,” *Foreign Affairs*, September 16, 2019.

ended the American policy of engagement with China, stressing “China challenges American power, influence, and interests attempting to erode American security and prosperity.”²⁶ Unlike President Obama’s strategy, President Trump’s NSS recognizes the extent of the digital threat. For example, the United States recognizes that China gathers and exploits data on an unrivaled scale and spreads features of its authoritarian system, including corruption and the use of surveillance, and China is gaining a strategic foothold around the world by investing in critical technology.²⁷

To avoid losing America’s technological edge, President Trump focuses on preventing Chinese acquisition of critical technology by protecting American technological innovation, and ensuring countries around the world maintain sovereignty. Unlike the Obama administration’s strategy, the plan focuses on preventing foreign acquisition of Chinese critical technology, which is key to defending against digital authoritarianism. To curtail the spread of authoritarian technology abroad, the strategy focuses on working with partners to restrict its acquisition of sensitive technologies.²⁸ It also suggests helping South Asian Nations maintain their sovereignty when China exerts influence.²⁹ This has come in the form of creating a U.S. Association of Southeast Asian Nations (ASEAN) Smart Cities partnership and discussions on cyber sovereignty.³⁰

President Trump’s strategy to defend against digital authoritarianism has been a unilateral but confrontational approach, exemplified by imposing tariffs and attempting to curtail intellectual property theft by waging a trade war. President Trump has also prohibited Chinese surveillance technology in the United States through a 2018 law that prohibited the purchase and use of telecommunications equipment from certain Chinese companies.³¹ In May 2019, the President issued an executive order which restricts the use of communications technology, or services that threaten the national security, foreign policy, or economy of the United States, which was more inclusive than the 2018 law.³² In February of this year, the Senate went so far as

²⁶ United States, 2017, *National Security Strategy of the United States of America*, [Washington]: President Donald J. Trump, 2.

²⁷ *Ibid.*, 47.

²⁸ *Ibid.*, 48.

²⁹ *Ibid.*, 50.

³⁰ Lindsey Ford, “The Trump Administration and the Free and Open Indo Pacific,” May 2020, 8.

³¹ Kaska Kadri and Henrik Beckvard, “Tallinn 2019 Huawei, 5G and China as a Security Threat.”

³² “Executive Order on Securing the Information and Communications Technology and Services Supply Chain,” The White House (The United States Government).

to pass a bill to pay telecom carriers to replace any Huawei or ZTE equipment in their networks. All of this strengthens American cybersecurity, but does little to stop the digital authoritarianism threat. Abroad, the Trump Administration has discouraged digital espionage and control. The *Secure 5G and Beyond Act of 2020* requires the executive branch to develop a strategy to create and to protect new U.S. and allied 5G infrastructures.³³ As this law does not yet have an implementation plan or funding, it is difficult to predict its role abroad, though it is a good first step to prevent Chinese selling of its own surveillance technology and discussions on cyber sovereignty.

RESPONSES

A. *Focus on Surveillance Technology*

Digital authoritarianism is too broad and pervasive of a topic for the United States to counter each individual aspect, so the US should focus on deterring the spread of surveillance technology. Surveillance technology has the potential to affect democracy's future on a global scale, reducing citizens' abilities to assemble and protest against their governments, and allowing governments to effectively censor their citizenry. As previously noted, digital authoritarianism comprises six techniques: surveillance, censorship, social manipulation, harassment, cyber-attacks, internet shutdowns, and targeted persecution against online users. China does not dominate all of these areas. China is not the world's leader in cyber-attacks or internet shutdowns, and compared to liberal democracies, China is not a major exporter of hacking technology. Thus, by simply targeting China, the United States could not effectively counter digital authoritarianism on a global scale. However, surveillance, specifically, selling surveillance technology, is one area where China does have a heavy hand. Authoritarian regimes around the world look to the People's Republic of China as their dominant trading partner for surveillance technology.

To rise to its role as the leading surveillance technology exporter, China has leveraged its BRI relationships beyond just a source of revenue. China establishes itself in areas using the digital BRI, often selling its exclusive and inexpensive 5G technology through state funded companies like Huawei. Once Beijing establishes itself in a country, it develops relations with

³³ S.893, "Secure 5G and Beyond Act of 2020"

developing countries, which then become trading partners with whom China can export its surveillance technology. The “2019 Open Technology Fund White Paper” details the diffusion of Chinese surveillance technology to over 70 countries.³⁴ Of these 70 countries, Chinese firms appear to be the primary suppliers of AI surveillance technology to the governments of 24. Of these 24 countries, many share close political ties with China and have an authoritarian system of governance.³⁵

China’s export of surveillance technology allows countries that fall in Beijing’s growing sphere of influence to follow the Chinese model of digital authoritarianism. This involves surveilling, repressing, and manipulating populations. China’s model has included cracking down on protesters in Hong Kong, controlling the Uyghur population in Xinjiang, and eliminating the possibility for dissent through Beijing’s Great Firewall. Specifically, surveillance technology threatens freedom because it allows regimes to track dissidents, control movement, and respond to civil unrest. In democratic governments, the technology can eliminate the citizen’s ability to place checks and balances on their elected government when it fails to uphold its social contract because citizens are unable to assemble or protest without their government’s knowledge. In authoritarian states, it prevents citizens from establishing democratic governance because leaders can immediately identify and suppress dissenters.

B. Use Allies to Deter Surveillance Technology Spread

The United States should work with a coalition of allies to take a stand on the international stage against exporting surveillance technology to authoritarian regimes. The coalition of allies would address critical technology issues to counter Chinese efforts that do not support liberal values. Just as the United States must work across all areas of its own government, it should expand beyond its own resources and establish a coalition between its Five Eyes partners, Australia, Canada, New Zealand, and the United Kingdom, along with other countries with significant tech capabilities including Estonia, Germany, India, Israel, Japan.³⁶ The membership of such a coalition should be limited to ten to fifteen countries at first, to develop concrete rules and norms

³⁴ Valentin Weber, “The Worldwide Web of Chinese and Russian Information Controls,” (Centre for Technology and Global Affairs, 2019).

³⁵ Steven Feldstein, “When It Comes to Digital Authoritarianism, China Is a Challenge - But Not the Only Challenge,” February 12, 2020.

³⁶ James Manyika, Adam Segal, and William H McRaven. “The U.S. Needs a New Strategy to Keep Its Edge in Innovation.” Council on Foreign Relations, September 2019.

for action. If the group is too big, the United States risks losing a coherent message; conversely, if the group is too small, the United States would lack enforcement capabilities. Eliminating the spread of surveillance technology from its own members should be the group's first action. The group should be able to make a commitment to stop selling surveillance technology to countries it deems authoritarian. Beyond just the United States, Israel, France, and the United Kingdom all supply advanced surveillance technologies to repressive regimes. Each of these countries must stop the practice to retain group membership. The alliance should sanction firms that supply digital authoritarian regimes, regardless of whether they come from China, even if they come from traditional allies. If a country within the coalition refuses to stop selling the technology to an authoritarian regime, the other countries should remove it from the coalition.

Beyond just self-policing, some of the actions the coalition could take to counter the exporting of surveillance technology include national export controls, reviewing the classification of research, using targeted sanctions, and supporting investments for groups, which will promote a free and secure digital domain. National export controls could be an effective method to counter the spread of surveillance technology because each country of the coalition could ensure they do not sell pieces of surveillance technology.³⁷ For example, the United States is the only country that produces certain types of semi-conductors, which contribute to Chinese technology. The allied coalition could use its diverse set of resources to limit the spread of these types of materials critical to Chinese technology development. Beyond physical parts and resources, the allied coalition should conduct a review to limit technology transfer through research. First, the coalition must decide which types of technology truly pose a security risk based on who could develop such technology and what their consequences would be for a democratic society. Second, the coalition must agree on which research should be classified, distinguishing between basic and applied research. This would ensure open source information that can help reproduce critical technology and poses a security risk for democratic society is no longer available to China or any other authoritarian regime seeking to create surveillance technology.³⁸ Third, the coalition should target sanctions at regimes that buy digital authoritarian tools from China and at those which routinely employ surveillance without

³⁷ Alina Polyakova and Chris Meserole, "Exporting Digital Authoritarianism," Brookings (Brookings, November 25, 2019), 11.

³⁸ Ibid.

protections for their people or regard for civil liberties.³⁹ With such a powerful economic coalition, many countries may think twice before purchasing Chinese equipment. Last, the Big Brother Senate Report recommends establishing a fund promoting digital rights. The fund could authorize grants and investments to entities like local activist organizations, nonprofit organizations, and think tanks that provide policy recommendations to stop the proliferation of surveillance technology, all efforts that support a free and secure digital domain. The fund could also contribute to an international digital infrastructure corporation, in which foreign countries could use low interest rate loans to purchase Western digital infrastructure.⁴⁰ In short, all of these funds would promote groups and efforts to support countries with increased digital authoritarianism. If all ten to fifteen of these allies contributed to the fund, the effort would become more powerful than a unilateral effort. The International Telecommunications Union or the U.N. group of governmental experts provides two options for this coalition of allies to work within the already existing international framework.⁴¹

C. Work with Allies to Provide an Alternative Model

The best way to counter the Chinese model in countries where surveillance technology is already pervasive is to prove there is a better way to manage the internet. China is not alone in its invention and production of surveillance technology. The United States has developed its own surveillance technology and has many of the same tools that Beijing has used for digital repression. The United States must not use or allow others to use surveillance technology according to Beijing's oppressive standard. Alternatively, the United States and its coalition of allies can set a standard, or a "Digital Code of Conduct" which can replace the Chinese model that China seeks to export.⁴² This would involve placing legitimate restrictions on the global spread of authoritarian technology and restrictions on the common terms of use for platforms, which are already widely disseminated. The United States should focus on tackling social media manipulation, the misuse of data, and ensuring the internet is global, free, and secure. The United States can develop such a Digital Code of Conduct at home, but to ensure enforcement, it will

³⁹ Ibid.

⁴⁰ U.S. Congress, Senate Committee on Foreign Relations, 2020. *The New Big Brother: China and Digital Authoritarianism*, Congressional Publications, 24.

⁴¹ Ibid., 48.

⁴² Alina Polyakova and Chris Meserole, "Exporting Digital Authoritarianism," Brookings (Brookings, November 25, 2019), 11.

need the help of a coalition of like-minded entities. This coalition should be composed of governments, tech companies, and groups from civil society, which can address common terms of use among platforms.⁴³

To help enforce its internet code of conduct, the United States and its allies should invest more money than they currently do into research and development to provide an alternative model for countries purchasing problematic Chinese technology. If the United States can persuade countries to purchase its equipment instead of Beijing's, Washington can more effectively enforce laws and set the standard for its technology. The West will need to develop an alternative model of digital governance that can outcompete the Chinese model and enhance security while promoting civil liberties. Although research has been a stated aim of both the Obama and Trump administrations, neither has increased funding to Cold War levels. The United States should increase federal government support for scientific research and also increase efforts to translate that research into products and services that can be brought to market. The investments required to counter China's digital technology model are too big and risky for private firms. A good place to start would be restoring federal funding for research and development to a historical average of .7 to 1.1 percent of GDP, from about the \$146 billion that the United States currently spends to \$230 billion.⁴⁴ The increase in funding should span across the American bureaucracy to include the Department of Defense, the Department of Energy, NASA, the National Science Foundation, and the National Institute of Health. Each organization should submit budgets, which would allow them to disseminate research funding. Federal and state governments could also provide additional research investment in universities. The Council on Foreign Relations' Report, *Counting the Cost*, recommends allocating \$20 billion a year for five years to help identify national priorities, provide targeted scholarships, and fund fellowships in STEM fields.⁴⁵ Part of this effort could include encouraging allies to increase investment alongside the United States and promoting this initiative across multiple American administrations.

⁴³ Ibid., 11-12.

⁴⁴ James Manyika, Adam Segal, and William H McRaven. "The U.S. Needs a New Strategy to Keep Its Edge in Innovation." Council on Foreign Relations, September 2019.

⁴⁵ Ibid.

To control China's export of surveillance technology, the liberal world must develop its own surveillance technology; however, acquisition, development, and proliferation must adhere to strict moral standards to ensure the West does not contribute to its wrongful spread. Because regimes around the world will likely eventually acquire surveillance technology, the United States must minimize the proliferation of lawless Chinese technology, and promote its own. To do so, the United States and its allies must prove that they will not develop and use the tools in the same ways that it is trying to prevent authoritarian countries from doing. Perhaps most importantly, the United States should lead in shaping the global norms for AI in ways that are consistent with American values outlined in the NSS, such as valuing human dignity and freedom and opposing those who oppress individuals and enforce uniformity. For surveillance technology, this moral check begins with acquisition and development and continues when selling the technology to trading partners. According to ethicist Tony Pfaff, a country must meet two conditions to manage the transfer of technology to civilian society: 1) the technology must enable resistance and there must be no other less risky moral alternative, and 2) a government must ensure they put measures in place when beginning research on disruptive technologies to manage proliferation. If technology enables resistance and there is no other moral alternative, then the state should develop that technology itself. In other words, liberal allies should develop certain surveillance technologies themselves, if developing them is the only way to prevent a Chinese version of its authoritarian product. Though the United States and its allies must recognize "developing that technology brings with it a further obligation to work toward preventing its proliferation and use."⁴⁶ While it is necessary for Western countries to develop surveillance technology themselves, leadership must use this advantage to help control its proliferation rather than to contribute to the spread among authoritarian regimes. For example, the United States has exported facial recognition systems to Saudi Arabia and the United Arab Emirates, both authoritarian countries. The U.S. government and its partners must discriminate between democratic trading partners and authoritarian ones, and absolutely refrain from selling surveillance to authoritarian regimes such as Saudi Arabia and the UAE. If the United States exports its own surveillance technology to authoritarian regimes, it cannot expect to counter China in this arena.

⁴⁶ C. Anthony Pfaff et al., "The Ethics of Acquiring Disruptive Military Technologies," Texas National Security Review, April 22, 2020.

The United States should work with its allies to develop alternatives to Chinese 5G technology. Because China uses its Digital Silk Road and the promise of 5G to develop trading relationships with authoritarian regimes, the United States and its allies should work to develop their own technology that can serve as a replacement. The U.S. Senate Report on “Chinese Digital Authoritarianism” recommends establishing a Federally Funded Research and Development Center on 5G, mandating the private sector create an American private sector 5G alternative, and establishing a 5G policy coordinator within the White House. The U.S. government must devote more attention to AI and 5G and establish clear metrics of success and accountability. Huawei alone has deployed a “Safe City” system in 230 city systems around the world for more than 90 national or regional governments, which underlines the widespread scope of the problem.⁴⁷ While the United States dominated 4G smartphone apps, it has not yet been able to do so with 5G technology.⁴⁸ Companies like Huawei have largely been successful because the Chinese government supports them with subsidies. Additionally, Beijing gives Huawei shares of the Chinese domestic market, allowing the company to offer services at lower prices than competitors. The United States should learn from the Chinese model and increase its own federal funding levels for technology. Between 1988 and 2010, a federal investment approximating \$4 billion in genomic research generated roughly \$800 billion and created 310,000 new jobs. The Council on Foreign Relations estimates that federal support for basic research today could produce similar economic benefits, so there is little reason for the federal government not to increase investment in research and development.⁴⁹

CONCLUSION

In the modern digital age, Xi Jinping, who Freedom House has deemed the worst abuser of internet freedom, can manipulate technology to suppress his population at home and has used his influence to encourage other authoritarians to do the same abroad, especially during the pandemic. China’s extensive use of these technologies to manage its outbreak, to suppress internal dissent, and to reshape debates about the pandemic around the world, all delegitimize

⁴⁷ U.S. Congress, Senate Committee on Foreign Relations, 2020. *The New Big Brother: China and Digital Authoritarianism*, Congressional Publications, 35.

⁴⁸ *Ibid.*, 56.

⁴⁹ James Manyika and Adam Segal, “The U.S. Needs a New Strategy to Keep Its Edge in Innovation,” 19.

democracy on a global scale. China has also helped proliferate the use of digital authoritarianism around the world. Through the Digital Silk Road, China has promoted its 5G networks, which give China digital trading partners. At the same time that China has dramatically increased its research and development funding, the United States has cut federal research and development funding, putting the United States at a disadvantage to propose alternate models to Chinese digital technology. Presidents Barack Obama and Donald Trump have developed extensive strategies to counter China, however, the strategies have not been consistent over the last two administrations, and neither has concentrated his strategy on surveillance technology.

To counter Chinese digital authoritarianism, Washington should work multilaterally to counter Beijing's spread of surveillance technology. Surveillance technology threatens democracy and reduces citizens' abilities to organize democratic revolutions because it allows authoritarian leaders to surveil and consolidate control. Because the spread of surveillance technology is inevitable, Western allies should lead the effort and set the standard for their own populations and the rest of the world. Beijing's model of suppressing dissent, controlling access to information through firewalls, and tracking and suppressing citizens based on their ethnicity, religious beliefs, or likelihood to engage in a revolution is especially dangerous to liberal values. If the United States wants to limit Beijing's influence, Washington should increase research and development funding at home, engage in a multilateral effort, and work to develop an alternative for 5G. To establish moral authority, the United States and its allies must refrain from selling technology to authoritarian regimes before adopting a strict and enforceable digital code of conduct. Western countries must also adhere to their own guidelines and be willing to punish uniformly those who do not through export controls and sanctions. After it has established authority in the digital domain on the international level, the United States can supply an alternative model for regimes around the world.

Overall, the best way to counter the Chinese model is to prove there is a better way to manage the internet. This comes from years of adhering to just internet guidelines at home, agreeing with partners on the best terms of use, and then establishing world-renown technology at home. To do so, the United States should ensure that it, along with its allies, leads in research and development funding. Otherwise, the United States faces a world saturated with Chinese global 5G infrastructure that authoritarians can use at their will to exploit their citizens according to Beijing's precedent, with no U.S. capability or authority to regulate the foreign technology.

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LEVERAGING INTERNATIONAL COLLABORATION TO ACHIEVE U.S. LEADERSHIP IN 5G

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As the global technology race continues to gain momentum, 5G emerges as a critical area for U.S. leadership. The next generation of wireless networks will power the Internet of Things (IoT) and unlock immense opportunities in areas such as autonomous vehicles and telemedicine. To successfully respond to the technical, geopolitical, and national security challenges, the United States must develop a proactive, positive agenda for international leadership in 5G. From a foreign policy perspective, this paper will examine how the United States can deepen cooperation with its allies to lead 5G deployment. By identifying key areas and forms of collaboration, this paper will assess how the United States can develop an effective strategy to lead democratic nations towards a future powered by performant and secure 5G networks.

INTRODUCTION

5G, the next generation of telecommunications networks, will soon become the backbone of our digital economy and enable unprecedented levels of connectivity powered by the Internet of Things (IoT). The hundredfold increase in speed and ultra-low latencies of under one millisecond will prove critical to technological innovations. The United States' 4G leadership throughout the last decade propelled the economy, supporting 4.7 million jobs and contributing \$475 billion to the economy each year.¹ The nations that lead the world in 5G deployment “will have a distinct technological, economic, and national security advantage over other countries.”² For these reasons, the United States must maintain its wireless leadership in the transition to 5G networks.

The United States is facing several challenges in 5G, domestically and internationally. A report by the Defense Innovation Board (DIB) highlights alarming factors which suggest the United States is unlikely to maintain the leadership in 5G it held for previous generations of cellular networks.³ American operators face high capital expenditures when building out 5G networks, and progress is hindered by the time-intensive process of spectrum allocation as the

¹ “The Importance of 5G,” Senate Republican Policy Committee, June 2019.

² *The 5G Economy: How 5G will contribute to the global economy*. IHS Markit, November 2019.

³ *The 5G ecosystem: Risks and opportunities for DoD*. Defense Innovation Board (DIB), 2019.

Federal Communications Commission (FCC) needs to work with satellite companies to clear the spectrum and organize a spectrum auction for commercial use. Spectrum—often broken down into low, medium and high-band—designate the radio frequencies used to communicate over airways. Internationally, the United States is losing ground to China in the technology competition as Chinese 5G suppliers such as Huawei are rapidly increasing their global market share, bolstered by government subsidies and aggressive policies.⁴ As there are no major U.S.-headquartered vendors which specialize in telecommunications equipment, the United States cannot compete with China on the same front.

There is bipartisan consensus that the deployment of 5G networks raises major national security concerns. Policy makers and industry leaders warn about the dangers associated with equipment from Chinese suppliers suspected of government ties due to China's 2016 National Intelligence Law, which requires companies to cooperate and provide assistance for national security reasons.⁵ Senate Majority Leader Chuck Schumer stated that “allowing China to dominate global 5G networks threatens America's national security”, and many other members of Congress from both sides of the aisle have joined him in warning of the security risks of 5G.⁶

The majority of actions taken by Congress and the former President have focused on the short-term agenda, particularly to limit the security risks associated with equipment from untrusted vendors. However, not enough attention has been paid to the development of a long-term 5G strategy to achieve specific national priorities. The DIB report is a call to action: the United States will have to focus on other forms of leadership and rely on its allies.⁷ This paper analyzes how the United States can deepen cooperation with its allies to lead 5G deployment. An evaluation of the Congressional and presidential responses to 5G challenges, through a review of existing legislation, serves to identify two major national priorities and demonstrate the need for international collaboration to ensure U.S. leadership in 5G. Through brief case studies of the common ground and disagreements among U.S. allies, three key areas for 5G leadership and collaboration with partners are identified. Finally, this paper gathers insights from interviews with industry and policy experts to propose specific forms of collaboration and highlight the

⁴ John Walko, “Huawei Maintains Lead in Global Communications Equipment Market.” *EE Times Asia*, March 2021.

⁵ Murray Tanner, “Beijing's New National Intelligence Law: From Defense to Offense.” *Lawfare*, July 20, 2017.

⁶ Maggie Miller, “Lawmakers Introduce Measure to Freeze out Huawei from Financial System.” *The Hill*, March 2020.

⁷ *The 5G ecosystem: Risks and opportunities for DoD*. Defense Innovation Board (DIB), 2019.

potential of the Open Radio Access Network (O-RAN) architecture to achieve national and shared interests.

CONGRESSIONAL AND PRESIDENTIAL RESPONSES TO 5G LEADERSHIP CHALLENGES

Congress faces difficulties on many fronts due to the changing landscape of the telecommunications industry and global competition that threaten the nation's technological leadership. Domestic challenges range from allocating spectrum, to combatting 5G misinformation, to connecting rural America and bridging the digital divide. There is a bipartisan consensus to develop policies to address these critical issues. Several bills including the "5G Spectrum Act of 2019" have been introduced to improve spectrum availability and accelerate the deployment of 5G networks.⁸ The Federal Communications Commission (FCC) manages this public resource and makes it available for commercial use via auctioning. The agency has made some significant advancements, including starting in December 2020 its largest mid-band 5G spectrum auction to date.⁹ This fits into the broader context of FCC Chairman Pai's strategy to Facilitate America's Superiority in 5G Technology, the 5G FAST plan¹⁰.

Congress has also responded to the national security threat posed by deploying 5G networks with equipment that could contain security vulnerabilities. Representatives from across the aisle have been quite vocal about the issue, affirming that "Nations cannot cede telecommunications infrastructure to China for financial expediency."¹¹ Congress has attempted to address the security threat by passing important legislation restricting access to Chinese "high-risk vendors" through bills such as the Secure 5G and Beyond Act of 2020, which became law in March 2020.¹² This was coupled with tougher investment laws by the interagency Committee on Foreign Investment in the United States. In May 2019, former President Trump issued an executive order which effectively prohibited U.S. companies from using communications technology produced by vendors that presented a national security threat.¹³ Huawei was added to

⁸ U.S. Congress. Senate. *5G Spectrum Act of 2019*. S 2881. 116th Cong. Introduced in Senate November 2019.

⁹ "FCC Begins Major 5G Spectrum Auction." Federal Communications Commission, December 2020.

¹⁰ "The FCC's 5G FAST Plan." Federal Communications Commission, October 2019.

¹¹ "Speaker Pelosi Remarks at Munich Security Conference." Speaker Nancy Pelosi, February 2020.

¹² U.S. Congress. Senate. *Secure 5G and Beyond Act of 2020*. S 893

¹³ Executive Order "Securing the Information and Communications Technology and Services Supply Chain." May 2019.

the Entity List, a trade blacklist published by the Department of Commerce's Bureau of Industry and Security.

The United States' strategy on the international stage has been very defensive. Leaders in the previous administration attempted to pressure allies to adopt a similar stance on untrustworthy 5G vendors, denouncing China's intentions, highlighting the national security threat, and calling for U.S. allies to stand up against China. This pressure was also reflected in legislation drafted by Congress, particularly with the bill introduced "To prohibit the sharing of United States intelligence with countries that permit operation of Huawei fifth generation telecommunications technology within their borders."¹⁴ This put American allies in a difficult position, having to choose between keeping the United States as an intelligence partner or doing business with China. This accentuated the existing tensions between the United States and its allies, as the administration had been distancing itself from international cooperation, agreements, and long-lasting partnerships.

Previous administrations committed mistakes early on, not only in terms of strategy but also communication. Former congressman Mike Rogers pointed out that policymakers did not clearly communicate the critical distinction between the economic and the national security issues of 5G.¹⁵ The consequences translated into setbacks on the international stage, which were particularly visible under the previous administration when former President Trump intended to use Huawei as a trade negotiation which increased doubts as to whether the United States was exaggerating the national security concerns to pursue its own geopolitical and economic interests. This led some allies in Europe to believe that the Huawei debate was a trade issue, when it really is a security issue, sowing confusion among allies and inhibiting the creation of a cohesive strategy.¹⁶

In 2020, the United States mounted an international campaign to keep Huawei equipment out of any foreign 5G network that might carry sensitive U.S. intelligence. The success or failure of this approach is debated among scholars. Some view government-led initiatives such as The Clean Network as a success, effectively enabling over 50 countries to commit to internationally

¹⁴ U.S. Congress. House. *To prohibit the sharing of United States intelligence with countries that permit operation of Huawei fifth generation telecommunications technology within their borders*. HR 5661. Introduced in House Jan 2020.

¹⁵ Mike Rogers, interview by author, February 24, 2021.

¹⁶ Ibid.

accepted digital trust standards. At the start of 2020, many American allies had signed agreements with Huawei to start building their networks. But as the year unfolded, many allies—notably the United Kingdom—backed out of their agreements with Chinese vendors due to national security concerns, under pressure from the United States. In a sense, the United States successfully achieved its short-term goal of preventing their allies from using equipment from Huawei.

However, this defensive strategy is neither sustainable in the long-term nor helpful in terms of promoting America’s innovation and technological leadership on the international stage. The campaign against Huawei reflects the intention to “tear China down rather than build America up.”¹⁷ The strategy has been overwhelmingly negative and aggressive towards China and lacks strong incentives for allies to side with the United States. Unilaterally with China, the strategy has been all sticks; multilaterally with allies, no carrots have been offered.¹⁸ Policy makers cannot expect allies to support the position of the United States indefinitely with no clear benefits or incentives. The United States needs a positive innovation agenda to stay ahead and lead our allies by example, not by fear.

U.S. NATIONAL PRIORITIES AND THE STRATEGIC ADVANTAGE OF COOPERATING WITH ALLIES ON 5G

The United States’ national priorities should shape its 5G strategy. After analyzing transcripts of committee hearings on 5G deployment and development, reviewing the dozen bills introduced to Congress, and attending webinars with government and industry representatives, I identified two key national priorities for the United States: Ensuring the Security of Global 5G Networks and Maintaining the United States’ Leadership in Technology Innovation. These two goals cannot be accomplished without relying on our international alliances.

A first and key priority, as defined in the Secure 5G and Beyond Act of 2020, is to “develop a strategy to ensure the security of next generation mobile telecommunications systems and infrastructure.”¹⁹ The past few years have seen an increase of cyberattacks on U.S. private companies, agencies, and critical infrastructure. Risks to telecommunications systems include

¹⁷ “Seizing the Moment: America’s Alliances and the Technology Race.” Webinar, CISAC, Stanford University, June 2020.

¹⁸ Ibid.

¹⁹ U.S. Congress. Senate. *Secure 5G and Beyond Act of 2020*. S 893

access by foreign actors for espionage, operational control purposes, and targeted infrastructure attacks.²⁰ The nature of telecommunications highlights that 5G network security is a joint issue. It is not sufficient for the United States to develop resilient and secure networks domestically: if one international ally has a major network vulnerability, it can compromise communications with other allied nations. It truly is in everyone's best interest to secure their 5G networks, which reinforces the idea that security is such a key area for cooperation with allied nations. "The United States should continue to encourage partner nations to secure their own supply chains."²¹

The second priority is to maintain the United States' status as a leader in technological innovation. The country's leadership in 4G during the 2010s propelled the U.S. economy as American companies "set the pace for global innovation", thanks to industry innovation and investment as well as smart wireless policymaking.²² There are concerns about how the United States and its allies can reduce dependence on Chinese equipment and remain technologically competitive in the long-term. Actions taken such as the banning of Huawei from 5G networks and America's campaign to pressure allies to do the same, have created a perception of a "scared" America that feels threatened by China's geotech dominance and the United States' inability to compete. The United States must immediately shift the narrative and clearly separate the economic and national security issues to be successful in addressing the two priorities.

There is a strong push from the government to "lead" in 5G, but it is not clear what it specifically means for the United States to lead the 5G transformation. Experts do not all agree on a common answer, which makes it even more difficult for Congress and the White House to engage in productive conversations and agree on a single, cohesive strategy.²³ There are many possible metrics that could be used to define international 5G leadership. One such metric could be the country's market share in 5G network equipment manufacturing, but this is no longer a feasible goal for the United States since the leading network hardware manufacturers are European or Chinese, not American. More realistic metrics include the representation of U.S. operators and vendors in standards-setting organizations, or the implementation of multilateral agreements with allies to encourage a global approach to network security and interoperability.

²⁰ U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. *5G Supply Chain Security: Threats and Solutions*. March 2020.

²¹ *The 5G ecosystem: Risks and opportunities for DoD*. Defense Innovation Board (DIB), 2019.

²² "How America's Leading Position In 4G Propelled the Economy," Recon Analytics, April 2018.

²³ Blair Levin, "Presidential Announcement Ignores Core Question: What Is Leadership in 5G?" Brookings, May 2019.

Vendors supply the network hardware, while *operators* buy from vendors to provide communication services to customers.

Telecommunications is by nature a global industry, and U.S. ambitions are not attainable without cooperation with our allies. Historically, alliances have been one of American's greatest strengths and achievements in science and technology have often been enabled by technological partnerships and joint projects, such as the U.S.-Japan Strategic Alliance in the Semiconductor Industry. Today, as the United States faces challenges in 5G and more generally in geotech competition, "cooperation with allies and partners is key for U.S. success."²⁴ A report by the Center for the Study of the Presidency and Congress underlines the recent skepticism regarding international cooperation, which accelerated under the Trump administration. It is important to emphasize the fundamental shared values of the United States and our allies and that "multilateralism is stronger than nationalism when it comes to facing the threat of authoritarian countries taking the lead in strategic technologies." Short-term economic benefits should not determine the development and deployment of the next telecommunications networks. The long-term costs of security vulnerabilities and loss of digital sovereignty are just too high. The divided world needs to reunite behind the cohesive message that technology disruption should not come at the expense of citizens' privacy and security. The president, at international conferences and press conferences, should play a role in emphasizing this vision and returning to our fundamental shared values with our allies.

Moreover, in the context of U.S.-China competition, leveraging the power of alliances can be the United States' competitive advantage. A report published by the ASEAN Studies Centre highlights that even within China's regional sphere of influence, China lacks a strong network of alliances which has worsened in recent years due to its handling of the pandemic and its unfair punitive trade embargoes against partners like Australia.²⁵ Moreover, "COVID-19 has raised serious questions regarding Beijing's concealment of the virus, and its larger aim to bolster its position in the global order through sheer economic might."²⁶ In 2020, 53.6% of ASEAN countries would side with the U.S. over China if given a binary choice. In 2021, that number jumped to 61.5%. The increase in favorable trust perceptions is an opportunity for the

²⁴ *Geotech: Fostering Competitiveness For Technological Competition*. CSPC. September 2019.

²⁵ S. Seah, et al., *The State of Southeast Asia: 2021*, Singapore: ISEAS-Yusof Ishak Institute, 2021.

²⁶ Harsh V. Pant, and Aarshi Tirkey. "The 5G Question and India's Conundrum." *Orbis* 64, no. 4 (2020): 571-588.

United States to expand its alliance network with not only Western allies but also ASEAN countries in the context of 5G development and deployment.

KEY AREAS FOR U.S. 5G LEADERSHIP AND COLLABORATION

The United States fortunately has a long history of diplomatic relations and technological partnerships with core allies, which should be considered when establishing a path forward. Key allies include the Five Eyes (Australia, Canada, New Zealand, U.K.), the European Union, Japan, and South Korea, among others. What is important to consider, however, is that not all allies share the exact same interests in 5G deployment. Partners have varying needs due to economic, strategic, and technical considerations. These differences materialized in 2020 among serious tensions between the United States and United Kingdom over the Huawei ban. Yet international collaboration is not about agreeing on every single aspect of an issue, it's about finding common ground and complementing each other's strengths. To identify these areas for common ground, as well as areas of contention, I conducted brief case studies on a few of the United States' strongest allies who could work together to achieve the national and shared goals from the previous section. I reviewed the countries' legislation, assessed their technical strengths and weaknesses, and summarized the results in the following table. It demonstrates the varying views of U.S. allies, but also identifies promising areas for cooperation. Noticeably, the security of 5G networks remains a priority for the vast majority of allies. Cooperation on 5G security has started to materialize already, particularly through international conferences like the Prague 5G Security Conference of 2019.

Ally	Priorities & Strengths the U.S. can leverage	Disagreements & Weaknesses
European Union	<ul style="list-style-type: none"> -Strong history of contributions to international standards and telecommunication leadership (2G, GSM global standards) -Hosts key standards organizations (3GPP, ETSI) -5G Action Plan, coordination of 5G deployment across EU member states - Home to 2 major telecom vendors: Nokia (Finland), Ericsson (Sweden); #2 and #3 in technical contributions to 5G standards -Close collaboration between private and public sectors, notably through 5GPPP (EU Public-Private Partnership) -Early bilateral 5G agreements with foreign countries (Brazil, China Japan, South Korea) 	<ul style="list-style-type: none"> -Divided stance on Huawei due to economic ties with China (Germany's car exports to China, Huawei's low prices): tensions exist as the EU is one of Huawei's largest markets while a major source of U.S. allies -Some countries like Germany adopt cautious "wait and watch" approach to arrive at a decision -European Commission signed Joint Declarations on 5G with China -EU lags behind in 5G trials and spectrum allocation due to regulatory challenges
United Kingdom	<ul style="list-style-type: none"> -Major focus on security; ranked #1 in ITU Global Cybersecurity Index (2018) -Desire to avoid dependence on Chinese equipment and maintain global competitiveness -Banned Huawei equipment from 5G networks -Long history of intelligence-sharing (Five Eyes) -International leadership; proposed creation of Democracy-10 (D-10) group for 5G collaboration 	<ul style="list-style-type: none"> -Mixed agreement on whether to allow Huawei to equip 5G networks (2019/20); public disagreements among U.S. and U.K. officials on the Huawei ban -Financial influence: Chinese FDI of EUR 50.3 billion since 2000
Japan	<ul style="list-style-type: none"> -Banned Huawei equipment from 5G networks -Experience with first-mover advantage, took the lead on 3G -Early R&D investments: 2014 5G Mobile Forum (5GMF) -Early experimental 5G trials, with both sub-6 & mmWave: understand practical challenges, push for pragmatic view -Focus on not only urban areas but also rural Japan with 5G System Trial, bridging digital urban/rural divide 	<ul style="list-style-type: none"> -Distinct challenges due to very different population density and geographical footprint compared to U.S.; Japan is more comparable to U.S. dense urban areas than the country as a whole
South Korea	<ul style="list-style-type: none"> -5G maturity, 2017 national spectrum plan, early auction; can leverage first-mover advantage in the sector globally -Centrally planned industrial policy; strong government support, tax benefits to operators if they worked together -Close collaboration with Verizon/AT&T on 5G mmWave -Samsung #2 & LG #3 in number of 5G patents; advanced hardware could be foundation of every 5G base station and smartphone 	<ul style="list-style-type: none"> -As with Japan, very different population density and geographical footprint -Face security-trade dilemma; dependent on China for trade & investments; 27% of exports went to China vs just 12% to U.S. (2018) -Many companies, including competitor Samsung, wish to collaborate with Huawei
Australia	<ul style="list-style-type: none"> -Major focus on security; ranked #10 in ITU Global Cybersecurity Index (2018) -Banned Huawei equipment from 5G networks -Long history of intelligence-sharing with U.S. (Five Eyes) 	<ul style="list-style-type: none"> -Complex Sino-Australian relations; deteriorating diplomatic relations with China which still holds powerful economic influence as Australia's #1 trading partner

<p>India</p>	<ul style="list-style-type: none"> -#2 Largest smartphone market; potential collaboration in the development of devices leveraging 5G technology -Deteriorating Sino-Indian ties; border disputes -Increasing focus on national security; banned 50 Chinese apps due to national security threat (2020) -Existing alliances, 2+2 ministerial dialogue. India, US, and Israel collaborating on 5G tech (2017) -Early 5G experiments, 3-year program for developing indigenous 5G test beds (2018) -Attempts to leverage Open RAN architecture to build low cost 5G open source-based network 	<ul style="list-style-type: none"> -Cannot ban Huawei due to financial concerns: operators face massive debt (AGR crisis 19') and have lower price points -5G trials authorized with all vendors, including Huawei (Dec 19) -Limited presence in 5G technology standard-setting bodies -Security issues: ITU Global Cybersecurity Index dropped from 23 to 47 (2018)
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Figure 1: Identifying common ground and disagreement to establish promising areas for cooperation with allies ²⁷.

Congress has expressed the importance of “enhancing the representation and leadership of the United States at international standards-setting bodies” in a bill passed in the House in 2019.²⁸ It is advantageous that some U.S. allies have extensive experience in telecommunications leadership and setting standards, most noticeably the European Union with GSM global standards, bolstered by the technical contributions of Ericsson and Nokia to organizations like the 3rd Generation Partnership Project (3GPP). It is in the interest of the United States to work with European partners in standards-setting organizations to set the agenda and promote our vision for 5G standards, with a particular emphasis on network security.

Key partners share concerns of the rise of China’s global technological dominance, and express the desire for their countries to remain competitive and reduce dependence on Chinese equipment suppliers. The ambition to remain competitive in the technology industry should positively shape international cooperation. However, it shouldn’t be about bringing China down per say, but about uplifting and bolstering the innovation in democratic nations.

Despite the United States’ warnings about the security threats of equipment from Chinese vendors like Huawei, strong disagreements between allies remain. These differences can be explained by primarily two factors: first the economic incentives due to the low cost of Huawei

²⁷ *Global Cybersecurity Index 2018*. International Telecommunication Union (ITU) Publications, 2019; *The 5G ecosystem: Risks and opportunities for DoD*. Defense Innovation Board (DIB), 2019; Erik Brattberg and Ben Judah, “Forget the G-7, Build the D-10.” *Foreign Policy*, June 2020; Colin Blackman and Simon Forge. *5G deployment: State of play in Europe, USA and Asia*. European Parliament, 2019; John Hemmings and Sungmin Cho. *South Korea’s Growing 5G Dilemma*. CISAC. July 2020; “Chinese FDI in Europe: 2019 Update.” Rhodium Group and the Mercator Institute for China Studies, April 2020.

²⁸ U.S. Congress. House. *Promoting United States International Leadership in 5G Act of 2019*. HR 3763. 116th Cong. Introduced in House July 15, 2019.

equipment (20-30% cheaper than alternative competitors), and second the desire to maintain a good relationship with China for trade reasons.²⁹ Doing business with Huawei is very attractive to countries with lower price points, including Eastern European countries and India. The second factor is the main reason why Germany decided not to ban Huawei equipment from their networks as of December 2020, after two years of deliberation. China was Germany's most important trading partner in 2019 for the fourth year in a row.³⁰ Striking a balance between cooperating with Western allies on security while not upsetting its main exporter is a challenging task.

The United States must acknowledge the difficult position that its allies are in; we can neither assume nor take for granted that allies will be fully on board on the campaign against Huawei, "As most countries are well on their way to deploying 5G networks, their policy choices are situated on the triangulation of three considerations—national security, strategic concerns and economic considerations."³¹ During discussions and negotiations, the U.S. must consider these three areas to be strategic and present convincing arguments, carefully considering the interests of our allies and how they can align with our national priorities. The United States will also need to highlight long-term benefits of building secure, reliable, and interoperable 5G networks, as opposed to the short-term economic benefits of lower manufacturing costs.

From these remarks and results summarized in Figure 1, we can draw on three key areas for collaboration with allies: Contribute to Global Standards and Promote Interoperability, Limit the Security Vulnerabilities of 5G Networks, and Foster Competitiveness and Long-term Innovation.

FORMS AND STRUCTURES FOR COLLABORATION WITH ALLIES ON 5G

The question now is how exactly to pursue these three key areas of cooperation with allies. It is important to note that most of the 5G deployment and development is directed by industry; in Western nations, "the role of government has changed from being in the lead to

²⁹ Harsh V.Pant and Aarshi Tirkey,. "The 5G Question and India's Conundrum."

³⁰ German Federal Statistical Office, "China Was Germany's Most Important Trading Partner in 2019 for the Fourth Year in a Row," March 2020.

³¹ Harsh V.Pant and Aarshi Tirkey,. "The 5G Question and India's Conundrum."

acting as a facilitator” of telecommunications industry development.³² While they can’t directly develop the network technology, governments can incentivize operators and vendors to go in a certain direction.

Contribute to Global 5G Standards and Promote Interoperability

a) Lead the development of international standards

Telecommunications, unlike other technology sectors, is a standards-driven industry.³³ The “first-mover advantage is particularly pronounced in wireless generation transitions because the leader can set the foundational infrastructure and specifications for all future products” and reap the commercial rewards.³⁴ Given the history of the U.S. technology industry in the past decade, it is likely that the United States will be successful in commercializing products that use 5G, including smartphones, IoT devices, and emerging technologies like self-driving cars. It is of utmost importance for U.S. companies to participate in setting standards to have a head start in the production and commercialization of products that rely on 5G technology.

Several bills introduced to Congress emphasize that “the United States and its allies and partners should maintain participation and leadership at international standards-setting bodies.”³⁵ While government actors cannot directly help set standards, it is viable for federal agencies to assist trusted companies and relevant stakeholders with participation in organizations that set standards for telecommunications, wireless devices, and related equipment.³⁶ These organizations include 3GPP, the European Telecommunications Standards Institute (ETSI), and the O-RAN Alliance.

There is a real opportunity to leverage our allies’ strengths in taking on leadership roles in standards-setting organizations. European countries led the development of the GSM standards, with companies actively contributing to standards within ETSI, headquartered in France. Possible actions include encouraging private sector industry leaders to take more active roles in standards settings bodies—for example, leading 3GPP working groups and pursuing

³² Wolter Lemstra, “Leadership with 5G in Europe: Two contrasting images of the future, with policy and regulatory implications.” *Telecommunications Policy* 42, no. 8 (2018): 587-611.

³³ *Ibid.*

³⁴ *The 5G ecosystem: Risks and opportunities for DoD*. Defense Innovation Board (DIB), 2019.

³⁵ U.S. Congress. House. *Promoting United States International Leadership in 5G Act of 2019*. HR 3763. 116th Cong. Introduced in House July 15, 2019.

³⁶ *Ibid.*

leadership positions like chairman to direct the agenda of the groups. It is particularly important for the United States, and its partners to set the agenda in order to prioritize security standards and open interfaces.

b) Promote interoperability with the O-RAN architecture

A major limitation of traditional Radio Access Network (RAN) architectures is the reliance on proprietary technology from a single equipment vendor. When operators plan the deployment of the next generation networks, they must choose a couple vendors and are locked in for practically a decade. It is extremely costly and difficult to switch vendors, which poses a significant issue if the equipment turns out to be dysfunctional or insecure.

An alternative approach relies on the concept of interoperability, defined by ETSI as “the ability of equipment from different manufacturers to communicate together on the same infrastructure.”³⁷ Interoperability is enabled by specific network architectures, in particular the Open Radio Access Network often referred to as Open RAN or O-RAN. The O-RAN architecture—which isn’t new to 5G but has been gaining prominence in recent years—supports the replacement of proprietary RAN technologies with open standard alternatives and involves two key initiatives: open interfaces and software and hardware disaggregation. Interoperability solves the problem of having operators locked in with a single vendor, facilitating multi-vendor deployments and increasing competition.³⁸

To better understand the additional benefits and strategic advantage of adopting the architecture, I interviewed Sachin Katti, Technical Steering Board Co-Chair of the O-RAN Alliance. The O-RAN alliance, a world-wide community of network operators, vendors, and researchers, aims to “re-shape the RAN industry towards more intelligent, open, virtualized and fully interoperable mobile networks.” Members include representatives from 26 core operator members including Verizon and AT&T, as well as 200 contributing companies. Many operators support the adoption of O-RAN as it can lower their costs, facilitate multi-vendor deployments, and unlock more flexibility.³⁹ Additionally, O-RAN has immense potential to improve the efficiency of networks as it supports the introduction of smart AI-based software into the

³⁷ “Achieving technical interoperability.” European Telecommunications Standards Institute (ETSI), 2008.

³⁸ “Open Networks: How O-RAN can drive collaboration and security across the 5G ecosystem.” Foreign Policy, 2020.

³⁹ Gareth Owen, “The Race to Open RAN Is a Marathon, Not a Sprint,” July 2020.

network for improved performance.⁴⁰ The O-RAN alliance working groups are actively working on specifications to build the virtualized RAN on open hardware, founded on the core principles of openness and intelligence.

Interestingly, while the major vendors of telecommunications equipment (Huawei, Ericsson, Nokia) are not American, the largest buyers of telecommunication technology by dollar value (AT&T, Verizon) *are* American. Although Chinese operators have the most users, the fact that American operators lead in revenue gives the U.S. a “tremendous amount of influence” as equipment vendors must align with the requests of AT&T and Verizon, simply because they are their largest customers.⁴¹ This influence does not apply to only the United States, but also to its allies. Out of the world’s 10 largest telecommunications operators, 7 are strong allies of the United States (Japan, European Union, and the United Kingdom).⁴² If the United States and allied governments push major operators to ensure that equipment from big vendors like Ericsson and Nokia support open interfaces, then it will help the rest of the world using equipment from these vendors to also adopt this new architecture for 5G deployment.⁴³ The U.S. government must take advantage of this unique opportunity and create alliances with other nations that share the same vision to leverage the benefits of O-RAN and interoperable architectures.

Limit the Security Vulnerabilities of 5G networks

Security of 5G networks remains a core concern for American allies. Although security was already a focus point for previous telecommunications generations, security risks are amplified with the deployment of 5G due to its infrastructure and the future use of interconnected applications and IOT devices that will permeate the next decade. 5G infrastructure differs greatly from previous generations as it brings greater complexity to the supply chain, removes distinction between the core and edge networks, and increases dependency on software, translating into potential entry points for attackers.⁴⁴

⁴⁰ *O-RAN: Towards an Open and Smart RAN*. O-RAN Alliance. October 2018

⁴¹ Sachin Katti, Personal interview. December 3, 2020.

⁴² *The State of Digital Communications 2020*, European Telecommunications Network Operators’ Association, Jan. 2020

⁴³ Sachin Katti,. Personal interview.

⁴⁴ “The EU Toolbox for 5G Security,” European Commission, January 2020.

Attempts to develop a global approach to security for next-generation wireless networks include the Prague 5G Security Conference of 2019, which established the foundation of trust between the telecom chiefs of 32 countries, the majority members of the EU, and NATO. The conference resulted in the development of the Prague Proposals, which emphasize transparency, interoperability, and security in telecommunications networks.⁴⁵ This conference is a strong example of how governments can convene world leaders to collaborate on a specific 5G issue.

Establishing a global approach to security is a great first step, but concrete solutions need to be developed to improve network security. Traditional network architectures using proprietary hardware and software from a single vendor severely lack transparency. Operators cannot hire a third party to inspect the risks in an independent manner, and essentially rely on the vendor's word that the equipment is secure—yet “Security by obscurity has never really worked in practice.”⁴⁶ Policy makers are looking to implement mandatory security reviews and inspections, which could be implemented more easily with O-RAN as “open networks allow for a lot more introspection and for new security practices to be introduced.”⁴⁷ Indeed, open interfaces and the disaggregation of software and hardware facilitate third party inspections and ensure a higher level of security. Over the past decade marked by a shift towards cloud computing, cloud services have gotten much better at security, leading to more agility and more secure software. Sachin Katti from the O-RAN Alliance said, “I don't think O-RAN is a silver bullet to solve security, but it gives you an opportunity to introduce new security tools that the rest of the cloud world has embraced, to make these networks more secure.”⁴⁸

Congress should turn to O-RAN for enforcing better security practices. Nonetheless, it is worth noting that as networks become more open, the surface area vulnerable to security attacks increases, particularly with the emergence of startups which often have worse security practices than well-established companies. Despite the U.S. campaign to keep Huawei equipment out of our networks, Congress and industry will have to understand that customer data will inevitably travel over insecure networks.⁴⁹ It is thus imperative to develop security protocols and requirements to limit data breaches, in addition to new security practices enabled by O-RAN.

⁴⁵ Julian Kamasa, “Securing Future 5G-Networks.” *CSS Policy Perspectives* 8, no. 4 (2020).

⁴⁶ Sachin Katti, Personal interview.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Mike Rogers, interview by author.

Implementing financial incentives could ensure that security becomes a forethought, not an afterthought. The DIB recommends adjusting trade policies to discourage vulnerabilities in the supply chain, which could include heavy tariffs “on any goods from any nation found to have backdoors or serious security vulnerabilities.”⁵⁰ This approach essentially rewards good security and imposes a massive market cost for insecurity, incentivizing vendors and operators to prioritize security. The report also recommends that the United States encourage Five Eyes and NATO partners to adopt the same tariffs.⁵¹ Similarly, there should be a push towards ensuring O-RAN becomes the standard 5G network architecture and incentivize operators to develop these networks with open interfaces for better security, domestically and abroad.

Stimulate Competitiveness and Long-Term Innovation

The U.S.-China competition raises concerns about the long-term prospects for innovation in the U.S. technology and telecommunications sectors. The United States and allies are concerned about the rise of Chinese telecom companies benefitting from the close relationship between the public and private sector, with subsidies enabling them to undercut competitors. Moreover, there are strong ideological and cultural differences that facilitate the development of certain use cases for 5G (such as facial recognition or drones) in China but not in the United States due to concerns about privacy that are not a factor in China. The world is facing a true contest between open societies and authoritarian regimes. The United States can counter this by leaning on its strengths of transparency and collaboration with its allies—areas where China seriously struggles. In the short-term, creating barriers to entry like the current ban on Huawei may work, but these initiatives will fall short in the long-term. The United States must work with allies to prevail in this competition and foster long-term competitiveness and innovation.

The White House reinforced the desire to work with the private sector and international governments to “adopt policies, standards, guidelines, and procurement strategies that reinforce 5G vendor diversity to foster market competition.”⁵² It is important to acknowledge that the United States is no longer a dominant player in the telecommunications equipment manufacturing industry; while American companies like Qualcomm create chips and smaller

⁵⁰ *The 5G ecosystem: Risks and opportunities for DoD*. Defense Innovation Board (DIB), 2019.

⁵¹ *Ibid.*

⁵² White House Office, *National Strategy to Secure 5G*, March 2020

components that are crucial to 5G, the large players that build out the networks are not American. It is unrealistic for the United States to expect to gain market share in that sector and should not pursue policies with that sole goal in mind. Instead, the United States should maintain its dominance over innovation in the applications and software *enabled* by 5G networks.⁵³ The 5G race is sometimes mistakenly thought of as a sprint where countries strive to be the first ones to build out the largest networks. Yet it's not just about 5G deployment, but also about how governments can encourage the technology industry to leverage the power unlocked by next generation networks and continue to innovate in applications and interconnected devices.

The O-RAN architecture is very promising to achieve the U.S. priority of fostering competitiveness and long-term innovation. This is due not only to the interoperability but also the software and hardware disaggregation unlocked by this architecture. O-RAN makes it easier for new competitors and vendors to emerge in the telecom industry, a space that has incredibly high barriers to entry. To reduce reliance on foreign manufacturers, the United States should encourage the emergence of startups focused on smaller subcomponents of the network that can interoperate with equipment from existing vendors. Moreover, “U.S. strengths are in cloud software and building highly scalable distributed software systems”, strengths that can be capitalized with O-RAN thanks to the disaggregation of hardware and virtualized software on top of the RAN.⁵⁴ The United States should focus not on developing core network hardware, but instead focus on technologies built on top of the virtualized network. There are many opportunities in RAN automation, which include intelligent controllers, load balancing, and energy saving. Congress should realize the United States' competitive advantage in these areas and promote O-RAN to stimulate innovation in these fields.

CONCLUSION

5G deployment will pave the way for future technological innovation and economic opportunity. To maintain international leadership, the United States must develop a proactive strategy to address competition and national security challenges. Regardless of how U.S.-China tensions evolve, it is important to avoid a complete shutdown of relations with China.

⁵³ Nicol Turner Lee, “Navigating the US-China 5G Competition”, Brookings Institute. April 2020

⁵⁴ Sachin Katti, Personal interview.

Historically, even at the height of the Cold War, the United States and Russia worked together on fundamental physics research. The United States' strengths lie in its ability to cooperate with allies and adversaries, despite their differences. The motivating belief behind the U.S. 5G strategy should be to accelerate the United States and its allies' innovation capabilities, not tear down China.

The United States can collaborate with other democracies in three key areas: contributing to global standards, limiting the security vulnerabilities of 5G networks, and fostering competitiveness and long-term innovation. Through smart policies and subsidies, Congress should incentivize operators to adopt O-RAN when deploying 5G networks. Large operators with high infrastructure costs are naturally risk-averse, meaning incentives are essential to encourage short-term risk in adopting a new open architecture. It is advantageous to leverage the influence of U.S. operators like AT&T and Verizon in standards-setting bodies like the O-RAN Alliance to ensure that vendors sell equipment compatible with open standards to the U.S. and the rest of the world. Open architectures present a unique opportunity for the U.S. technology industry to play a role in the strategically important market of 5G.

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GRAND STRATEGY IN TRANSITION: EXAMINING THE UNITED STATES MILITARY RESPONSE TO UNIPOLARITY (1986-1996)

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Following the collapse of the Soviet Union in 1991, the United States found itself in an unprecedented position as the unipolar power in international politics. How did America's military policy respond to this extraordinary position? Through a blend of international relations theory and empirical investigation on military expenditure, internationalized militarized disputes, and military interventions, this paper analyzes how American foreign policy changed through the conclusion of the Cold War (1986-1996). Lastly, this paper seeks to situate how unipolarity impacted America's military engagements into a contemporary setting. This research finds that the unipolarity is not "peaceful," and instead presents distinct challenges and a continuation of international conflict.

Introduction

From the Thirty Years' War to the Second World War, multipolar struggles for power have defined the international system. Yet, the 1989 collapse of the Berlin Wall, and subsequent conclusion of the Cold War in 1991, marked the start of an unprecedented era in global politics. The advent of a sole hegemon saw the end of 'balance' in international relations, with the United States gaining newfound power and responsibility in the global order. The United States was now in a prime position to exert its economic and political influence throughout the world. This development begs the question: How did American foreign policy respond to the unprecedented transition from bipolarity to unipolarity through the conclusion of the Cold War? This paper argues that America's unipolar development saw greater threats to international stability, and hence prompted greater military expenditures, engagements in military disputes, and mobilizations for military interventions.

This paper seeks to investigate this question by analyzing American foreign policy "through the conclusion" of the Cold War, between 1986 and 1996, to provide a balanced before and after picture of the fall of the Soviet Union. Although foreign policy is often used as an all-encompassing term which may refer to international trade, diplomatic relations, or war-making powers, for the purposes of this paper, foreign policy will strictly refer to military strategy and

expenditures. Hence, analyzing multilateral economic developments or international treaty signings falls beyond the scope of this paper.

This paper begins with an overview of the theoretical underpinnings and background information on unipolarity. Second, based on the theoretical literature, it introduces three testable hypotheses, and derives causal mechanisms. Third, it overviews the data and research design for testing the hypotheses. Fourth, it analyzes the results of these tests. Fifth, it attempts to bridge the gap between the final years of the Cold War, and its broader implications for contemporary geopolitical struggles facing the United States. Sixth, it mentions several limitations evident in the paper's research design, and potential fixes for future works. Finally, it briefly overviews two ways this research applies to future policymakers.

Unipolarity in Theory and Background

In 1989 the Berlin Wall collapsed and saw the first definitive move towards unipolarity.¹ Between 1986 and 1996 (from here on known as the “conclusionary period”) the United States had three different presidents, from both the Republican and Democratic parties, Ronald Reagan (1981-1989), George H. W. Bush (1989-1993), and Bill Clinton (1993-2001). The variance in term-length, political affiliation, and political experience offers a unique perspective to the conclusionary period and unipolarity's effects on American military policy.

That said, what is unipolarity? Unipolarity refers to an international system with a sole dominant power. America's unipolar position created the condition for it to succeed and play a role as a major influence in *any* conflict.² Economic power is a necessary but not sufficient condition for hegemonic power, as evident from the status of states such as Japan and Germany during the conclusionary period.³

Prevailing literature on unipolarity exists in one of two camps: unipolarity is peaceful; or unipolarity is not peaceful. Wohlforth stands atop the “unipolarity is peaceful thesis” by arguing that by removing threats of hegemonic war and balance-of-power stakes, the international system stands to face less conflict.⁴ Balance-of-power theory proposes that bipolarity is more secure

¹ G.Ó. Tuathail, “The Bush Administration and the ‘End’ of the Cold War: A Critical Geopolitics of US Foreign Policy in 1989,” *Geoforum* 23, no. 4 (1992): 437.

² Charles Krauthammer, “The Unipolar Moment.” *Foreign Affairs*. 70 (1990): 24.

³ *Ibid.*

⁴ William C. Wohlforth. “The Stability of a Unipolar World,” *International Security* 24, no. 1 (1999): 23.

than unipolarity because it offers great powers the ability to counterbalance others in maintaining international security.⁵ Evidently, the anarchic state of the international system pursues a sort of “equilibrium” wherein balance is achieved.⁶ The disparity between the unipole and the second strongest state must be clear because conflict will arise if there are disagreements over each other’s relative power.⁷ Building off Waltz’s assumption that bipolarity is more peaceful than multipolarity, this logic follows that unipolarity is even more peaceful than the latter.⁸

Monteiro contends that the “unipolarity is peaceful” thesis is flawed for several reasons. First, the thesis focuses on great power “incentive for war,” while minor instabilities clearly impact attempts at stability.⁹ Second, the unipole’s pursuit of “defensive dominance” is equally likely a policy as offensive dominance.¹⁰ Some scholars propose that counterbalancing the United States is not possible in the unipolar world. However, it is important to consider which states would be able to counterbalance against the United States. The European Union (EU) though not a state in the traditional sense, represents political unity and boasts a gross domestic product (GDP) greater than that of the United States.¹¹ Glasner proposes that the perceived benefits from unipolarity are not as great as initially interpreted because those states with the capacity to challenge the United States, do not view it as a threat.¹²

What role does the United States have in shaping the unipolar international system? A persuasive argument exists wherein the unipole *may* pursue leadership, international management and multilateralism.¹³ Some theorists argue that collective security in the post-Cold War period was never a serious possibility because America’s sovereignty and the anarchy of the international system could never compel their action.¹⁴ Although successful multilateralism occurred during the Second World War, a situation inciting state-interest to the same extreme capacity would be necessary for a repeated occurrence. Conversely, unipolarity may allow allied

⁵ Charles L. Glasner "Why Unipolarity Doesn't Matter (Much)," *Cambridge Review of International Affairs* 24, no. 2 (2011): 137.

⁶ Wohlforth, "The Stability of a Unipolar World," 24.

⁷ Ibid.

⁸ Ibid.

⁹ Nuno P Monteiro, “Unrest Assured: Why Unipolarity Is Not Peaceful.” *International Security*, no. 1 (2012): 36-37.

¹⁰ Ibid.

¹¹ Glasner, "Why Unipolarity Doesn't Matter (Much)," 137.

¹² Ibid.

¹³ John G. Ikenberry, Michael Mastanduno, and William C. Wohlforth. "Introduction: Unipolarity, State Behavior, and Systemic Consequences." *World Politics* 61, no. 1 (2009): 26.

¹⁴ Krauthammer, "The Unipolar Moment," 25.

states to free ride and hamper the unipole's interest in maintaining hegemonic rule.¹⁵ Interestingly, since 1991 it is unclear whether the United States adopted this leadership framework in its entirety.

In the immediate aftermath of the collapse of the Soviet Union, prevailing literature argues, the spread of "weapons of mass destruction" became the foremost issue facing international security.¹⁶ However, this proposition never manifested in the way it was theorized. While current enemy states like North Korea possess nuclear capabilities, the nuclear issue has not significantly developed since the Cold War.¹⁷ Instead, nuclear weapons have always stood as a background threat to international security following the events in Hiroshima and Nagasaki in 1945.¹⁸ Ultimately, the Gulf War and subsequent collapse of the Soviet Union marked the start of the "new world order."¹⁹

Unipolar Expectations

Based on the previous discussions of international relations theories, several assumptions about the American experience on military strategy and expenditure can be drawn and empirically examined.

H1. The conclusion of the Cold War, and bipolar system, should see higher levels of military expenditure.

The causal theory for this hypothesis develops from the Neorealist assumptions of power stability. Neorealists argue the Cold War's bipolar structure is more conducive to peace than multipolar or unipolar international systems, because two or multiple hegemons can keep each other in check through nuclear deterrence or hegemonic war.²⁰ Therefore, H1 builds off this assumption and posits that the emergence of unipolarity should create more opportunities for international conflict, and hence, the United States will bolster its military to ensure its

¹⁵ Ibid.

¹⁶ Ibid, 31.

¹⁷ Eleanor Albert, "North Korea's Military Capabilities," Council on Foreign Affairs, last modified November 16, 2020, <https://www.cfr.org/background/north-koreas-military-capabilities>.

¹⁸ William R. Keylor, Jerry Bannister, and Tracey J. Kinney, *The Twentieth-Century World: An International History* (Oxford: Oxford University Press, 2011), 187.

¹⁹ Tuathail "The Bush Administration and the 'End' of the Cold War," 449.

²⁰ Stephen M. Walt, "International Relations: One World, Many Theories." *Foreign Policy*, no. 110 (1998): 31.

dominance. This hypothesis is examined by interpreting figures on net American military expenditure as part of annual GDP and analyzing trends on America's foreign involvements through the conclusion of the Cold War.

H2. Unipolarity creates conditions for power contentions. Hence, the conclusion of the Cold War should see the United States engaged in more military conflicts.

Similar to H1, H2 builds off the Neorealist assumptions in international relations, but additionally posits an increase in American military engagements as opposed to simply military expenditures. This hypothesis is examined by assessing figures from the Correlates of War's Militarized Interstate Dispute dataset based on the paper's temporal scope.

H3. The conclusion of the Cold War will see the United States engage in more regime and policy change oriented military interventions.

Last, given the previous two hypotheses on the expected American military reinforcements, H3 posits that the United States engaged in less "peace-building" and "security" guided military interventions. Instead, assuming that unipolarity creates conditions for power contention, the conclusion of the Cold War and subsequent American pursuits to maintain dominance may spur an increase in conflict-based foreign military intervention. This hypothesis is examined by assessing visual models on American military interventions from the Military Intervention by Powerful States (MIPS) dataset.

Methodology, Data, and Variables

This research project encompasses a time-series small-*N* design. It examines *all* examples of American military disputes and interventions within the 1986 to 1996 timeframe. The data from this analysis comes from multiple sources.

First, statistics on military expenditure comes from the World Bank's International Development Association. The World Bank operationalizes, "military expenditure" from data from the Stockholm Institute of Peace Research (SIPR) using NATO's definition: "all current and capital expenditures on the armed forces, including peacekeeping forces; defense ministries

and other government agencies engaged in defense projects; paramilitary forces, if these are judged to be trained and equipped for military operations; and military space activities.”²¹

Although the data on military expenditures is from 1960 to 2020, the World Bank acknowledges that differences in military expenditure disclosure may present figures which are not entirely accurate. Military expenditure as a percentage of GDP is measured by dividing the aforementioned military expenditure figures by the GDP figure for the given year.

Model 1 (see Appendix) is made by filtering World Bank data from the United States. The two graphs in Model 1 do not strictly examine the temporal scope of the paper. Instead, they cover a larger timeframe to interpret a wider range of trends in expenditures so see if the conclusionary period had any unique developments.

Second, America’s military actions are measured by the Correlates of War’s Militarized Interstate Dispute (MIDS) dataset. Here, the variable “hihost” accounts for various types of militarized disputes ranging from no actions to joining interstate disputes.²² By filtering this variable towards actions taken by the United States and within the scope and range of this paper (1986-1996), the data develops a clear roadmap viewing both *where* and *how* America engaged militarily through the conclusion of the Cold War. Within “hihost,” militarized disputes range across four categories: 1) Threat to Use Force; 2) Display of Force; 3) Use of Force; and 4) Interstate war. These four classifications allow for an easily visible and gradual comparison between America’s different military engagements. The level of hostility displayed by states in dispute is visualized as opposed to fatality counts or conflict outcome to assess the type of dispute the United States was involved in during the conclusionary period of the Cold War in relations to H2.

Third, America’s military interventions is measured using the Military Intervention by Powerful States (MIPS) Version 2.0 dataset.²³ This dataset offers a comprehensive overview of instances of military force used as an instrument of foreign policy setting.²⁴ A set of criteria deem an action as a “military intervention.” First, an official, sovereign state must deploy, or be willing to deploy, at least 500 military personnel (no distinction between ground, air, or naval

²¹ “Military expenditure (% of GDP)” The World Bank, Data. 2020

²² Glenn Palmer et al., “The MID5 Dataset 2011-2014: Procedures, Coding Rules, and Description.” Working paper (2020): 7.

²³ Patricia L. Sullivan and Michael T. Koch. “Military Intervention by Powerful States (MIPS) Codebook” (2008).

²⁴ *Ibid*, 3.

forces).²⁵ Second, this action must be recognized as “official” from a recognized political leader. This deployment of soldiers must have a recognizable aim in hand, hence routine “training” objectives do not suffice under this dataset’s coding parameters. Last, the foreign adversary may either be a state or non-state actor. Therefore, this dataset includes an array of military interventions, ranging from internationally recognized interstate war, to smaller counterinsurgency objectives.

Model 3 is created by filtering the MIPS dataset by the timeframe (1986-1996) and by engagements including the United States. The “objcode” variable is plotted as opposed to other variables on military outcomes, the specific type of targets (i.e., state, non-state actor, or terrorist group), or the specific type of military deployment (i.e., naval, air, ground) to assess the type and frequency of military interventions the United States engaged in during the conclusionary period. In particular, these models seek to determine if the collapse of the bipolar system altered the types of engagements the United States took part in as a function of bipolar balancing and in testing H3.

Within Model 3, *Remove Foreign Regime* refers to deposing or overthrowing a foreign regime from power and fighting alongside insurgency groups posed to replace the power or creating the conditions for foreign invasions to control power.²⁶ In the simplest sense, this classification reflects the various “regime-change” involvements the United States played a role in throughout Latin America during the Cold War. *Maintain Empire* refers to an intervening state’s intent to preserve the intervened state’s authority over territorial sovereign claim.²⁷ *Acquire or Defend Territory* refers to using, or threatening to use military force, to “defend, acquire, or reclaim territory.”²⁸ This may occur to assist an allied state suffering inter-territorial disputes. *Policy Change* refers to using, or threatening to use force, to “coerce” an incumbent regime into altering its behaviour.²⁹ This term is synonymous with Joseph Nye’s *hard power* typology wherein states with hard power possess the capacity to not only influence others to act a certain way but also hold the means to shape this action by force.³⁰ *Social Protection and Order*

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid, 12

²⁸ Ibid

²⁹ Ibid

³⁰ Ernest J. Wilson, "Hard Power, Soft Power, Smart Power." *The Annals of the American Academy of Political and Social Science* 616, (2008): 114.

refers to using, or threatening to use military force, to protect civilians, combat human rights abuses, and limit violence.³¹ Military interventions under the pretenses of “peacekeeping,” intending to alter the incumbent government, do not fall under this classification, instead they count as *Policy Change. Social Protection and Order* contains actions taken under humanitarian interventions. All the models in this paper are coded using R software.

Results

Model 1 shows American Military expenditure as a function of time, both regarding total spending figures, but also as a percentage of GDP between 1960 and 2019 to allow for easy identification of trends. Both graphs of Model 1 plot the year on the x-axis. The first graph on total military spending plots American expenditure calculated in billions on 2020 USD pricing on the y-axis. The second graph on spending as a percentage of GDP plots the percentage of GDP on the y-axis. Both graphs show vertical dotted lines between 1986 and 1996 to mark the temporal frame of this paper.

Model 1 clearly shows that total military spending has steadily risen between 1960 and 2019. However, over this period the rate of growth is inconsistent. In particular, between 1960 and 1986, military spending rates increased substantially. This is consistent with public discourse and literature on the “arms race” between the United States and the Soviet Union throughout the Cold War.³² Essentially, in the bipolar struggle for power, the United States sought a definitive advantage regarding their military capacity. Hence, the substantive increase from around 80 billion in 1960 towards 300 billion in 1986 is clear. From 1991 to 2019, the United States saw an increase in military expenditures similar to that during the Cold War. Again, this depiction is consistent with the post-Cold War era’s “war on terror” and the United States’ increased military capacity to maintain supremacy over the likes of China, Iran, and North Korea.³³ However, the interesting finding here is in the period between the dotted lines. Here, the United States seemed to not make up a net-increase over the 10-year period, with a notable decrease in military spending in 1991. This finding contradicts H1 which posits that based on the unipolar contest for power, the United States would look to bolster its military spending during the conclusionary

³¹ Ibid.

³² Keylor, Bannister, and Kinney, *The Twentieth-Century World*, 232

³³ Ibid, 467.

period of the Cold War. Despite Model 1 refuting H1, the underlying mechanisms persist as logical. As previously outlined, American military spending before and after the Cold War stood as a function of the Cold War and with the War on Terror. Hence, during the conclusionary period, the fall of the Soviet Union made the United States see itself as more secure than ever, subsequently limiting military spending.

The second graph of Model 1 on spending as a percentage of GDP adds nuance to the discussion on military spending. Specifically, if military spending remains consistent with national economic growth (GDP), although the aggregate number may increase, the effects of military growth remain consistent. That said, the second graph of Model 1 shows that the percentage of GDP spent on the military has consistently decreased between 1960 and 2019. In particular, the conclusionary period between the two dotted lines depicts a steep decrease which, when considered vis-à-vis the first model on total military spending, shows that in the conclusionary period the United States remained consistent in their aggregate spending, while seeing substantial national economic growth. Hence, during the conclusionary period, the United States *could have* increased military spending if it felt it needed to. Overall, Model 1 does not lend credence to H1, but it contributes to our knowledge of military capacity and economic growth in the conclusionary period.

Model 2 plots the year on the x-axis and the number of international disputes the United States was engaged in on the y-axis. All models have a dotted vertical line in 1991 to allow for comparison on the official year the Cold War concluded (when the Soviet Union collapses). Model 2 shows that during the conclusionary period, the United States only engaged in 1 instance of interstate war. However, the aggregate figure on use of force and displays of force varies. On displays of force, a “unipolar moment” is evident between 1991 and 1992, wherein the United States reached zero displays of force. However, consistent with H2’s assumption of more conflict in unipolarity, after 1992, the United States reached ten total displays of force by 1996, averaging 2.5 per year. The graph on the use of force similarly paints a picture of the “unipolar moment.” Between 1991 and 1992, the United States stood at three uses of force per year, lower than that seen between 1986 and 1988. However, immediately after in 1993, this figure increases and remained somewhat turbulent until 1996. Therefore, unlike some theorists predicted, the unipolar moment was just a moment and not predictive of the rest of the era. Model 2 credits H2 because it shows that unipolarity creates conditions for power contention.

Overall, through the conclusionary period the United States was engaged in 54 instances of military disputes, rising to the level of applying force in 33 of the 54 instances, or about 61 percent.

Model 3 plots year on the x-axis and total number of military interventions the United States engaged in on the y-axis, as outlined by the MIPS dataset. All models have a dotted vertical line in 1991 for ease of analysis for the end of the Cold War. Model 3 shows 15 instances of American military intervention through the conclusionary period. First, it is apparent that at most, the United States engaged in one military intervention by type per year. Second, the United States engaged in zero military interventions to maintain an empire. Across the other five typologies of military intervention, the results are inconsistent. Between building regime authority, removing regime from power, and acquiring territory, a unipolar moment is clear, between 1991 and 1992 the United States conducted zero military interventions. However, policy change and social protection each had one intervention in 1991. That said, Model 3 is consistent with H3 for several reasons. Despite many thinking that the United States would use its newfound supremacy to engage in maintaining international security, promoting democracy, and combating human rights abuses through humanitarian interventions, the conclusionary period depicts three instances of intervention on humanitarian grounds. Between 1990 and until 1992, the United States engaged in Operation Continue Hope with the United Nations in Somalia, Operation Restore Hope also in Somalia, and Operation Provide Comfort alongside coalition forces during the Gulf War.³⁴ Following the Battle of Mogadishu in 1993 and the downing of an American helicopter and subsequent dragging of bodies through the streets, President Bill Clinton halted all action in Somalia.³⁵ This event preceded the disastrous Rwandan genocide wherein approximately 500,000 ethnic Tutsis were slaughtered at the hands of militia groups, with no American response because of events in Mogadishu.³⁶ On H3, regime change, and policy change missions remain symmetric to before and after the fall of the Soviet Union. Overall, Model 3 does not offer credence to H3 on America using its military might to shape the world in either a positive way (humanitarian missions and promoting democracy) or in orchestrating the

³⁴ Patricia L. Sullivan and Michael T. Koch, "Military Intervention by Powerful States (MIPS) Codebook" (2008).

³⁵ "What A Downed Black Hawk In Somalia Taught America," *NPR*, October 5, 2013, <https://www.npr.org/2013/10/05/229561805/what-a-downed-black-hawk-in-somalia-taught-america>.

³⁶ "Rwanda Genocide: 100 days of slaughter," *BBC News*, April 4, 2019, <https://www.bbc.com/news/world-africa-26875506>.

overthrow of enemy government as was seen throughout the Cold War in Latin America and Africa. Instead, the conclusionary period saw relatively consistent action on the various military intervention fronts. Ultimately, we do not see a strong relationship between the bipolar to unipolar transition and immediate increases or decreases in American military interventions across any of the six typologies outlined in the MIPS dataset.

America's New Place in the World

Finally, it is important to consider what America's unipolar position meant in their international conduct. Overall, the United States now faced a reality wherein it needed to transition from a big nation competing with big nations, to a big nation competing with smaller nations. In *The Sling and the Stone: On War in the 21st Century*, Colonel Thomas X. Hammes describes a phenomenon following the Second World War wherein the historic conventions of war changed.³⁷ Hammes calls this new era of conflict "fourth generation warfare," and although an in-depth overview of the various intricacies of this theory falls beyond the scope of this study, the underlying assumptions pose substantial implications for the United States.³⁸ In short, WWII marked the end of great-power interstate war, with the forthcoming conflicts mirroring that of early 20th century insurgencies. The lines defining the battlefield, describing objectives and victory, and identifying enemy combatants drastically shifted, and traditional measures of military might would not suffice in deciding key battles. We certainly saw these characteristics in America's pursuits in Vietnam, and currently in the mission creep defined War in Afghanistan. In the conclusionary period through the end of the Cold War, the United States engaged in one interstate conflict—the Gulf War—as outlined by the MIDS dataset, as opposed to several uses of force, displays of force, and conventional military threats. In a contemporary sense, American involvement in interstate war remains seldom. Instead, the United States combats violent non-state actors and restricts threats for interstate adversaries. Hence, Hammes thesis on the shift in conflict following the Second World War accurately describes America's place in the post-Cold War era and offers substantive insights to their position moving forward.

³⁷ Thomas X. Hammes, *The Sling and the Stone: On War in the 21st Century*. (St. Paul: Zenith Press, 2006), 3.

³⁸ Ibid.

Future Research

Overall, this analysis provides a preliminary empirical look at America's military policy through the conclusion of the Cold War. However, there are several ways in which future scholars can build upon this research and contribute to our historical understanding of American military and foreign policy more broadly. First, to build on the empirical analysis proposed by this paper on military expenditures, military engagements, and military interventions, newer and competing data may test the replicability of this work and to act as a robustness test. Essentially, social scientific concepts such as defining the intent of a military intervention or the exact type of military engagement may be contested. Thus, a valuable way to account for this is to use several datasets concurrently. For this research in particular, scholars may look towards the Peace Research Institute Frankfurt's Humanitarian Military Interventions dataset, Pickering and Kisangi (2009) Military Intervention Dataset, or the UCDP/PRIO Armed Conflict Dataset.³⁹

Second, in understanding how American military policy transitioned, it is worth investigating mediums other than those described here. For example, a more technical approach in evaluating America's military regarding available army members, numbers of soldiers deployed abroad, number of international military bases, technological advancements and capacity, and role within multilateral security institutions such as NATO or the UNSC may prove valuable. Approaching the question of American military transition through the Cold War from this perspective would certainly offer novel conclusions. In particular, between 1986-1996, the United States played key roles in the Somalian Civil War (1993-1995) and the Bosnia War (1992-1995) under the auspices of the United Nations and NATO, respectively. Regardless, investigating technical domestic measures on civilian engagement with military affairs, the spread of international bases, and America's role in leading international security institutions certainly offers substantive insights to understanding the state of U.S. military policy between 1986-1996.

Finally, although this research posits that changes in military expenditures, international disputes, and military interventions is a function of the Cold War's conclusion, this may not entirely be the case. For example, although the conclusion of the Cold War marked the end of the

³⁹ Jeffrey Pickering and Emizet F. Kisangani. "The International Military Intervention Dataset: An Updated Resource for Conflict Scholars," *Journal of Peace Research* 46, no. 4 (2009): 589-99; "Humanitarian Military Intervention Dataset" Peace Research Institute Frankfurt (2018); Therese Petterson, "UCDP/PRIO Armed Conflict Dataset Codebook v 20.1" (2020).

last hegemonic war involving the United States, attributing several aspects of military policy to its end may be short-sighted. As previously mentioned, America's action in the Gulf War and the start of radical Islamic terrorism certainly played a role in determining America's military strategy. Shortly beyond the scope of this paper, on 7 August 1998, al-Qaeda's rose to international prominence with its carefully coordinated bombings in American embassies in Nairobi Kenya and Dar es Salaam Tanzania.⁴⁰ With over 200 dead and 4000 injured, these events served as a prelude to the September 11th attacks and America's eventual transition to the "war on terror."

Policy Implications

Several policy implications exist from this research. First, literature on American bureaucratic institutions related to foreign policy and national security states that they suffer heavily from path dependency.⁴¹ Path dependency is a phenomenon wherein organizations and political actors heavily value history in decision-making. Essentially, previous political and military decisions act as a sort of precedent in deciding future actions. From understanding this perspective, possessing a detailed understanding of historical actions in foreign policy remains ever more important. Hence, this research may provide useful to foreign policymaker specifically on decisions pertaining to foreign interventions and military disputes in times of hegemonic transitions. Though we currently still live in the unipolar world forged in 1991, between the rise of China's economic reach and nuclear proliferation in rogue states, unipolarity may admittedly be close to exhaustion. Hence, understanding and building off the previous American response to transitions in hegemony is paramount towards a successful transition when the unipolar moment concludes.

Second, to a certain extent, the foreign policy decisions taken through the end of the Cold War have direct implications to contemporary geopolitical objectives. Operation Cyclone (1979-1989) was a CIA program wherein the United States funded Mujahideen fighters against Soviet occupation during the Afghan-Soviet War.⁴² Although after nine-years of brutal fighting with

⁴⁰ Amy B. Zegart. *Spying Blind: The CIA, the FBI, and the Origins of 9/11*. (Princeton: Princeton University Press, 2009), 24.

⁴¹ *Ibid*, 4.

⁴² Keylor, Bannister, and Kinney, *The Twentieth-Century World*, 308.

over 500,000 civilian casualties, the Mujahideen proved victorious over their Soviet occupiers, with much of the instability in the contemporary Middle East having roots in America's initial plan to arm Afghan insurgents. In particular, existing reports suggest that America supplied Mujahideen fighters *prior* to Soviet invasion to destabilize the region and draw the Soviets into a costly proxy war.⁴³ Resentment in the region manifested into jihadist groups set on seeing the United States suffer in some capacity. Evidently the attacks on September 11th two decades later may be seen as an attack on "American foreign policy."⁴⁴ Overall, the current "war on terror" and attacks on American soil were not forged in isolation. Hence, historic American foreign policy decisions fueled the issues of today. Therefore, from a policymaking perspective, a thorough reflection on historic actions and their relation to today's geopolitical environment may offer substantive insights to questions of military interventions.

In summary, this research is important in two ways. First, it shows that the path dependent decision-making process of American foreign policy institutions demands a thorough review of historical decisions made during hegemonic transitions. Someday the unipolar system will cease to exist, and the best possible preparation lies in understanding and reflecting on the successes and failure of previous actions during hegemonic transitions. Second, it contends that given the impact past foreign policy decisions have on directly shaping the enemies we face today, careful consideration towards foreign arms funding and strengthening proxies remains relevant. Thus, although the temporal scope of this paper covers a plethora of significant developments in America's positions in the international system, policymakers can take away an emphasis on decision making in power transitions and evaluating the potential backlash funding potential adversaries can have.

Conclusion

This paper sought to assess how U.S. foreign policy, specifically on military funding and engagements, transitioned in response to unipolarity. Overall, this paper had three findings. First, as opposed to any definitive period over the last 60 years, military expenditures and expenditures as a percentage of GDP in the conclusionary period did not rise. Second, while military disputes

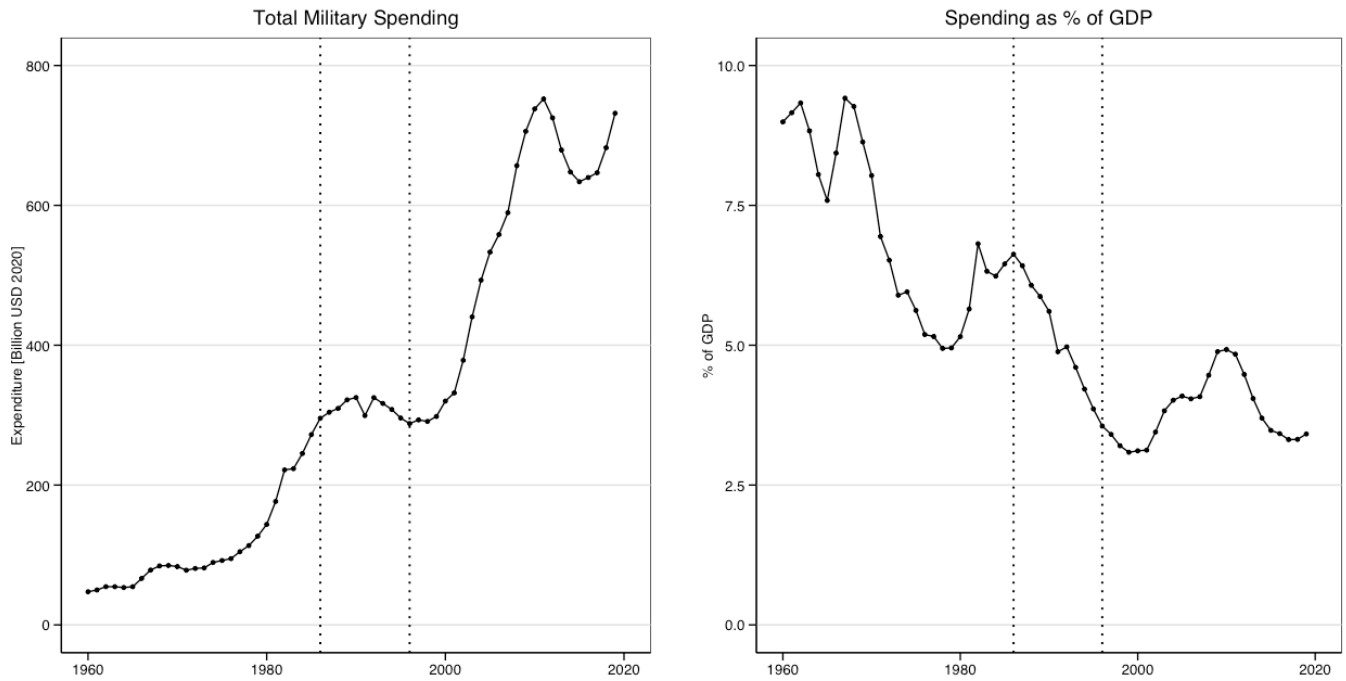
⁴³ Chalmers Johnson. *Blowback: The Costs and Consequences of American Empire* (New York: Henry Holt and Company, 2000), 16.

⁴⁴ *Ibid*, 18.

momentarily stopped towards the conclusion of the Cold War, the following years saw an increase towards previous levels. Third, similar to internationalized disputes, military interventions momentarily paused in 1991, but then resumed to normal rates. Across these three observations, this study notes that unipolarity is not necessarily peaceful, as some theorists have suggested, and that the United States did not take definitive action towards leading the world toward peace and stability. Ultimately, this paper offers some insight to policymakers, specifically on questions pertaining to military direction during hegemonic transitions and on the potential future consequences of military action.

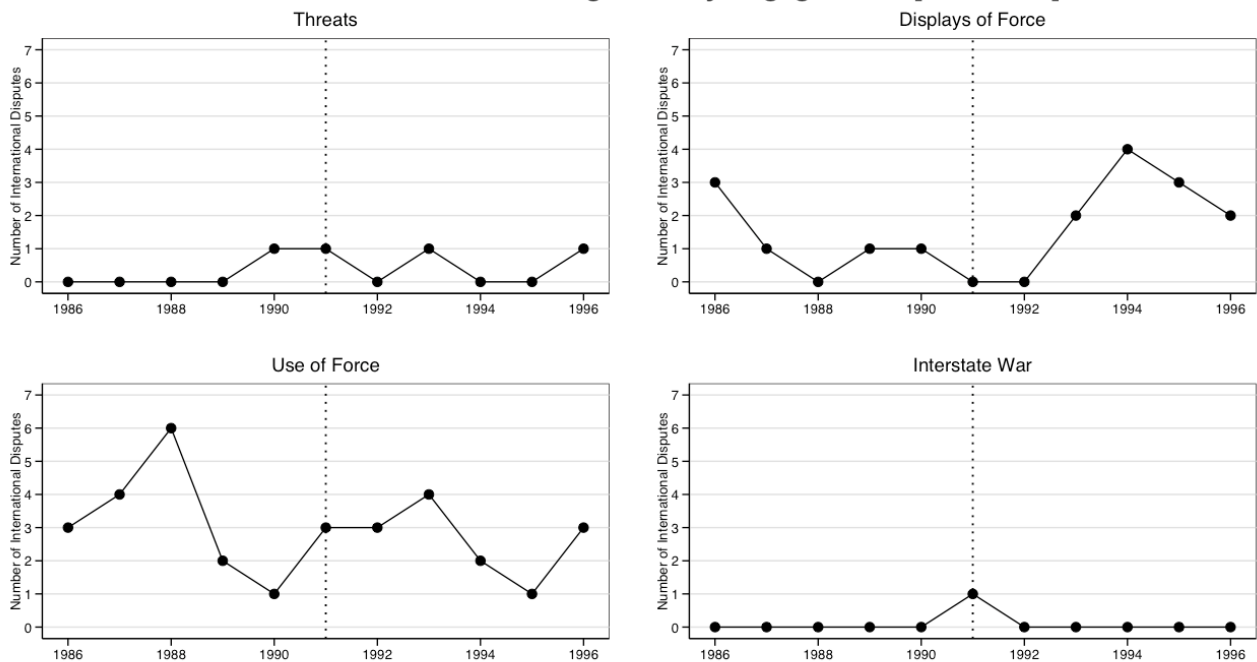
Appendix

MODEL 1. United States Military Expenditure [1960-2019]



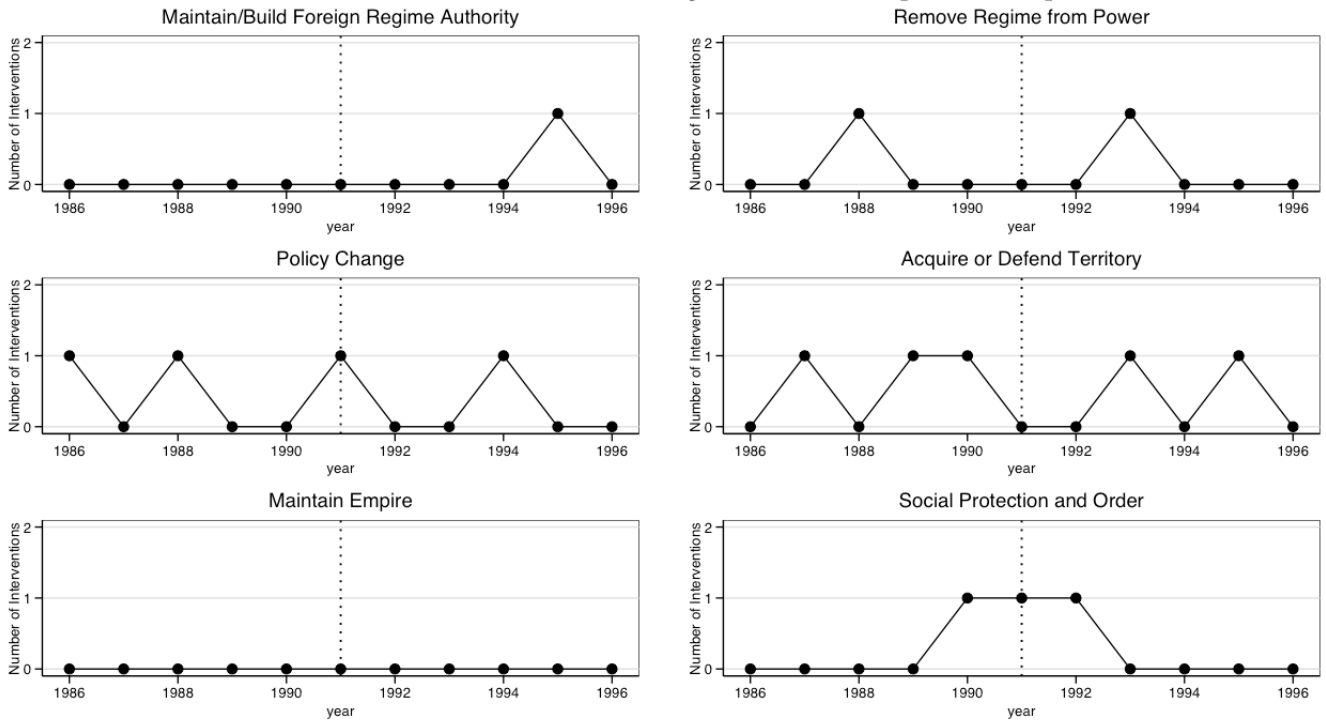
NOTE: Data from the World Bank International Development Association

MODEL 2. United States Foreign Military Engagements [1986-1996]



NOTE: Data from the Correlates of War Project's Militarized Interstate Disputes (v5.0)

MODEL 3. United States Military Interventions [1986-1996]



NOTE: Data from the Military Interventions by Powerful States: 1945-2004

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Part 5

Economic Policy

RECOVERY AND REFORM: THE ECONOMICS OF SIGNIFICANT NEW DEAL LEGISLATION

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President Franklin Delano Roosevelt inherited the worst economic crisis of any president in United States history. The Great Depression devastated the global economy and eliminated nearly all of the trust Americans had in the financial system from the Roaring 20s. When he was elected president in 1932, the American people depended on President Roosevelt to get the banks and consumer financial industries under control. To restore the economy, President Roosevelt expanded the role of government, fostered trust in the financial system, and strengthened presidential powers in order to create innovative solutions for the country's most pressing issues. He did this through landmark banking and industrial regulation policies that still have an effect on our financial system today. The first section of this essay will provide a historical analysis of the events that led up to the Great Depression. The second section will describe the significant banking and industrial regulation policies that the Roosevelt administration implemented to stabilize the economy. This section will include statistical analysis as to how these bills expanded the role of government, strengthened presidential powers, and increased American citizen's trust in the financial system. The third section will include an assessment of his policies, in order to analyze the impact the policies had on the American economy. This analysis will allow us to utilize the lessons of history to guide our economic future.

HISTORICAL ANALYSIS

Prior to the stock market crash of 1929, the American economy was coming off of a historic boom. The period known as the “Roaring 20s” saw many Americans investing their money in the stock market and enjoying a higher quality of life. It was the norm during this period to buy luxury and essential items on credit and watch the prices of shares continue to rise. However, the value of most shares in the market towards the end of the 1920s were higher than their book value. The agricultural drought experienced in the Dust Bowl region made it difficult for farmers to produce crops and pay their taxes. Banks were unable to liquidate loans they had given to European countries who were still suffering from the Great War. In addition, consumer spending dropped due to increasing credit expansion debt. According to renowned economist Charles E. Persons, credit expansion debt was the leading factor contributing to the free fall of the market in 1929, “The past decade has witnessed a great volume of credit inflation. Our period

of prosperity was based on nothing more substantial than debt expansion.”¹ Acquisitive bankers convinced many Americans it was safe to purchase stocks on credit instead of cash, and when the market crashed few could repay their loans, leaving banks unable to collect financial assets. Many Americans lost confidence in the financial system and withdrew all the money they could, causing severe bank runs in the early 1930s. Since banks don’t keep all of their cash on hand, they had to foreclose homes in order to liquidate assets to repay their debts. This was detrimental to the American economy and left many Americans homeless and without jobs.

Another relevant factor that contributed to the severity of the Great Depression was the extreme income inequality of the 1920s. As shown in figure I, between 1917 and 1927, the top tax bracket in the country owned between 40-45% of all national income. By 1928, the figure increased to ~46% and the nation's top 1% received 23.9% of the nation's income before taxes.² This extreme wealth inequality would have made access and faith in the banking system limited to the lucky, wealthy few. Thus, leaving the rest of Americans less familiar with the banking system.

American banks failed to provide security for American investments. This left Americans with less to spend in consumer industries, causing corporations to lay off workers, leading to mass unemployment and inflation. During his 1932 presidential election campaign, then-Governor Roosevelt promised a “New Deal” to revive the economy, stimulate industry, and give Americans opportunities to work. To accomplish this, he expanded the role of the federal government, strengthened presidential powers, and restored American trust in the financial system through landmark banking and industrial regulatory legislation. President Roosevelt served four terms, and there are multiple examples of his efforts to expand the role of the federal government, strengthen presidential powers, and restore American trust in the financial system. However, for the sake of keeping a limited scope in this essay, only legislation passed during his first term will be discussed. The first term was chosen because many of his most significant banking and industrial regulations were passed during his famous first 100 days. By investigating the successes and failures of President Roosevelt’s banking and industrial

¹ Charles E. Persons, “Credit Expansion, 1920 to 1929, and its Lessons,” *The Quarterly Journal of Economics*, 45, no. 1 (November 1930): 94, doi:10.2307/1882528.

² Drew DeSilver, "U.S. Income Inequality, on Rise for Decades, Is Now Highest since 1928," *Pew Research Center*, last modified December 13, 2013, <https://www.pewresearch.org/fact-tank/2013/12/05/u-s-income-inequality-on-rise-for-decades-is-now-highest-since-1928/>.

regulation policies, we can take steps to secure our financial future and learn from the past. With increasing student loan debt, industries struggling from the coronavirus pandemic outbreak, and extreme wealth inequality, we need to take preventative steps to ensure we don't see more major financial collapses in the twenty-first century.

INCOME INEQUALITY IN THE UNITED STATES, 1913–1998 11

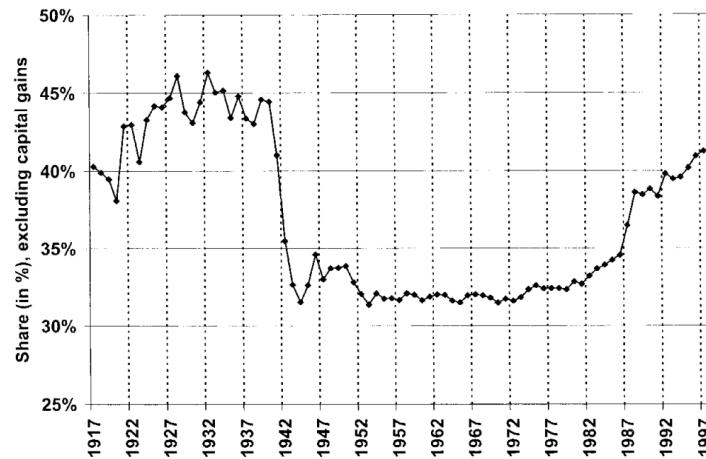


FIGURE I
The Top Decile Income Share, 1917–1998
Source: Table II, column P90–100.

Figure I shows that the income share of the top decile of tax units from 1917 to 1998 is U-shaped. The share of the top decile fluctuated around 40% to 46% during the interwar period. It declined substantially to about 30% during World War II and then remained stable at 31% to 32% until the 1970s when it increased again. Major increases in inequality appeared in the late 80s and mid 90s.

THE EMERGENCY BANKING ACT OF 1933

During his first 100 days, President Roosevelt took speedy action to combat the effects of the Great Depression. One of his first major financial reforms was the signing of the Emergency Banking Act of 1933, which occurred only 5 days after his inauguration. This Act closed the banks for a four day bank holiday to inspect their stability before allowing them to reopen. The first banks to reopen on March 13, 1933, were the 12 regional Federal Reserve banks.³ These banks were given special authority to produce new currency to distribute to commercial banks so they would be able to operate without issue when they reopened. These were followed the next day by banks in cities with federal clearing houses. The remaining banks deemed fit to operate

³ Stephen Greene, “Emergency Banking Act of 1933,” *Federal Reserve History*, last modified November 22, 2013, <https://www.federalreservehistory.org/essays/emergency-banking-act-of-1933>.

were given permission to reopen on March 15.⁴ Another key purpose of the closure was to halt ongoing bank runs that were expediting the hardship of the economic crisis. Many Americans were rushing to the bank to withdraw their money out of distrust for the financial system. Of the \$1.78 billion that Americans privately held prior to the reopening, about two thirds of the money was redeposited into banks.⁵ This Act was the President's first step in restoring consumer confidence in banks.

In addition to preparing Americans to return their money to the banks, the Act also expanded the powers of the President and Secretary of the Treasury. The first title of the Act granted the President the authority to regulate all banking functions during times of emergency, including “any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin.”⁶ The third title allowed the Secretary of the Treasury to decide whether or not a bank required financial support. With the consent of the President, the Secretary can, “request the Reconstruction Finance Corporation to subscribe to the preferred stock in such association, state bank or trust company, or to make loans secured by such stock as collateral.”⁷ The statutes of the Act also allowed the Federal Reserve to retrieve pertinent financial documents that would inform their decisions about the stability of the banks and issue currency. This Act as a whole invested strong banking regulation authority in the executive branch and in the hands of the President. The federal government was taking a larger role in ensuring the stability of state and local banks. As a result of this expansion of power, the Dow Jones industrial average increased by a record 14.27% (see figure II). The stock market reacted positively to the bank holiday and the bank runs significantly decreased. President Roosevelt's first Fireside Chat, broadcasted on the first day of the bank holiday, calmed rattled Americans' nerves and built trust in his inspection process, persuading them to return their savings to the banks.

⁴ Adam Hayes, “Emergency Banking Act of 1933,” *Investopedia*, last modified January 14, 2021, <https://www.investopedia.com/terms/e/emergencybankingact.asp>.

⁵ Greene, “Emergency Banking Act of 1933.”

⁶ William L. Silber, “Why did FDR's Bank Holiday Succeed?” *Economic Policy Review* 15, no. 1 (July 2009), <https://www.newyorkfed.org/medialibrary/media/research/epr/09v15n1/0907silb.pdf>.

⁷ Emergency Banking Act, Pub.L. 73–1, 48 Stat. 162 (1933).

Significance Tests for Stock Returns: March 3-15, 1933

	Dow Jones Industrial Average	S&P 500 Index	CRSP Equally Weighted Index	CRSP Value-Weighted Index
Return over Bank Holiday (percent)	14.27	15.37	18.48	14.41
Post-election standard deviation of returns (percent)	2.48	2.45	1.81	1.94
<i>t</i> -statistic (with eight trading days)	2.03	2.22	—	—
<i>t</i> -statistic (with ten trading days)	—	—	3.23	2.35

Source: University of Chicago, Booth School of Business, Center for Research in Security Prices (CRSP).

Note: All data are continuously compounded.

Figure II

THE BANKING ACTS OF 1933 AND 1935

The Banking Acts of 1933 and 1935 significantly reformed the banking industry and established greater bureaucratic power over the financial system. The role of the federal government in banking security expanded through these Acts, and Americans received greater economic security through the creation of the Federal Deposit Insurance Corporation (FDIC). The Banking Act of 1933, commonly known as the Glass-Steagall Act, created a wall of separation between the industries of commercial and investment banking. The leading legislators Senator Carter Glass and Representative Henry Steagall sought to eliminate risk for consumers by forcing banks to specialize in either commercial or investment banking. The general rationale for this divide, as explained by George J. Benston in his 1990 book *The Separation of Commercial and Investment Banking: The Glass-Steagall Act Revisited and Reconsidered*, were “three well defined evils found to flow from the combination of commercial and investment banking.”⁸ These evils included banks endangering commercial deposits by investing in their assets in securities, risky loans taken by banks to shore up the value of their securities, and the conflict of interest caused by bank officials advising customers to invest in securities that the bank was looking to sell.⁹ In addition to this separation, the Glass-Steagall Act required the federal government to insure commercial deposits for Federal Reserve member banks, at the time up to \$5,000, increasing the federal government’s role in economic security and building trust in the financial system.

⁸ George J. Benston, *The Separation of Commercial and Investment Banking: The Glass-Steagall Act Revisited and Reconsidered* (London: The MacMillan Press, 1990), 11.

⁹Ibid.

Whereas the 1933 bill set forth the goal of deposit insurance, the 1935 bill detailed how the insurance would be regulated by the FDIC and Board of Governors.

The passage of the Banking Act of 1935 reorganized the structure and purpose of the Federal Reserve Board. In an expansion of the role and size of government, the Federal Reserve Board became a more centralized institution with greater control over the monetary policy of member banks, including the ability to set requirements and interest rates for member banks.¹⁰ The title of the governing body changed from the Federal Reserve Board to The Board of Governors of the Federal Reserve System. The Board no longer included members of the presidential cabinet but allowed the president to choose the chairman with the consent and confirmation of the Senate. The Act completed the restructuring of the Federal Reserve System that began under President Hoover and solidified many temporary reforms passed by congress. In addition to changes to the Federal Reserve Board, the FDIC was given larger supervisory powers and defined standards for the recognition of indemnity.¹¹ The establishment of these two agencies marked significant reforms to financial regulation. The establishment expanded the role of the federal government in monitoring member banks and creating policy to stabilize the economy, which we benefit from today. For example, on March 23, 2020, the Board of Governors designated monetary policy aimed to combat the adverse economic conditions created by the coronavirus pandemic outbreak by purchasing \$500 billion worth of U.S. Treasury securities and \$200 billion worth of agency mortgage backed securities, effectively lending money to the federal government and financial institutions to support businesses and consumers.¹² Through the FDIC and Board of Governors, Americans were able to have greater trust in the security of their deposits and continued giving banks their business.

In addition to the Board of Governors, the Act also established the Federal Open Market Committee (FOMC) which works with the Governors in determining monetary policy. The FOMC determines the rate at which central bank institutions can purchase and sell U.S. government securities in the open market.¹³ Such actions affect the circulation of currency in the

¹⁰ Gary Richardson, "Banking Act of 1935," last modified November 22, 2013, <https://www.federalreservehistory.org/essays/banking-act-of-1935>.

¹¹ Stanley C. Silverberg et al., "The First Fifty Years: A History of the FDIC 1933-1983," (Washington, D.C: Federal Deposit Insurance Corporation, 1984), <https://www.fdic.gov/bank/historical/firstfifty/chapter3.pdf>.

¹² "Federal Reserve announces extensive new measures to support the economy," 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>

¹³ "Open Market Operations," Board of Governors of the Federal Reserve System, last modified August 13, 2019, www.federalreserve.gov/monetarypolicy/bst_openmarketops.htm.

nation. Committee membership is made up of the Board Governors and interchanging Presidents of eleven federal reserve districts. The President of New York's federal reserve district stays permanently on the committee and serves as Vice Chairman. Through the creation of the FOMC, the reserve banks' participation in the open market was more regulated. Prior to 1935, each district made its own decisions on whether or not it would purchase U.S. securities. The Committee gave more power to the federal government in determining monetary policy and significantly expanded the role of government.

THE SECURITIES ACTS OF 1933 AND 1934

The Securities Acts of 1933 and 1934 set out to “provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.”¹⁴ After the stock market crash of 1929, investors needed reliable information in order to choose if they wanted to invest in public companies. The need for regulating the sale of securities was deemed necessary after the Senate Committee on Banking and Currency examined how “practices with respect to the buying and selling and the borrowing and lending of securities” contributed to the 1929 stock market crash during the high profile Pecora Investigations.¹⁵ At the time, the securities tax exemption loophole in the 16th amendment was a major contributing factor to increasing regulations of securities trading. President Roosevelt declared the Acts were, “intended to correct some of the evils which have been so glaringly revealed in the private exploitation of the public's money.”¹⁶ The American public expressed their skepticism of Wall Street and the financial industry by paying great attention to the Pecora hearings and sending mail to Senate Committee members that, “expressed the overwhelming distrust that many Americans held for the financial industry.”¹⁷

The Securities Act of 1933 established a system where the public could be assured they knew all relevant information when deciding to invest in securities. The Securities Act of 1933

¹⁴ Securities Act of 1933, 15 U.S.C. § 77a, 73rd Cong. 1933.

¹⁵ “Subcommittee on Senate Resolutions 84 and 234,” *U.S. Senate: Subcommittee on Senate Resolutions 84 and 234*, United States Senate Archives, accessed July 22, 2020. www.senate.gov/about/powers-procedures/investigations/pecora.htm.

¹⁶ Franklin D. Roosevelt, “Statement on Signing the Securities Bill,” May 27, 1933, *The American Presidency Project*, University of California, Santa Barbara, <http://www.presidency.ucsb.edu/ws/index.php?pid=14654>.

¹⁷ “Subcommittee on Senate Resolutions 84 and 234.”

created the Securities Exchange Commission (SEC), which set standards and regulations for the sale of securities. The SEC determines whether or not a company has provided adequate information to the public to determine if they should buy their securities. The SEC is the main agency responsible for enforcing U.S. securities law, and ensures investors have pertinent information about the company and terms of the security that would affect their choice to purchase.

The Securities Act of 1934 regulates the transactions of securities in the secondary market. The Act requires brokerage companies to release recurring disclosure reports so investors are informed of the pertinent information that helps them decide whether or not to buy securities from a company. The Act also established penalties for companies who defraud investors.¹⁸ By signing these bills, President Roosevelt established protections for American investors in the primary and secondary markets and rebuilt the trust Americans lost in Wall Street and the financial system. He expanded the role of government by creating an institution that was primarily focused on protecting consumers and regulating the transaction of securities to keep the public safe. To this day, the SEC is the primary institution responsible for holding bankers accountable to provide necessary information to the public and preventing investment fraud at the dispense of the American public.

NATIONAL INDUSTRIAL RECOVERY ACT

Another significant law passed during President Roosevelt's first 100 days was the National Industrial Recovery Act (NIRA), signed into law on June 16, 1933. This law was designed to stimulate the economy by reorganizing consumer industries and providing employment to Americans. Codes of competition were set between companies in shared industries and approved by President Roosevelt. This controversial system greatly strengthened presidential powers and expanded the role of the federal government in determining standards of employment between companies and laborers. When approving codes of competition, President Roosevelt ensured employee rights to organize and form unions were protected, and

¹⁸ Krystyna Blokhina, "Securities Exchange Act of 1934," *Legal Information Institute*, Cornell Law School, last modified June 10, 2019, www.law.cornell.edu/wex/securities_exchange_act_of_1934.

monopolization did not threaten economic growth.¹⁹ The National Recovery Administration (NRA), led by Hugo S. Johnson, was in charge of legislating and enforcing the codes of competition. The creation of the NRA was another expansion of the role of the federal government in determining the operations of smaller businesses and consumer industries. President Roosevelt strengthened his presidential powers by having a direct role in determining industrial codes.

The second title of the NIRA created the Public Works Administration (PWA), which was created to provide jobs for unemployed Americans. The federal government allocated \$3.3 billion for state and local governments to hire private contractors for the development of major infrastructure projects.²⁰ The goal for this policy was to increase Americans spending power by providing work for which they could be compensated for. The federal government took on a large role increasing the demand for laborers and rebuilding the nation's infrastructure. Through the PWA, many major projects were completed between 1933 and 1939, including the construction of new schools, hospitals, dams, sidewalks, park benches, and aircraft carriers. Over 25,000 housing units were created for houseless Americans during this period.²¹ These projects contributed to an increase in morale during a time of depression, where previously unemployed Americans found a sense of purpose and increase of self-esteem for contributing to the development of American infrastructure and earning a living, instead of receiving a government handout.

NATIONAL LABOR RELATIONS ACT OF 1935

In addition to the NIRA, President Roosevelt took more major steps to fundamentally change the relationship between laborers and their employers during the Great Depression. One of his most significant reforms was the passage of the National Labor Relations Act (NLRA), which expanded the rights of laborers to organize their own unions. The “inequality of bargaining power” as described in the bill, was harmful to the flow of commerce due to worker

¹⁹ “National Industrial Recovery Act of 1933,” *Social Welfare History Project*, Virginia Commonwealth University, 2011, last accessed Feb 10, 2021, socialwelfare.library.vcu.edu/new-deal/national-industrial-recovery-act-of-1933/.

²⁰ “Public Works Administration (PWA), 1933-1943.” *Living New Deal*, January 10, 2021, livingnewdeal.org/glossary/public-works-administration-pwa-1933-1943/.

²¹ “Public Works Administration,” Ohio History Connection, accessed January 16, 2021, ohiohistorycentral.org/w/Public_Works_Administration.

strikes disrupting and curtailing the ability of industries to produce goods.²² With levels of unemployment at record heights during the Great Depression, the NLRA sought to mend the relationship between employers and trade unions. The federal government took responsibility in ensuring employers would work with trade unions by establishing the Federal Labor Relations Board (NLRB), which was responsible for prosecuting employers who violated the provisions of the NLRA. The NLRB takes action to protect the collective bargaining between employers and laborers by, “investigating the allegations of wrongdoings brought by workers, unions, employers, etc.”²³ Through the passage of the NLRA and creation of the NLRB, President Roosevelt sought to alleviate the economic hardship of the Great Depression by improving the flow of interstate and foreign commerce. He understood that, to do so, he needed to start by improving the conditions of workers in the United States.

Robert A. Caro reminds us in *The Years of Lyndon Johnson: Master of the Senate* that the legislative drafting of the NLRA was done primarily in the Senate office of Senator Robert F. Wagner:

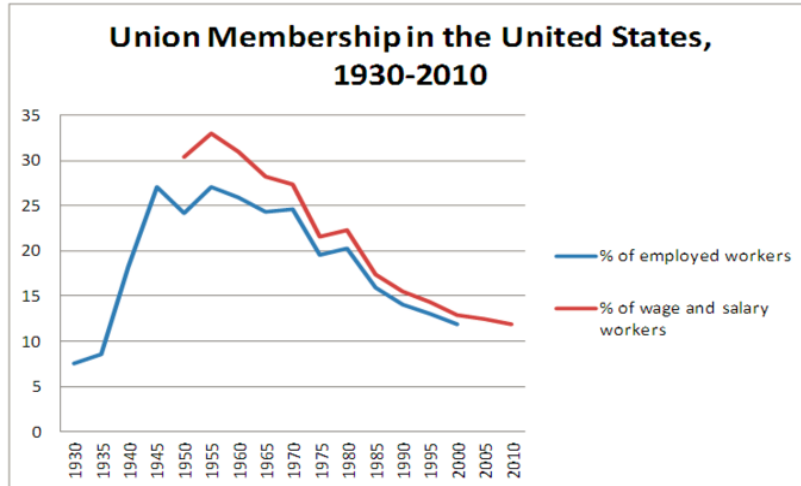
The great National Labor Relations Act of 1935, the ‘Magna Carta of Labor,’ which at last placed between the power of mighty corporations and the masses of their workers the shield of government protection, was the creation of Senator Robert F. Wagner of New York, who pushed it through the Senate after Roosevelt had promised Southern Democrats, adamantly opposed to the measure, to remain neutral.²⁴

The fact that the NLRA was the creation of Senator Wagner limits the extent to which we can credit the Roosevelt Administration with the finite details of the Act’s policy. However, we must acknowledge that President Roosevelt’s demonstrated willingness to expand the role of government paved the way for the NLRA to pass through the Senate. These actions taken by the federal government improved the trust Americans had in their labor industries and unions, and encouraged more Americans to use their right to organize. As shown by figure III, the number of workers who were members of unions increased in 1935, the same year the NLRA passed.

²²National Labor Relations Act, 29 U.S.C. § 151-169.

²³ “National Labor Relations Board.” *USAGov*, United States Federal Government, January 2021, www.usa.gov/federal-agencies/national-labor-relations-board.

²⁴ Robert A Caro, *The Years of Lyndon Johnson: Master of the Senate* (New York: Alfred A. Knopf, 2002), 57.



- Figure III. Union membership increases after the passage of the National Labor Relations Act but declines steadily over the following decades. Factors contributing to the decrease in union membership include the outsourcing of labor, immigration, and other elements of globalization.²⁵

ASSESSMENT

President Roosevelt's most significant banking and industry reforms established greater trust in the financial system, strengthened presidential powers, and increased the role of government but failed to meet all of its policy goals and prevent economic collapse in the future. This section will evaluate the shortcomings of the New Deal legislation discussed above, as well as expired or neutralized New Deal provisions that would be helpful in creating a more stable economic climate today.

A major criticism of the New Deal is that it was only halfway committed to the Keynesian approach to economic relief. President Roosevelt increased federal spending, but not to the level in which renowned economist John Maynard Keynes deemed necessary to end the depression. In his open letter to President Roosevelt, Keynes described economic relief as having two essential components: Recovery and Reform. Keynes believed both elements of relief were necessary, yet Reform could impede Recovery if not carefully implemented. His criticism of the NIRA was that it confused Reform with Recovery, and too much of the budget went to implementing the program immediately, rather than observing the effects of the statutes over

²⁵ Todd E. Vachon et al., "Union Decline in a Neoliberal Age: Globalization, Financialization, European Integration, and Union Density in 18 Affluent Democracies," *Socius: Sociological Research for a Dynamic World* 2 (July 2016), 1-22, <https://doi.org/10.1177%2F2378023116656847>.

time and making adjustments as needed, “That is my first reflection--that N.I.R.A., which is essentially Reform and probably impedes Recovery, has been put across too hastily, in the false guise of being part of the technique of Recovery.”²⁶ Keynes also criticized the NIRA for setting prices out of the natural order of the economy. Keynes explained that increasing prices are beneficial to the economy only if it is accompanied by increased production output. Production output cannot increase without rising purchasing power; therefore Keynes saw it fit that the Roosevelt administration increased the purchasing power of Americans through printing or borrowing money, not by raising prices or wages unnaturally as done in the NIRA, “The stimulation of output by increasing aggregate purchasing power is the right way to get prices up; and not the other way round.”²⁷ In 1933, Keynes called for a major stimulus package before the concept existed.

Amazingly, Keynes predicted World War II as the means that would bring alleviation of economic strife.²⁸ Keynes explained that in a depression, government spending is the only method that can increase purchasing power and prices naturally, and war is the only accepted method of extreme government expenditure:

War has always caused intense industrial activity. In the past orthodox finance has regarded a war as the only legitimate excuse for creating employment by governmental expenditure. You, Mr. President, having cast off such fetters, are free to engage in the interests of peace and prosperity the technique which hitherto has only been allowed to serve the purposes of war and destruction.²⁹

Keynes called on President Roosevelt to break precedent and do what has historically only been done in times of war, and spend as necessary to solve the crisis at hand. President Biden broke this precedent through the American Rescue Plan Act, dedicating \$1.9 trillion dollars for economic recovery from the coronavirus pandemic

²⁶ John Maynard Keynes, “An Open Letter to President Roosevelt”. *The New York Times*, December 31, 1933, <http://la.utexas.edu/users/hcleaver/368/368KeynesOpenLetFDRtable.pdf>.

²⁷ Keynes, “An Open Letter to President Roosevelt.”

²⁸ “Overview,” U.S. History Primary Source Timeline, Library of Congress. <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/great-depression-and-world-war-ii-1929-1945/overview/>.

²⁹ “American Rescue Plan Act of 2021” National Conference of State Legislatures, last modified March 9, 2021. <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/american-rescue-plan-act-of-2021.aspx>.

Figure IV shows government spending was relatively low compared to World War II, which is widely accepted as the force that pulled the United States out of the Great Depression.³⁰

Graph of Federal Spending (In Millions of Dollars) 1929-1945

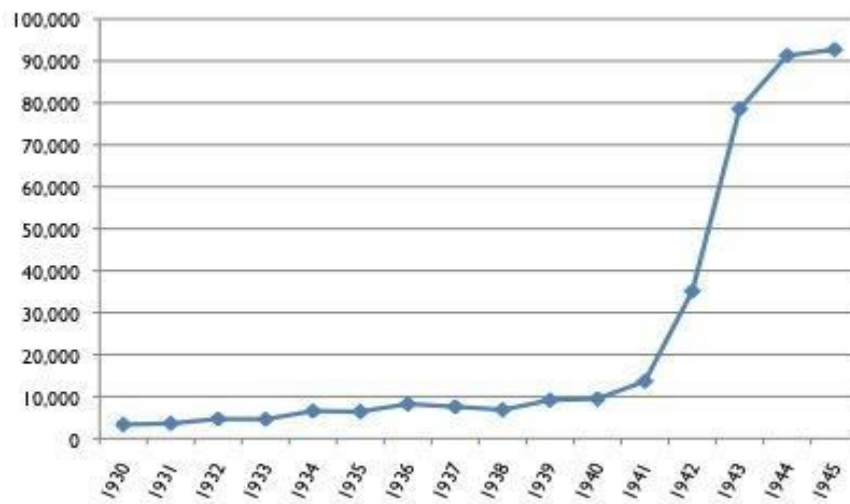


Figure IV

When assessing President Roosevelt's significant economic and industry regulations, it is important to acknowledge the fact that his labor laws failed to protect the right to unionize equitably among all workers. The NLRA protections that were designed to promote the collective bargaining between employees and their employers were not extended to agricultural workers. Without the protections of the NLRA, many agricultural workers feared repercussions for attempted unionization despite working assiduously in conditions that put them at risk for work related injuries, fatalities, lung and skin diseases, and cancers associated with chemical and sun exposure.³¹ The exploitation of agricultural workers was not new in the 1930s or in any time period in American history. The majority of farm workers at the time were black citizens in the South, whose interests were not represented by the federal government, which instead prioritized the earnings of plantation owners. As explained by political scientist and food ethicist Margaret Gray, “The [agricultural] system was dependent on the exploitation of slaves. That legacy carries

³⁰ “Overview,” Library of Congress.

³¹ “Agricultural Operations,” Occupational Safety and Health Administration, accessed Feb 5, 2021, <https://www.osha.gov/agricultural-operations#>.

through and directly affects farm workers.”³² This institutionally racist system of preventing agricultural workers from unionizing was brought to great attention by Cesar Chavez and Dolores Huerta in the 1960s. Chavez and Huerta organized the United Farmworkers Movement and struggled for the agricultural workers right to better labor laws, “Without a union, the people are always cheated, and they are so innocent,” Chavez explained to *The New Yorker* in 1968.³³ Chavez and Huerta were able to advance their cause and provide the right for agricultural workers in California to collectively organize, which President Roosevelt failed to do in the 1930s, with the passage of the California Agricultural Labor Relations Act of 1975. If the NLRA provided these same protections that workers of other industries had, workers like Chavez all around the country would be able to better provide for their families and work in safer conditions. In addition to instances where recent statutes have made up for some of the failures of President Roosevelt's policy, there have been laws passed since his time that neutralized some of his more important provisions and economic safeguards.

One of the biggest changes in banking policy since the New Deal has been the neutralization of the Glass-Steagall Act. In 1999, the Financial Modernization Act (FMA) broke down the wall of separation between commercial and investment banks, which had stood since the passage of Glass-Steagall in 1933. The FMA primarily repealed Sections 20 and 32 of the Glass-Steagall Act which prevented the affiliation of commercial and investment financial institutions.³⁴ Commercial and investment banks were also allowed to have shared administrators and company officers.³⁵ The loosening of financial regulations that occurred with the passage of the FMA have brought speculation that the ability of banks to merge with investment companies was an important factor in the 2008 stock market crash less than a decade later. However, it is important to consider that the biggest losers of that crash such as Lehman Brothers and Washington Mutual weren't engaged in the unification of financial services, which suggests the FMA only played a minor role in the crash.³⁶ Nonetheless, the “too big to fail”

³² Kamala Kelkar, “When labor laws left farm workers behind- and vulnerable to abuse,” *PBS NewsHour*, September 18, 2016, <https://www.pbs.org/newshour/nation/labor-laws-left-farm-workers-behind-vulnerable-abuse>.

³³ Maureen Pao, “Cesar Chavez: The Life Behind A Legacy Of Farm Labor Rights,” *NPR*, August 12, 2016, <https://www.npr.org/2016/08/02/488428577/cesar-chavez-the-life-behind-a-legacy-of-farm-labor-rights>. This is taken from a section of Pao's article where she directly quotes Chavez's interview with the New Yorker.

³⁴ Oonagh McDonald, “The Repeal of the Glass-Steagall Act: Myth vs. Reality,” *Cato Institute*, November 16, 2016, <https://www.cato.org/policy-analysis/repeal-glass-steagall-act-myth-reality>.

³⁵ *Ibid.*

³⁶ *Ibid.*

interconnectedness of financial institutions caused disaster to the greater economic community, and with the nullification of imperative Glass-Steagall statutes, banks will continue to grow bigger. And as we saw in 2008, the bigger they are, the harder they fall. The New Deal was useful in setting a precedent for how the size and potential conflict of interest that can result from the unification of commercial and investment banking can be regulated. However, the “First New Deal” of 1933-1935 was invalidated by the Supreme Court and is remembered as a constitutional failure by President Roosevelt. This raises the questions, was President Roosevelt justified in his attempts to revive the economy using his methods? Is the president given enough constitutional power to effectively alleviate economic strife in a depression as severe as the one he presided over?

CONCLUSION

All and all, President Roosevelt wasted no time during his presidency going right to work to address the needs of his country in crisis. He was impressive in his ability to hastily pass major reforms through congress and create bureaucratic institutions that would last for decades after him. While tackling the Great Depression, President Roosevelt was able to expand the role of government, strengthen presidential powers, and restore trust in the financial system. Although his regulatory policies affected the nation in different ways and benefited some Americans more than others, there is much we can learn from looking back at President Roosevelt's policies in order to prevent future economic catastrophe and strife.

It is important to analyze the successes and failures of past leadership to guide our policy today. The lessons we can learn from President Roosevelt's response to the Great Depression can serve us well in creating solutions to modern economic crises if we utilize the lessons of history to address today's challenges. As we've seen during the coronavirus pandemic outbreak, the government can be hesitant to play its role in alleviating financial hardship. Understanding criticisms given to President Roosevelt by renowned economist John Maynard Keynes may allow us to be more open minded about providing the necessary relief needed to alleviate financial hardship. As student debt increases, it becomes reminiscent of the period of credit expansion debt prior to the Great Depression. By understanding how increasing household debt played a role in beginning the Great Depression and Great Recession, it is imperative we support

relieving debt now, something that is being considered by the Biden Administration.³⁷ It is important to create economic legislation that considers social context such as race, as proven by the omission of farm workers from the NLRA and the disproportionality shown by the effects of the pandemic outbreak. History and the future are forever intertwined, and there is no better history to analyze when looking for a guiding light for the path to economic stability in the twenty-first century than President Roosevelt and his most significant New Deal policies.

³⁷ Amir Sufi and Atif Mian, “Credit expansion is the real cause of booms and busts,” *Market Watch*, March 2018.

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DO SKILLS PAY THE BILLS? ANALYZING THE IMPACT OF H-1B RECIPIENTS ON DOMESTIC WAGES IN APPLICABLE OCCUPATION SECTORS

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Many studies have examined immigrants' impact on domestic wages. However, U.S. visas requiring recipients to work in specific occupational sectors likely affect wages in certain occupation sectors disproportionately. One such visa is the H-1B visa, which is a temporary visa for immigrants working in skilled occupation sectors¹. This research reviews the history of the H-1B visa, specifically discussing related Congressional and Presidential policies, and it examines prior research on the H-1B visa. This research then determines the impact of H-1B visa beneficiaries on wages in appropriate occupation sectors. This research finds that an increased number of H-1B visa beneficiaries relative to total foreign workers in an occupation sector increases domestic wages in the applicable occupation sector. This effect is particularly clear in STEM occupations.

INTRODUCTION

The United States grants H-1B visas to high-skill foreign workers who intend to work in “specialty occupations” and demonstrate “distinguished merit and ability.”² H-1B visas are nonimmigrant visas, meaning they only enable foreigners to work in the United States temporarily. H-1B visas initially last three years, but employers can petition to extend an H-1B visa to up to six years, with a possibility for further extensions if the beneficiary proceeds to a certain stage in an employer-sponsored permanent residency process.³ Although the number of yearly H-1B visa recipients has fluctuated significantly since 1997, the H-1B visa admissions have generally increased over time (see Appendix A). For example, the United States admitted 188,123 H-1B visa applicants in 2019, compared to the United States' admission of only 80,547 H-1B visa applicants in 1997.⁴

¹ U.S. Department of State Bureau of Consular Affairs. “Temporary Worker Visas.” U.S. Department of State, 2020. <https://travel.state.gov/content/travel/en/us-visas/employment/temporary-worker-visas.html>.

² U.S. Department of Labor Wage and Hour Division. “H-1B Program.” U.S. Department of Labor, 2020. <https://www.dol.gov/agencies/whd/immigration/h1b>.

³ American Immigration Council. “The H-1B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy.” *American Immigration Council*, 2020, 1–9.

⁴ U.S. Department of State. “Nonimmigrant Visa Issuances by Visa Class and by Nationality: FY1997-2019 NIV Detail Table”. *U.S. Department of State – Bureau of Consular Affairs*, 2020.

As the number of H-1B visa beneficiaries increases, the economic impact of this program becomes more important to understand. Immigration is a heavily politicized issue, and Congress and the President will likely consider new immigration policies or legislation in the near future.⁵ The H-1B visa has been subject to intense political scrutiny in recent years.⁶ For example, President Donald Trump's 2017 "Buy American Hire American" (BAHA) Executive Order recommended the imposition of additional barriers for employers seeking to hire H-1B visa beneficiaries⁷. Therefore, an economic analysis of the H-1B visa is necessary to ensure that Congress and the Presidency enact economically beneficial H-1B visa policies. Accordingly, this research focuses on measuring H-1B beneficiaries' impact on domestic workers' wages.

POLICY HISTORY OF H-1B VISAS

Prior to examining the H-1B visa's economic impact, one must first examine the historical influence of Congress and the Presidency on the H-1B visa. In the 1952 Immigration and Nationality Act, Congress first created the "H-1 visa" for foreign workers who were "of distinguished merit and ability." The Immigration and Nationality Act specified that the H-1 visa was only for foreigners coming to the United States "to perform temporary services of an exceptional nature requiring such merit and ability." Congress and the Presidency maintained the H-1 visa throughout multiple subsequent overhauls of the U.S. immigration system, such as the Immigration and Nationality Act of 1965.⁸

In the Immigration Act of 1990, Congress and President George H.W. Bush altered the H-1 visa program for the first time since 1952.⁹ The Immigration Act of 1990 divided the H-1 visa into the H-1A visa and the H-1B visa. Congress specifically created the H-1A visa for nurses seeking temporary employment in the United States, while the H-1B visa became the visa program for other foreigners seeking to temporary work in "specialty occupations."¹⁰ This law

⁵ Alba, Richard, and Nancy Foner. "Immigration and the Geography of Polarization." *City & Community* 16, no. 3 (2017): 239-43.

⁶ Torres, Nicole. "The H-1B Visa Debate, Explained." *Harvard Business Review*, 2017.

⁷ Buy American and Hire American, Executive Order 13788 (2017).

⁸ CIS. "The Legacy of the 1965 Immigration Act: Three Decades of Mass Immigration." *Center for Immigration Studies*, 1995.

⁹ Immigration Act, Public Law 101-649 § 104 Stat. 4978 (1990).

¹⁰ Find Law. "Temporary Worker Visas" 2016. Retrieved from <https://www.findlaw.com/immigration/visas/temporary-worker-visas.html>.

also set a limit of 65,000 yearly H-1B visa admissions. This “H-1B visa ceiling” has remained in effect in some capacity since the H-1B visa’s inception.

In 1998, Congress and President Bill Clinton reformed the H-1B visa through the American Competitiveness and Workforce Improvement Act.¹¹ The American Competitiveness and Workforce Improvement Act increased the H-1B visa ceiling to 115,000, which would expire in 2002.¹² It also levied a \$500 application fee on H-1B visa employers. Congress invested these fees in scholarships for underprivileged students seeking STEM education and job training programs for domestic workers, seeking to help Americans compete with an increasingly skilled foreign workforce.

Congress and President Bill Clinton altered H-1B visa policy in the American Competitiveness in the Twenty-First Century Act of 2000.¹³ The Act increased the H-1B visa ceiling to 195,000 yearly admissions through 2003 and exempted nonprofit research institutions and accredited higher education institutions from H-1B visa employer fees. However, it also increased the H-1B visa employer fee from \$500 to \$1,000.¹⁴ Although this policy initially increased the number of H-1B visa recipients in the United States, Congress allowed the H-1B visa ceiling increase to expire in 2003, returning the H-1B visa ceiling to 65,000 applicants.

Under the direction of President George W. Bush, Congress implemented new H-1B visa policy through the H-1B Visa Reform Act of 2004, which exempted government entities from H-1B visa fee requirements.¹⁵ It maintained the H-1B visa ceiling at 65,000 recipients, but it also allocated an additional 20,000 H-1B visas for individuals with advanced degrees. Under this law, H-1B visa applicants with advanced degrees enter a specific “advanced degree lottery” for H-1B visas, and those who do not receive one of these 20,000 visas can still receive one of the other 65,000 visas. Effectively, foreign workers with advanced degrees have two opportunities to obtain an H-1B visa each year. The H-1B Visa Reform Act of 2004 also subjected employers seeking to hire H-1B beneficiaries to consistent Department of Labor investigations.¹⁶ Under this

¹¹ Hahm, Jung S. “American Competitiveness and Workforce Improvement Act of 1998: Balancing Economic and Labor Interests under the New H-1B Visa Program.” *Cornell Law Review* 85, no. 6 (2000): 1673–1701.

¹² American Competitiveness and Workforce Improvement Act, Public Law 105-227 § 112 Stat. 2681 (1998)

¹³ Joe, Harry J. “Summary of American Competitiveness in The Twenty-First Century Act Of 2000.” *Jenkins and Gilchrist, P.C.*, 2001.

¹⁴ American Competitiveness in the Twenty-First Century Act, Public Law 106-313 § 114 Stat. 1251 (2000)

¹⁵ Allocation of Additional H-1B Visas Created by the H-1B Visa Reform Act of 2004 8 C.F.R. Part 214. *U.S. Citizenship and Immigration Services Department of Homeland Security*, 2005.

¹⁶ U.S. Department of Labor. “Fact Sheet #62A: Changes made by the H-1B Visa Reform Act of 2004.” *U.S. Department of Labor Wage and Hour Division*, 2008.

law, employers with more than 26 employees pay a \$1,500 fee to sponsor an H-1B visa applicant, while other H-1B visa sponsors pay a \$750 fee. Further, the law imposed a \$500 “fraud prevention and detection fee” on all employers filing an H-1B visa petition, increasing the total cost of each H-1B visa sponsorship.

Through the 2009 Employ American Workers Act, Congress and President Obama sought to limit Great-Recession-related domestic job losses.¹⁷ This law emphasizes that any business receiving TARP or Federal Reserve Act government funds must attest that they will not hire H-1B visa beneficiaries to replace domestic workers. Additionally, Congress prevented employers from hiring H-1B visa beneficiaries into any position that was previously subject to layoffs. The Employ American Workers Act imposed additional requirements on employers with a certain proportion of employees holding H-1B status. Congress has not passed H-1B visa policy since 2009. Instead, the executive branch has effectively controlled H-1B visa policy.

U.S. Citizenship and Immigration Services (USCIS) created most H-1B visa policy between 2010 and 2017. USCIS the main executive agency providing U.S. visa services, implementing the immigration service functions of the federal government.¹⁸ The Department of Homeland Security (DHS) controls USCIS, giving the President direct control over all USCIS policy. USCIS first enacted new H-1B visa policy in 2010, placing additional restrictions on H-1B visa beneficiaries and requiring employers to demonstrate an “employee-employer” relationship for all H-1B visa sponsorships.¹⁹ In 2015, the Obama administration amended DHS policy through USCIS rulemaking, making it easier for certain spouses of H-1B visa beneficiaries to receive U.S. employment authorization.²⁰ This policy encouraged skilled foreign workers to apply for H-1B visas, as they became more confident that their families could pursue employment in the United States as well. A separate 2015 USCIS memorandum emphasized that H-1B visa recipients could remain in the United States while attending external trainings, conferences, and so on, as long as they eventually returned to their original place of

¹⁷ U.S. Department of Labor. “Fact Sheet #62Z: What impact does the Employ American Workers Act (EAWA) have on H-1B employers?” *U.S. Department of Labor Wage and Hour Division*, 2009.

¹⁸ U.S. Citizenship and Immigration Services. “Our History.” U.S. Citizenship and Immigration Services, 2020. <https://www.uscis.gov/about-us/our-history>.

¹⁹ U.S. Citizenship and Immigration Services. “Memorandum: Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements”. *U.S. Citizenship and Immigration Services Department of Homeland Security*, 2010.

²⁰ U.S. Department of Homeland Security. “Employment Authorization for Certain H-4 Dependent Spouses” *Federal Registrar Department of Homeland Security*, 2015.

employment.²¹ This policy increased H-1B visa recipients' job security, but it also placed additional burdens on their petitioning employers.

Under the Trump administration, H-1B visa policy became more restrictive. A 2017 USCIS memorandum instructed U.S. immigration officials to no longer grant H-1B visas to applicants in certain computer-related positions.²² These computer-related positions previously represented a majority of H-1B visa recipients, meaning the USCIS memorandum likely prevented many skilled immigrants from entering the United States.²³ This policy also made it more difficult for H-1B visa recipients already present in the United States to extend their H-1B status, and additional policies removed any presumption that USCIS should give deference to prior decisions. Consequently, foreign workers who USCIS previously granted H-1B status could be rejected for an H-1B visa extension under this policy, even if their employment circumstances did not change. Furthermore, President Trump recently issued two policies that significantly affected H-1B visa policy. President Trump's 2017 BAHA Executive Order recommended the implementation of additional barriers on employers seeking to hire H-1B visa beneficiaries. Furthermore, President Trump issued Presidential Proclamation 10052 as a response to the COVID-19 pandemic, which barred H-1B beneficiaries not in the United States from entering the United States, unless they met narrow exception criteria.²⁴

Importantly, the Biden administration has not yet created policy specifically affecting the H-1B visa. However, President Biden has not signaled that he will extend Presidential Proclamation 10052, which is due to expire on March 31, 2021. President Biden's inaction may indicate support for more liberal H-1B visa policies. Since 1952, both Congress and the Presidency have repeatedly changed, refined, and controlled H-1B visa policy. Accordingly, both Congress and the Presidency must have an empirical understanding of H-1B visa recipients' economic impact.

²¹ U.S. Citizenship and Immigration Services. "Policy Memorandum: USCIS Final Guidance on When to File an Amended or New H-1B Petition After 'Matter of Simeio Solutions, LLC'". *U.S. Citizenship and Immigration Services Department of Homeland Security*, 2015.

²² U.S. Citizenship and Immigration Services. "Policy Memorandum: Recession of the December, 2000 'Guidance memo on H1B computer related positions'". *U.S. Citizenship and Immigration Services Department of Homeland Security*, 2017.

²³ Wolfsdorf, Bernard, Josune Aguirre, and Robert Blanco. "USCIS Announces New Policy Memo on H-1B Computer Programmers." *Wolfsdorf Rosenthal LLP*, 2017.

²⁴ AILA. "Presidential Proclamation Suspending Entry of Individuals who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak." *American Immigration Lawyers Association*, 2020.

PREVAILING IMMIGRATION RESEARCH

Extensive research examines the economic impact of immigration on domestic economies. Prevailing immigration research holds that, in most circumstances, an increase of immigrants in a labor market will result in falling domestic wages and employment levels.²⁵ This effect has been particularly pronounced among low-skill workers in the United States.²⁶ In contrast, economic research indicates that immigrants increase domestic business earnings.²⁷ This increase in firm earnings leads to overall economic gains in the domestic economy, increasing the U.S. GDP by \$1.6 trillion annually. Some research indicates that immigrants' usage of welfare programs mitigates the economic benefit of immigration.²⁸ However, although immigrants are more likely to use social programs upon entering the country than native residents, most research indicates that immigrants quickly exit welfare programs.²⁹ Additionally, immigrants are not eligible for many U.S. welfare services, limiting the extent to which immigrants can "take advantage of" American social programs.³⁰ Prevailing economic research on immigration indicates that immigrants benefit the domestic economy in general, while having different effects on workers of different skill levels.

Specifically, immigration reduces short-term wages and employment among domestic workers of comparable education and experience, while long-term wages typically return to prior levels. Recent research indicates that domestic employers do not consider immigrants with comparable education and experience to domestic workers to be perfect substitutes for domestic workers.³¹ Rather, they represent imperfect substitutes in the labor market. Accordingly, modern immigration research focuses on estimating immigrants' economic impact by occupation sector,

²⁵ Borjas, George J. "The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market." *The Quarterly Journal of Economics* 118, no. 4 (2003): 1335–74; Sharpe, Jamie, and Christopher Bollinger. "Who Competes with Whom? Using Occupation Characteristics to Estimate the Impact of Immigration on Native Wages." *Labour Economics* 66 (2020).

²⁶ Borjas, George J. *Immigration Economics*. Cambridge, MA: Harvard University Press, 2014.

²⁷ Hanson, Gordon H. "The Economics and Policy of Illegal Immigration in the United States" *Migration Policy Institute*, 2009, 1–16.

²⁸ Borjas, George J., and Stephen J Trejo. "Immigrant Participation in the Welfare System." *Industrial and Labor Relations Review* 44, no. 2 (1991): 195–211.

²⁹ Kerr, Sari P, and William R Kerr. "Economic Impacts of Immigration: A Survey." *National Bureau of Economic Research*, 2011, 1–37.

³⁰ Broder, Tanya, Avidah Moussavian, and Jonathan Blazer. "Overview of Immigrant Eligibility for Federal Programs." *National Immigration Law Center*, 2015, 1–10.

³¹ Ottaviano, Gianmarco, and Giovanni Peri. "Rethinking the Effect of Immigration on Wages." *The Journal of European Economic Association* 10, no. 1 (2011): 152–97.

rather than educational sector, to analyze the impact of immigration on domestic workers' wages.

PREVAILING H-1B RESEARCH: FINDINGS AND GAPS

Prevailing research on the economic impact of H-1B visa beneficiaries reaches different findings compared to the overall economic effects of immigration. Many American metropolitan areas have a shortage of skilled workers.³² Therefore, high-skill H-1B visa beneficiaries do not limit the jobs available for domestic workers. H-1B visa beneficiaries also increase workplace innovation, which likely increases domestic employment and wages by increasing workplace efficiency.³³ Furthermore, high-skill immigrants often receive higher earnings than other immigrants, meaning they are more likely to invest financial resources in local economies.³⁴

Prevailing research has indicated that H-1B visa recipients positively impact the U.S. economy. For example, research on H-1B visa beneficiaries in American cities from 1990 to 2010 demonstrates that higher amounts of H-1B visa beneficiaries significantly increase wages among both college-educated and non-college educated native workers in STEM fields.³⁵ Additionally, due to current shortages of workers in skilled occupations and H-1B visa beneficiaries' tendency to innovate, H-1B visa beneficiaries empirically increase native employment rates in American cities. Finally, recent research finds that high-skill immigrants, including H-1B visa beneficiaries, significantly increase production in high-technology industries.³⁶ Notably, some research indicates that firms may use H-1B visa beneficiaries as low-cost substitutes for domestic workers, as H-1B visa beneficiaries may be willing to work for less than domestic employees.³⁷ Nonetheless, research supporting this view is largely based on

³² Ruiz, Neil G, Jill H Wilson, and Shyamali Choudhury. "The Search for Skills: Demand for H-1B Immigrant Workers in U.S. Metropolitan Areas." *Metropolitan Policy Program at Brookings*, 2012, 1–38; Rothwell, Jonathan, and Neil G Ruiz. "H-1B Visas and the STEM Shortage." *Brookings*, 2013.

³³ Khanna, Gaurav, and Munseob Lee. "High-Skill Immigration, Innovation, and Creative Destruction," *National Bureau of Economic Research*, 2018, 1–38.

³⁴ Saxenian, A. (2002). Brain Circulation: How High-Skill Immigration Makes Everyone Better Off. *The Brookings Review*, 20(1), 28-31.

³⁵ Peri, Giovanni, Kevin Shih, and Chad Sparber. "STEM Workers, H-1B Visas, and Productivity in US Cities." *Journal of Labor Economics* 33, no. 1 (2015): 225–55.

³⁶ Paserman, M. "Do High-Skill Immigrants Raise Productivity? Evidence from Israeli Manufacturing Firms, 1990-1999." *IZA Journal of Migration* 2, no. 6 (2013): 1–31.

³⁷ Hira, Ron. "Bridge to Permanent Immigration or Temporary Labor? The H-1B Visa Program Is a Source of Both." In *U.S. Engineering in a Global Economy*, 263–83. Chicago, IL: University of Chicago Press, 2018.

descriptive evidence, rather than empirical evidence. Current research indicates that H-1B visa beneficiaries serve as compliments to domestic workers, rather than substitutes.³⁸

Current research on H-1B visa beneficiaries' economic impact has certain limitations. Most of this research focuses on individual cities, metropolitan areas, or local economies, rather than the United States as a whole. Prevailing research indicates that immigrants may choose to move to areas with increasing wages, or domestic workers may choose to move to areas with less competition with incoming foreign workers.³⁹ Consequently, comparative wage increases in cities with many H-1B visa beneficiaries may be biased due to confounding factors in the labor market. A national level analysis of H-1B visa beneficiaries will more accurately estimate the effect of H-1B visa immigration on domestic workers' wages.

Furthermore, current economic research on H-1B visa beneficiaries assumes that H-1B visa recipients exclusively impact STEM fields. Although some H-1B visa beneficiaries work in STEM fields, many H-1B visa recipients work in other high-skill occupation sectors. As such, current research fails to examine H-1B beneficiaries' economic impact on non-STEM economic sectors. Finally, recent economic analyses of H-1B beneficiaries' economic impact only examine data through 2010, which cannot account for later potential economic shifts. Therefore, this research seeks to adjust for these factors, providing a national-level analysis of all occupation sectors with more recent data.

Prior H-1B visa research indicates that H-1B visa beneficiaries increase domestic wages. Consequently, the main hypothesis of this research is that *a higher rate of H-1B visa immigration in an occupation sector will increase domestic wages within the occupation sector.*

METHODOLOGY

This research examines the economic impact of H-1B visa beneficiaries by analyzing the effect of H-1B visa beneficiaries on domestic worker wages in corresponding occupation categories. This research follows Borjas (2003) by using log wages as an economic indicator, largely due to the plethora of available data on wages across U.S. occupation sectors. Data from

³⁸ Bound, John, Gaurav Khanna, and Nicolas Morales. "Understanding the Economic Impact of the H-1B Program on the U.S." *National Bureau of Economic Research*, 2017, 1–62.

³⁹ Borjas, George J, Richard B Freeman, and Lawrence F Katz. "How Much Do Immigration and Trade Affect Labor Market Outcomes?" *Brookings Papers on Economic Activity* 1 (1997): 1–90.

the U.S. Department of Labor measures the presence of H-1B visa recipients in different occupation sectors from 2009 to 2019, and Current Population Survey (CPS) data measures wages across occupation sectors from 2003 to 2019. Following Peri et al. (2015), this research measures the impact of annual changes in the number of foreign workers by occupation sector on domestic workers' wages. Unlike Peri et al., (2015), this research focuses exclusively on H-1B visa recipients. While data are available for year 2020, the COVID-19 pandemic likely impacted wages in unpredictable ways, due to extraordinary disruptions to the U.S. labor market in the form of job losses, salary reductions, and temporary furloughs. Thus, this research excludes the year 2020.

Following Sharpe and Bollinger (2020), this research examines the impact of H-1B visa beneficiaries by occupation group, rather than by education group. Immigrants and natives of equal education and experience may not be perfect substitutes. As Borjas (2003) notes, analyzing H-1B visa beneficiaries' economic impact by occupation sector more effectively illustrates H-1B visa beneficiaries' economic effect than measurements across education groups. Importantly, domestic and foreign workers can move between cities, metropolitan areas, and local economies based on local wage variances. Thus, this research follows Borjas et al. (1997) in analyzing the labor market at the national level.

This research uses the CPS's four-digit occupation codes to determine H-1B visa occupation sectors. The CPS is an annual survey that serves as the primary source of quantitative information on the U.S. labor market.⁴⁰ Among other things, the CPS measures the number of Americans working in different occupation sectors and American wages. The CPS provides data to determine the number of workers in different occupation sectors, as well as demographic information and mean wages for these occupation sectors. The U.S. Department of Labor provides data on the number of H-1B visa recipients from 2009 to 2019, as well as the CPS occupation sector in which they work, thereby determining which occupation sectors H-1B visa recipients most heavily populated. This research divides CPS occupation sectors into four categories. *Blue Collar* occupations include occupation sectors typically requiring low communication skills and high physical skills, where no H-1B visa recipients worked from 2009

⁴⁰ U.S. Census Bureau. "Current Population Survey (CPS)". *U.S. Census Bureau*, 2020. Retrieved from <https://www.census.gov/programs-surveys/cps.html>.

to 2019. *White Collar* occupations include occupation sectors typically requiring high communication skills and low physical skills, where no H-1B visa recipients worked from 2009 to 2019. *H-1B STEM* occupations are those occupations listed as “STEM” occupations by the U.S. Department of Labor including at least one H-1B visa recipient from 2009 to 2019. *H-1B non-STEM* occupations are the remainder of occupations including at least one H-1B visa recipient from 2009 to 2019.

This research estimated two regression models. Both models used the average of the natural log of domestic workers’ wages in each occupation sector as the dependent variable. Changes in average log domestic wages indicate overall trends in domestic workers’ wages. The first model examines the total share of foreign workers in each occupation category, as well as the total share of foreign workers in the United States each year. The share of foreign workers is represented by the variable *Immigrant Share*. This regression demonstrates the impact of all foreign workers on domestic workers’ wages in each occupation category. The second regression model still measures *Immigrant Share*. It also measures the percentage of workers who are H-1B visa recipients in each occupation sector, which is represented by the variable *H-1B Visa Share*. This regression estimates the impact of increasing the share of foreign workers who are H-1B visa recipients on domestic workers’ wages, while holding constant the share of total foreign workers. Thus, the second model isolates the impact of H-1B visa beneficiaries on domestic workers’ earnings.

This research controls for exogenous economic factors by controlling for *year*, which accounted for broad yearly economic shifts. Furthermore, this research breaks down occupations by *age category* to control for age differences among domestic workers. This research follows Borjas (2003) by exclusively examining men ages 25-64, thereby controlling for potential differences in earnings among domestic workers of different genders. Following Sharpe and Bollinger (2020), this research controlled for differences in the number of workers in different age groups and occupation sectors by weighing regressions by the number of workers in each age and occupation category.

RESULTS

The final sample from the CPS included 587,111 American workers. Of these American workers, 141,930 worked in blue collar occupation sectors without any H-1B visa recipients, 62,269 worked in white collar occupation sectors without any H-1B visa recipients, 330,326 worked in non-STEM occupation sectors with at least one H-1B visa recipient, and 52,586 worked in STEM occupation sectors with at least one H-1B visa recipient. Results for the first regression model are listed in Table 1, which is included in Appendix B. Results for the second regression model are listed in Table 2, which is included in Appendix C.

In the first regression, *Immigrant Share* had a negative coefficient for the full sample. This negative coefficient means that, as the share of foreign workers in an occupation sector increased, domestic workers' wages became lower. This result affirms the findings of Borjas (2003): increasing the share of immigrant workers causes increased competition for jobs and lowers domestic workers' wages. When this research estimated the model separately for each occupation sector, the *Immigrant Share* coefficient was also negative for *Blue Collar*, *White Collar*, and *H-1B Non-STEM* variables. This result demonstrates that, for workers in occupation sectors in these three categories, increasing the share of immigrant workers also decreases domestic wages.

However, the *Immigrant Share* coefficient for *H-1B STEM* was positive. This result indicates that, in STEM occupations with at least one H-1B visa recipient from 2009 to 2019, increasing the share of immigrant workers actually increases domestic wages. This result is congruent with the findings of Peri et al. (2015), who found that foreign workers in STEM fields increase domestic wages.

In the second model, the coefficient pattern for *Immigrant Share* changes. The coefficient for *Immigrant Share* is still negative for *Blue Collar* and *White Collar* occupation sectors and positive for the *H-1B STEM* occupation sector. However, the coefficient for *Immigrant Share* is now positive for the *H-1B non-STEM* occupation sector. This result indicates that foreign workers in skilled non-STEM occupation sectors may actually positively impact domestic workers' wages.

In the second model, the coefficient for *H-1B Visa Share* is positive. This result indicates that domestic workers' wages increase as the share of H-1B visa recipients among foreign workers in an occupation sector increases, holding constant the share of foreign workers. This

finding supports the work of Peri et al. (2015), who found that STEM H-1B visa recipients increase domestic workers' wages due to high rates of innovation. However, this result demonstrates that a higher share of H-1B visa recipients relative to foreign workers also increases domestic workers' wages across all occupations.

In the second model's estimates by occupation sector, neither *Blue Collar* nor *White Collar* occupation sectors had any H-1B visa recipients working in corresponding occupations. As such, their coefficients for *H-1B Visa Share* were equal to zero. Additionally, because of low-variance in the *H-1B Non-STEM* occupation category, its coefficient for *H-1B Visa Share* was outlandishly high and imprecisely estimated, as evidenced by its very high standard error. Although this finding supports the hypothesis, this research ignores this result.

For the *H-1B STEM* occupation category, *H-1B Visa Share* had a positive coefficient. This result indicates that domestic workers' wages in STEM occupations increase as the share of H-1B visa recipients among foreign workers in STEM occupation sectors increases, holding constant the share of foreign workers. This result concurs with the work of Peri et al. (2015), demonstrating the positive impact of H-1B visa recipients in STEM occupations on domestic wages. Importantly, though, the *H-1B Visa Share* coefficient for the *H-1B STEM* occupation category was greater than the *Immigrant Share* coefficient for the *H-1B STEM* occupation category. This difference in coefficients indicates that H-1B visa recipients in STEM occupations increase domestic wages even more than other foreign workers in STEM occupations.

POLICY DISCUSSION

Based on these results, the United States should encourage a larger number of H-1B visa recipients to come to the United States. Such policy would likely increase the U.S. GDP. Based on the results of this research, increasing the share of overall foreign workers who are H-1B visa recipients would also increase domestic workers' wages. Encouraging H-1B visa beneficiaries to work in the United States would simultaneously benefit workers and the American economy.

Multiple potential policy responses would encourage more H-1B visa beneficiaries to enter the United States. As previously stated, Congress sets a ceiling on the number of H-1B visa recipients that can enter the United States each year. Eliminating this ceiling would encourage more skilled immigrants to seek H-1B visa sponsorship and pursue employment in the United

States. This policy would also encourage currently employed H-1B visa recipients to continue working in the United States, as they may otherwise be unable to renew their H-1B visa under H-1B visa ceiling limitations, meaning they would have to leave the United States. Without an H-1B visa ceiling, skilled foreign workers would have a higher chance of successfully gaining employment in the United States. Furthermore, because the H-1B visa program is employer-sponsored, eliminating the H-1B visa ceiling would encourage more employers to make greater use of the H-1B program. Employers would face a lower risk of their H-1B visa sponsorship being rejected if the H-1B visa ceiling were eliminated, increasing the value of sponsoring an H-1B visa.

Furthermore, the 2009 Employ American Workers Act and the 2017 BAHA Executive Order restricted employers attempting to hire H-1B visa recipients. President Joe Biden has already rescinded the BAHA Executive Order. These and other related eliminations of H-1B visa restrictions would encourage higher rates of H-1B visa recipient entry into the United States. Consequently, these policies would likely increase domestic workers' wages.

Admittedly, many Americans may initially oppose encouraging more H-1B visa recipients to work in the United States, equating increases in foreign workers with negative media portrayals of immigrants.⁴¹ Due to the present economic crisis related to the COVID-19 pandemic, many Americans fear that admitting H-1B visa beneficiaries will exacerbate massive COVID-related job losses.⁴² These negative sentiments should dissipate as Americans experience the positive influence of H-1B visa recipients on the U.S. economy. Nevertheless, the Biden administration will have to demonstrate to the broader public why the H-1B program stimulates the American economy and benefits U.S. workers in the form of higher wages.

CONCLUSION

Overall, although increased levels of immigration typically decrease domestic wages, H-1B visa recipients working in the United States increase domestic wages. This phenomenon

⁴¹ Hooghe, Marc, and Ruth Dassonneville. "Explaining the Trump Vote: The Effect of Racist Resentment and Anti-Immigrant Sentiments." *Political Science and Politics* 51, no. 3 (2018): 528–34.

⁴² Scarpetta, Stefano, Jean-Christophe Dumont, and Thomas Liebig. "What Is the Impact of the COVID-19 Pandemic on Immigrants and Their Children?" *Organization for Economic Co-operation and Development*, 2020, 1–26.

likely occurs due to high levels of innovation by H-1B visa recipients. Furthermore, like foreign workers in general, H-1B visa recipients likely contribute to the U.S. GDP. Therefore, U.S. policymakers should support initiatives to increase the number of H-1B visa recipients in the United States, such as eliminating the annual H-1B visa ceiling.

There are some limitations to this research. This research did not control for the age or gender of H-1B visa recipients. Future research should examine these factors to obtain a better understanding of the H-1B visa's economic impact. This research also had to ignore the results for "non-STEM" H-1B visa recipients. Future research should further analyze this category to obtain more comprehensive results. Furthermore, this research only examines H-1B visa recipients. Other temporary nonimmigrant visas may exhibit unique influences over domestic wages. For example, the H-2A visa encourages temporary agricultural workers to come to the United States.⁴³ Examining the impact of these visa recipients on domestic wages would provide further insight into future U.S. immigration policy opportunities. Finally, domestic wages are an imperfect measurement of the American economy's strength. Future research may examine employment, production, or other standards of economic wellbeing to illustrate the influence of H-1B visa recipients on the American economy.

Nevertheless, this research has clear short-term policy implications. As the Biden administration prepares to make significant changes to U.S. immigration policy, the administration should certainly consider increased H-1B visa availability to be a key component of any immigration reform strategy. Such policy would not just benefit high-skilled workers, but it would also promote economic recovery during and after the COVID-19 pandemic.

⁴³ U.S. Department of Labor Employment and Training Administration. "Performance Data." U.S. Department of Labor, 2020. <https://www.dol.gov/agencies/eta/foreign-labor/performance>.

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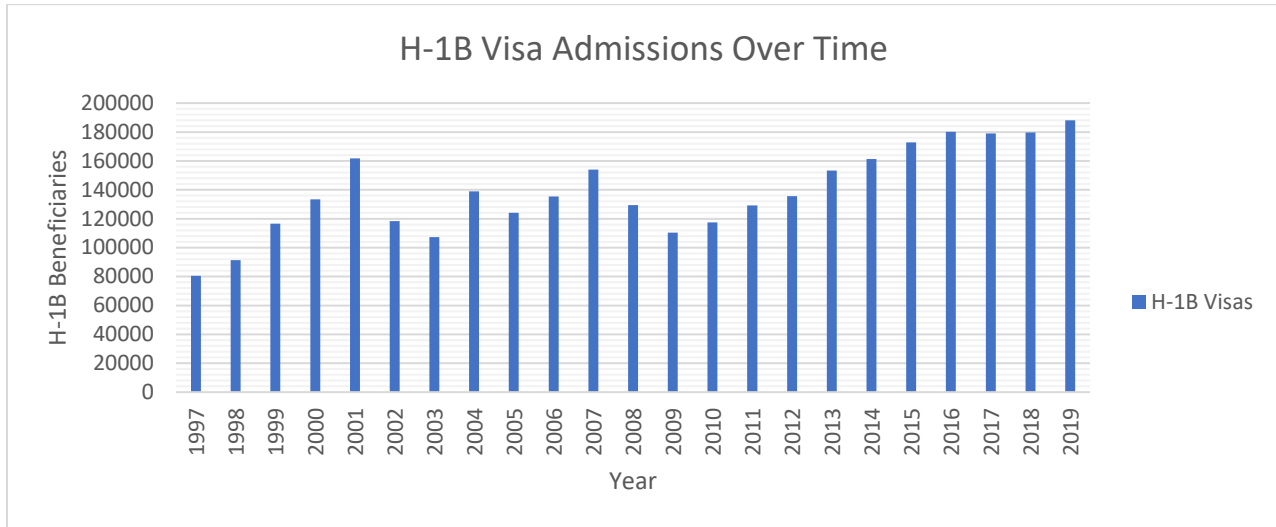
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APPENDIX A



Data retrieved from the U.S. Department of State

APPENDIX B

Table 1: Native Earnings on Immigrant Employment Share

VARIABLES	Full Sample	Blue Collar	White Collar	H-1B Non-STEM	H-1B STEM
Immigrant Share	-0.0698	-0.146	-0.169	-0.0595	0.221
	(0.0887)	(0.165)	(0.252)	(0.218)	(0.208)
Constant	0.00583	0.0101	-0.00267	0.00582	-0.0116
	(0.0109)	(0.0209)	(0.0267)	(0.00977)	(0.0655)
Observations	272	68	68	68	68
R-squared	0.158	0.379	0.294	0.388	0.299

Robust standard errors in parentheses, all columns control for year and age group fixed effects, full sample column controls for H1B occupation categories. Observations were weighted by the total number of workers in each cell.

APPENDIX C

Table 2: Native Earnings on Immigrant Employment Share by H1B Status

VARIABLES	Full Sample	Blue Collar	White Collar	H-1B Non-STEM	H-1B STEM
Immigrant Share	0.0714 (0.0887)	-0.146 (0.165)	-0.169 (0.252)	0.0727 (0.233)	0.247 (0.212)
H-1B Visa Share	0.148 (0.185)			15.33 (9.015)	0.310 (0.363)
Constant	0.00623 (0.0108)	0.0101 (0.0209)	-0.00267 (0.0267)	0.00507 (0.00967)	-0.0119 (0.0662)
Observations	272	68	68	68	68
R-squared	0.159	0.379	0.294	0.421	0.308

Robust standard errors in parentheses, all columns control for year and age group fixed effects, full sample column controls for H1B occupation categories. Observations were weighted by the total number of workers in each cell.

IMPROVING COMMUTING ZONES USING THE LOUVAIN COMMUNITY DETECTION ALGORITHM

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Using the Louvain community detection algorithm, I produce two new commuting zone delineations “TS Louvain” and “Sum Louvain” to define U.S. local labor markets. TS Louvain and Sum Louvain outperform the existing ERS commuting zone delineations on multiple metrics. I conduct two case studies in which TS Louvain produces point estimates of larger magnitude and standard errors of similar or smaller magnitude compared to ERS. Given the importance of boundary definitions in spatial economic analysis and the impact of economic research on policymaking, TS Louvain and Sum Louvain may help improve the accuracy of economic research to better inform policy. Researchers can access these commuting zone definitions at bit.ly/LouvainCZ.

INTRODUCTION

A substantial amount of social science research is based on spatial analysis because data on important indicators such as health, employment, and social demographics are often reported at aggregated regional levels. This research serves to inform policies on a variety of issues like public health, international trade, and education. However, the factors that affect indicators, such as trade shocks or disease spread, are not limited to regional boundaries. Therefore, researchers must determine how best to use discrete regional-level data to study phenomena that spill over into neighboring regions. Often, researchers will aggregate regional level data into clusters that better correspond to the actual geography of the subject of interest. For example, commuting zones are used by economists to delineate local labor markets, a basic unit for economic analysis that define areas that people both work and live in. Because of the effect of boundaries on spatial analysis, drawing well-fit regions is critical to producing accurate evidence to shape policy.

Commuting zones were first developed by the United States Department of Agriculture Economic Research Service (ERS) researchers Charles Tolbert and Molly Sizer. Using county-level commuting data, Tolbert and Sizer developed commuting zones so researchers could assess the impact of local labor markets on the socio-economic well-being of workers.¹

¹ Charles Tolbert and Molly Sizer Killian, “Labor Market Areas for the United States.”

Since then, these ERS commuting zones have been used for a variety of policy-relevant studies. However, despite knowledge of the impact of regional boundary lines on spatial analyses, there has been little work on evaluating the robustness of research to commuting zone definitions or on improving them. This is the first paper to present a new delineation of commuting zones using an algorithm differing from Tolbert and Sizer's.

In this paper, I use the Louvain community detection algorithm to develop two new commuting zone delineations "TS Louvain" and "Sum Louvain" that improve upon the original ERS commuting zones. The two Louvain commuting zone delineations have a greater share of people that work and live in the same commuting zone and have greater "modularity" (a network science measure of community detection quality). Additionally, I conduct two case studies in which the TS Louvain delineation produces larger point estimates with similar or smaller standard errors. However, these Louvain delineations may perform less well for short panels, as TS Louvain and Sum Louvain produce a smaller number of commuting zones than ERS, reducing sample size.

Section 2 presents an overview of the use of commuting zones in research and policy, section 3 presents the methods used for delineating commuting zones, and section 4 compares the quality of the commuting zone delineations. Then, I present the two case studies in section 5. Lastly, I conclude in section 6.

COMMUTING ZONES, RESEARCH, AND POLICY

In the 1980s, the ERS — in conjunction with universities around the United States, found that existing U.S. spatial delineations were insufficient to measure local labor markets. Labor markets are not confined within county or state borders, and the previously developed metropolitan statistical areas did not encompass outlying rural areas. Tolbert and Sizer's new commuting zones had three important characteristics:

1. Commuting zones are built up from counties, which are the base reporting unit of many economic indicators.
2. County definitions do not change frequently, so researchers can easily apply commuting zones to panel data.

3. Commuting zones cover the entire contiguous United States — rural and urban, making a variety of spatial analysis techniques possible.²

Since then, commuting zones have been used to analyze a variety of phenomenon, such as the effect of education on local employment growth, the impact of the distribution of industries within a labor market on gender differences in earnings, and the effect of state minimum wage policies on teen unemployment.³ These studies influence how policymakers think about issues; for example, 30 of 43 studies in a meta-analysis concluded that the “use of economic evidence had a ‘substantial’ impact on health care policymaking.”⁴ Findings can influence the technical details of a policy implementation, inform solutions to national crises — such as the policy response to the Great Recession, and increase the salience of issues.⁵ Commuting zones underpin the analysis of many labor market characteristics, and by extension, indirectly shape policies that affect local labor markets. Having more accurate studies on these topics would assist in informing better policies on the minimum wage, unemployment, the gender pay gap, and other issues.

There has been some work examining and producing alternative labor market delineations. Kerry and Papps (2002) produce local labor markets for New Zealand using an algorithm developed by Coombes et al. (1986) that conducts iterative clustering and dismembering.⁶ Feser (2003) produces regional clusters based on worker occupations that share

² Christopher S. Fowler, Danielle C. Rhubart, and Leif Jensen, “Reassessing and Revising Commuting Zones for 2010: History, Assessment, and Updates for U.S. ‘Labor-Sheds’ 1990–2010” [in en], *Population Research and Policy Review* 35, no. 2 (April 2016): 263–286, ISSN: 0167-5923, 1573-7829, accessed January 25, 2021, <https://doi.org/10.1007/s11113-016-9386-0>, <http://link.springer.com/10.1007/s11113-016-9386-0>.

³ Elizabeth E. Davis, Laura S. Connolly, and Bruce A. Weber, “Local Labor Market Conditions and the Jobless Poor: How Much Does Local Job Growth Help in Rural Areas?” [In English], Num Pages: 16 Place: Logan, United States Publisher: Western Agricultural Economics Association, *Journal of Agricultural and Resource Economics* 28, no. 3 (December 2003): 503–518, ISSN: 10685502, accessed March 13, 2021, <http://www.proquest.com/docview/214692469/citation/4DCA0ABBD00E452DPQ/1>.; A. Tickamyer and J. Bokemeier, “Sex differences in labor-market experiences” [in English (US)], Publisher: Rural Sociological Society, *Rural Sociology* 53, no. 2 (January 1988): 166–189, ISSN: 0036-0112, accessed March 13, 2021, <https://pennstate.pure.elsevier.com/en/publications/sex-differences-in-labor-market-experiences>.; Sylvia Allegretto, Arindrajit Dube, and Michael Reich, “Spatial Heterogeneity and Minimum Wages: Employment Estimates for Teens Using Cross-State Commuting Zones” [in en], June 2009, accessed March 13, 2021, <https://escholarship.org/uc/item/1x99m65f>.

⁴ Louis W. Niessen et al., *Assessing the Impact of Economic Evidence on Policymakers in Health Care—A Systematic Review* [in eng], AHRQ Methods for Effective Health Care (Rockville (MD): Agency for Healthcare Research / Quality (US), 2012), accessed March 13, 2021, <http://www.ncbi.nlm.nih.gov/books/NBK114636/>.

⁵ Daniel Hirschman and Elizabeth Popp Berman, *The influence of economists on public policy* [in en], Section: *Featured, January 2015, accessed March 13, 2021, <https://blog.oup.com/2015/01/economists-public-policy/>.

⁶ Kerry Papps and James Newell, “Identifying Functional Labour Market Areas in New Zealand.”

the same “knowledge” requirements.⁷ Nelson and Rae (2016) produce large “megaregions” in the United States using the community detection algorithm Combo on census-tract level American Community Survey data from 2006-2010.⁸ Foote et al. (2021) examine the effect of changes in the parameter values of Tolbert and Sizer’s algorithm and the robustness of the algorithm to measurement error in commuting data.⁹ Manning and Petrongolo (2017) abandon strict borders entirely, and instead use granular data to produce continuous, rather than discrete, local labor markets.¹⁰

The question of how to define commuting zones is especially pertinent as the landscape of local labor markets changes. Recent years have witnessed shifts away from employment centered around urban cores, with growth in suburban employment and suburb-suburb commutes.¹¹ Moreover, since 1980, rates of workers taking public transportation and walking to work have declined, and rates of working at home have increased.¹² The COVID-19 pandemic has further accelerated the shift towards remote working.

COMMUNITY DETECTION DATA AND METHODS

In general, spatial research that aggregates point-based measures — such as qualities of individual persons — into regions — such as cities, counties, or commuting zones — suffers from the Modifiable Areal Unit Problem (MAUP).¹³ MAUP is a source of statistical bias

⁷ Edward J. Feser, “What Regions Do Rather than Make: A Proposed Set of Knowledge-based Occupation Clusters” [in en], *Urban Studies* 40, no. 10 (September 2003): 1937–1958, ISSN: 0042-0980, 1360-063X, accessed March 13, 2021, <https://doi.org/10.1080/0042098032000116059>, <http://journals.sagepub.com/doi/10.1080/0042098032000116059>.

⁸ Garrett Dash Nelson and Alasdair Rae, “An Economic Geography of the United States: From Commutes to Megaregions” [in en], Publisher: Public Library of Science, *PLOS ONE* 11, no. 11 (November 2016): e0166083, ISSN: 1932-6203, accessed January 26, 2021, <https://doi.org/10.1371/journal.pone.0166083>, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0166083>.

⁹ Andrew Foote, Mark J. Kutzbach, and Lars Vilhuber, “Recalculating ... : How Uncertainty in Local Labour Market Definitions Affects Empirical Findings” [in en], *Applied Economics*, January 2021, 1–15, ISSN: 0003-6846, 1466-4283, accessed January 28, 2021, <https://doi.org/10.1080/00036846.2020.1841083>, <https://www.tandfonline.com/doi/full/10.1080/00036846.2020.1841083>.

¹⁰ Alan Manning and Barbara Petrongolo, “How Local Are Labor Markets? Evidence from a Spatial Job Search Model” [in en], *American Economic Review* 107, no. 10 (October 2017): 2877–2907, ISSN: 0002-8282, accessed January 28, 2021, <https://doi.org/10.1257/aer.20131026>, <https://pubs.aeaweb.org/doi/10.1257/aer.20131026>.

¹¹ Fowler, Rhubart, and Jensen, “Reassessing and Revising Commuting Zones for 2010.”

¹² Nikos Tsafos, *The Slowly Changing U.S. Commute* [in en], accessed March 6, 2021, <https://www.csis.org/blogs/energy-headlines-versus-trendlines/slowly-changing-us-commute>.

¹³ Stan Openshaw, *The modifiable areal unit problem* [in English], OCLC: 12052482 (Norwich [Norfolk: Geo Books, 1983], ISBN: 978-0-86094-134-7).

resulting from the shape and scale of the point aggregation. Figure 1 illustrates how boundary lines may distort statistical estimates. Even though there is a single illness in each region, in region A, the illness rate in the shaded region is 50%, whereas in region B, the illness rate in the shaded region is 100%. Therefore, the illness rate in a region could be measured as more or less severe solely dependent on the region boundaries, rather than any within-region characteristic.¹⁴ Unfortunately, individual-level data on many important phenomena, such as employment, education, and health, are not easily available to researchers due to privacy concerns.

The presence of MAUP illustrates the importance of drawing boundary lines that most closely reflect the phenomena being studied, such as a school district for schooling, or a local labor market for worker characteristics. For problems with obvious boundaries, such as a law that only affects people within a single state, it is relatively clear how to delineate regions. For other problems, it is less obvious: workers commute across county and state lines; it is impossible to delineate commuting zones where no worker commutes across commuting zone boundaries without enlarging commuting zones beyond usefulness.

Tolbert and Sizer Agglomerative Clustering

Tolbert and Sizer use an agglomerative clustering method to delineate ERS commuting zones for years 1980, 1990, and 2000. They use Journey to Work data from the U.S. Census Bureau, which tabulates the number of commuters to and from each county. Tolbert and Sizer split the United States into six overlapping regions. For each region, they construct a dissimilarity matrix d which represents the relative distances between all pairs of N counties. Each entry in the matrix is defined as follows:

$$d_{ij} = 1 - \frac{f_{ij} + f_{ji}}{\min(rlf_i, rlf_j)}$$

where f_{ij} is the number of commuters who live in county i and work in county j and rlf_i is the resident labor force of county i .

Then, Tolbert and Sizer input d into an average-linkage agglomerative clustering algorithm, which aggregates counties into clusters. Each county begins in its own cluster. At

¹⁴ *File:Maup rate numbers.png* [in en], accessed March 13, 2021, https://en.wikipedia.org/wiki/File:Maup_rate_numbers.png.

each stage, the algorithm computes D_{KL} , the average dissimilarity among all pairs of counties between the clusters:

$$D_{KL} = \frac{1}{N_K N_L} \sum_{i \in C_K} \sum_{j \in C_L} d_{ij}$$

where N_K is the number of counties in cluster C_K . Then, the algorithm finds the lowest D_{KL} among all cluster pairs and combines the two clusters into one. The algorithm stops when height $H < D_{KL}$ for all cluster pairs. Tolbert and Sizer select a height of $H = 0.98$. After all clusters are determined in each region, Tolbert and Sizer consult with an expert to combine regions into a single commuting zone delineation spanning the entire United States.¹⁵ Fowler et al. (2016) computes 2010 commuting zones using Tolbert and Sizer’s method, except directly for the entire United States rather than through regional segmentation.¹⁶

There are several concerns with the original Tolbert and Sizer commuting zones. First, the measurement of “dissimilarity” is rather arbitrary and involves a subjective decision about the shape of local labor markets and their interactions. For example, the dissimilarity matrix d tends to agglomerate rural areas with a local metropolitan area by normalizing the dissimilarity matrix using $\min(rlf_i, rlf_j)$. However, this could unnecessarily cluster rural areas with local metropolitan areas and preclude the clustering of metropolitan areas with each other. If the algorithm used a nonnormalized dissimilarity matrix or used a different pairwise dissimilarity measure, the resulting commuting zone delineation would be largely different.

Second, the height H is also arbitrary. Foote et al. (2021) test height cutoffs between 0.9 and 0.98. The number of counties in a commuting zone varies from 400 to 1400, and the share of the population that commutes across commuting zone boundaries varies from less than 9% to more than 12%. They write, “There is no discontinuity and no empirical guidance or broad consensus in the theoretical literature.”¹⁷ The arbitrariness of these choices makes it unclear if the parameters that have been chosen are sensible and difficult to argue that ERS commuting zones produce an optimal or near-optimal division of the United States into local labor markets.

¹⁵ Tolbert and Sizer Killian, “Labor Market Areas for the United States.”

¹⁶ Fowler, Rhubarb, and Jensen, “Reassessing and Revising Commuting Zones for 2010.”

¹⁷ Foote, Kutzbach, and Vilhuber, “Recalculating ...”

Third, the hierarchical nature of agglomerative clustering methods may cluster entities together too early, resulting in a division that may not reflect what appears to be the natural set of communities. For example, consider the stylized commuting graph in Figure 2, where each node represents a county and each line a single commuter. A hierarchical clustering algorithm would first cluster counties A and B together (illustrated in green), because they share a commuting flow of two, rather than one like the other county pairs. However, visually, it appears that counties A and B should be in different clusters, as illustrated by the purple groups.

Louvain Community Detection Algorithm

In recent years, there has been a wide array of advances in network science and the development of new community detection algorithms. I selected the Louvain algorithm (as implemented in the Python package “Community”) due to its simplicity and speed.¹⁸ Importantly, unlike many other community detection algorithms, the Louvain algorithm allows for “weights” on graph edges, so one can easily model large numbers of commuters between counties or use a non-integer measure of inter-county connectivity. I also tested several other methods; I used alternative linkage types and dissimilarity measures in the agglomerative clustering algorithm, I used the Combo algorithm, and I used the Asynchronous Label Propagation algorithm, but these generally produced very few commuting zones or were not sensible upon visual inspection. (In one case, nearly half of counties were placed in one commuting zone and the other counties in individual commuting zones.)

The Louvain algorithm’s approach differs significantly from that of agglomerative clustering. The Louvain algorithm selects clusters in a graph to optimize for a graph’s modularity. The modularity of a graph is

$$Q = \frac{1}{2m} \sum_{ij} [A_{ij} - \frac{k_i k_j}{2m}] \delta(c_i, c_j)$$

where A_{ij} is the edge weight between nodes i, j , k_i is the sum of weights of the edges attached to node i , m is the sum of all edge weights in the graph, c_i is the clusters, and δ is the Kronecker

¹⁸ *Community detection for NetworkX’s documentation — Community detection for NetworkX 2 documentation*, accessed March 13, 2021, <https://python-louvain.readthedocs.io/en/latest/>.

delta function ($\delta(x,y) = 1$ if $x = y$, 0 otherwise). Intuitively, modularity is higher when there are more connections within a cluster and fewer connections between clusters.¹⁹

I produced two sets of commuting zone delineations using the Louvain Community Detection algorithm, “TS Louvain” and “Sum Louvain.” For “TS Louvain,” I input counties as nodes and $1 - d_{ij}$, the dissimilarity measure from above, as the edge weights. For “Sum Louvain,” I input counties as nodes and $f_{ij} + f_{ji}$, the sum of commuting flows between two counties, as the edge weights. I compute commuting zone delineations for 1980, 1990, 2000, and 2010. For brevity and because I focus on 1990 for my case studies, I display the 1990 commuting zones in Figures 3, 4, and 5.

COMMUTING ZONE COMPARISON

Descriptive Statistics

First, I present descriptive statistics on the commuting zone delineations. I present summary statistics on the number of counties in each commuting zone in Table 1 and summary statistics on the population in each commuting zone in Table 2. For each year, the ERS delineation has the most commuting zones, followed by TS Louvain, then Sum Louvain. Notably, the number of commuting zones is monotonically decreasing over time in each of the delineations, showing the increased geographic spread of individual local labor markets. The mean and standard deviations of the number of counties is greater for TS Louvain and even greater for Sum Louvain due to commuting zones with a large number of counties. The ERS delineation also has smaller variance in population than both the TS Louvain and Sum Louvain measures; this is expected since the ERS algorithm tends to cluster metropolitan areas with their outlying rural areas, rather than cluster metropolitan or rural areas only with each other.

Next, I directly compare the overlap between the commuting zone delineations. I follow the two “Fit” methods in Fowler et al. (2016).²⁰ The first method, F_{binary} , computes the share of counties that are in the same exact commuting zone in a pair of commuting zone delineations.

¹⁹ Vincent D. Blondel et al., “Fast unfolding of communities in large networks” [in en], arXiv: 0803.0476, *Journal of Statistical Mechanics: Theory and Experiment* 2008, no. 10 (October 2008): P10008, ISSN: 1742-5468, accessed March 13, 2021, <https://doi.org/10.1088/1742-5468/2008/10/P10008>, <http://arxiv.org/abs/0803.0476>.

²⁰ Fowler, Rhubart, and Jensen, “Reassessing and Revising Commuting Zones for 2010.”

The second method, F_{share} , computes the share of county pairs that are in the same commuting zone in both commuting zone delineations. More formally,

$$F_{binary,ijx} = \frac{1}{\sum_i 1} \sum_i \delta(C_{ijx}, C_{ijy})$$

$$F_{share,ijx} = \frac{1}{2} \left(\frac{\sum_{j=1}^{J \in C_{ijx}} \delta(C_{ijx} = C_{ijy})}{J} + \frac{\sum_{j=1}^{J \in C_{ijy}} \delta(C_{ijy} = C_{ijx})}{J} \right)$$

where δ is the Kronecker delta function, C is a vector of counties j in the same commuting zone as county i , and x and y denote the two delineations being compared. Both measures are symmetric and bounded by 0 and 1. Tabulations for $F_{binary,ijx}$ are presented in Table 3 and tabulations for $F_{share,ijx}$ are presented in Table 4.

The values for F_{binary} are not particularly informative, since the clusters are of different sizes as discussed previously, so it is naturally unlikely that any two clusters would be identical. The values in F_{share} indicate significant overlap in grouping between the different delineations; commuting links between around two-thirds to four-fifths of counties are strong enough that they are grouped together regardless of the method. Notably, F_{share} decreases over time for the ERS/TS Louvain comparison. This could be due to increased complexity in commuting patterns, whereby a greedy agglomeration could sub-optimally cluster counties too early.

Containment

Next, I follow Fowler and Jensen (2020) and compute 1) home containment, the share of residents who work in the commuting zone, 2) work containment, the share of workers who live in the commuting zone, and 3) total containment, the share of the United States labor force that lives and works in the same commuting zone.²¹ All else equal, better delineations have higher containment, since they better capture areas where people both work and live. I present summary statistics of the three measures in Table 5. Unsurprisingly, across all years, the three containment measures are highest for Sum Louvain, since individual commuting zones tend to have a greater number of counties than in the other delineations. Sum Louvain especially outperforms the other

²¹ Christopher S Fowler and Leif Jensen, “Bridging the gap between geographic concept and the data we have: The case of labor markets in the USA” [in en], *Environment and Planning A: Economy and Space* 52, no. 7 (October 2020): 1395–1414, ISSN: 0308-518X, 1472-3409, accessed January 27, 2021, <https://doi.org/10.1177/0308518X20906154>, <http://journals.sagepub.com/doi/10.1177/0308518X20906154>.

two measures in years 2000 and 2010 for home containment, with a greater mean and smaller standard deviation. ERS is generally on par with TS Louvain across all years.

Modularity

Lastly, I present the modularities of the three measures over time. I model commuting flows as graphs, with counties as nodes, with edge weights $1 - d_{ij}$ for “ERS” and “TS louvain”, and edge weights $f_{ij} + f_{ji}$ for “Sum Louvain.” Modularity, as defined in Section 3.2, is a measure of the ratio of within-commuting zone connections to between-commuting zone connections. Therefore, a partition of commuting zones is better-defined if it has a higher modularity.

Since the edge weights are different between Sum Louvain and the two other delineations, it is not meaningful to compare their modularities. Nevertheless, it is worth noting the high modularity of the Sum Louvain measure; Sum Louvain does clearly define commuting zones. The modularities for ERS and TS Louvain are similar for years 1990 and 2000, but ERS’s is lower for years 1980 and 2010. Therefore, based solely on modularity, the agglomerative clustering algorithm close to optimally detects communities in years 1990 and 2000, but less so in years 1980 and 2010. This could be due to changes in the composition of local labor markets over time. The divergence could also be due to randomness in the data; as previously discussed, the agglomeration algorithm is more privy to variance in quality stemming from a sub-optimal cutoff height or early clustering. An investigation of these factors would be interesting future work.

CASE STUDIES

To provide a worked example of these commuting zone delineations, I replicate the two case studies presented in Foote et. al. (2021).²² First, I estimate a model relating changes in local labor demand on unemployment receipts. Second, I replicate Autor, Dorn, and Hanson’s (2013) study on the effect of Chinese import penetration on U.S. manufacturing employment.²³ The

²² Foote, Kutzbach, and Vilhuber, “Recalculating ...”

²³ David H Autor, David Dorn, and Gordon H Hanson, “The China Syndrome: Local Labor Market Effects of Import Competition in the United States” [in en], *American Economic Review* 103, no. 6 (October 2013): 2121–2168, ISSN: 0002-8282, accessed March 13, 2021, <https://doi.org/10.1257/aer.103.6.2121>, <https://pubs.aeaweb.org/doi/10.1257/aer.103.6.2121>.

former case study uses delineations for years 1990 and 2000, and the latter case study uses delineations for year 1990.

If a delineation better captures the true geographic boundaries of a local labor market, the measured effect size of a phenomena (that does truly have an effect) should be greater and with a smaller standard error. To understand why, consider a simple case with two geographic units, where one is the treatment group T and the other is the control group C ; for example, if one region had industries affected by a tariff and the other did not, and we are interested in the effect on employment. Suppose that as a result of the tariff, the change in employment in T is $E_T \geq 0$ and the change in employment in C is $E_C = 0$, so a regression gives an effect size of $E_T - E_C \geq 0$. If the boundaries were incorrectly drawn to produce T' and C' , where T' and C' each included half of T and half of C , we would find that the two regions both had half their industries affected by the tariff and $E_{T'} = E_{C'}$, such that $E_{T'} - E_{C'} = 0$. Therefore, the point estimate is clearly smaller. Furthermore, the standard error is larger, since in the first case there is variation in how much the tariff applies to T versus C , but in the second case the tariff equally applies to T' and C' . The standard error effect is even more prominent in a two stage least squares regression than in an ordinary least squares regression. As a caveat, all else equal, a smaller sample size — that is, fewer commuting zones in a delineation — would lead to a larger standard error.

For both of these case studies, the Louvain-produced delineations produce point estimates of greater magnitude. Additionally, TS Louvain produces standard errors smaller than or equal to those of the ERS delineations. These differences are especially notable given the minor differences in modularity between the measures for years 1990 and 2000; future work could examine if using delineations for years 1980 and 2010 produce even greater differences.

Case Study 1: Labor Demand

I measure labor demand in a given commuting zone using the measure

$$Demand_{K_T,t} = \sum_s \frac{Emp_{K_Ts,T}}{Emp_{K_T,T}} (\log(Emp_{s,t}) - \log(Emp_{s,t-1}))$$

where T is the start year, K_T is the commuting zone corresponding to the start year, t is the year, s is the industry, and Emp is employment. This equation states that the demand in a commuting zone in a given year is a weighted sum of the share of employment in that commuting zone in a

given sector, where the weights are the change in log employment in that sector that year. I obtain data on employment from the U.S. Census's Quarterly Census of Employment and Wages (QCEW) and compute average employment for each of the 20 NAICS industry sectors. Then, I estimate the following fixed-effects model

$$\log(UIReceipts)_{KT,t} = \alpha Demand_{KT,t-1} + \gamma_{KT} + \delta_t + \epsilon_{KT,t}$$

using data on unemployment receipts from the Bureau of Economic Analysis's Regional Economic Accounts data. The estimates for years 1990-2016 and 2000-2016 are shown in Tables 7 and 8, respectively. For 1990-2016, I find that the point estimate of the effect of a labor demand shock on unemployment receipts is around two percentage points higher when using the Louvain, rather than ERS, delineation. The standard error is also smaller for the TS Louvain delineation compared to the ERS delineation. For 2000-2016, again TS Louvain and Sum Louvain produce point estimates of magnitude two to three units greater than ERS; TS Louvain produces the same standard error as ERS. TS Louvain's higher point estimates and lower standard errors affirm that these commuting zone delineations better define real local labor markets than ERS.

CASE STUDY 2: REPLICATION OF ADH CHINA SHOCK

Next, I replicate Autor, Dorn, and Hanson's (2013) estimation of the effect of Chinese import penetration on U.S. manufacturing employment. Due to China's dramatic economic growth, entrance into the World Trade Organization, and U.S. trade policy in 1980-2000, Chinese exports caused a negative shock to U.S. manufacturing labor demand in 1999-2011. The estimation relies on using local labor market variations in U.S. industry exposure to import competition; for example, one CZ may specialize in textiles and be very exposed to Chinese import competition, whereas a CZ specializing in steel would be less so. Autor, Dorn, and Hanson's results are robust to changes in commuting zone delineation; nevertheless, the point estimates using the Louvain delineations are of greater magnitude.

Autor, Dorn, and Hanson's workhorse model is

$$L_{mit} = \gamma t + \beta_1 \Delta IPW_{uit} + X_t + \epsilon_{it}$$

where L_{mit} is the decadal change in manufacturing employment in commuting zone i following start year t , IPW_{uit} is the import exposure growth measure, and X_t are controls. Specifically

$$IPW_{uit} = \sum_j \frac{L_{ijt}}{L_{ujt}} \frac{\Delta M_{ucjt}}{L_{it}}$$

where L_{ujt} is U.S. employment in industry j and ΔM_{ucjt} is the observed change in U.S. imports from China in industry j between the start and end of the period. To ensure that L_{ujt} is not capturing U.S. demand-side shocks, Autor, Dorn, and Hanson instrument for IPW_{uit} with Chinese lagged import penetration in eight other developed countries IPW_{oit}

$$IPW_{oit} = \sum_j \frac{L_{ijt-1}}{L_{ujt-1}} \frac{\Delta M_{ojct}}{L_{it-1}}$$

where ΔM_{ojct} is the observed change in exports from China to the eight other developed countries.

Data on international trade for 1991-2001 come from the UN Comtrade Database; data are harmonized at the six-digit Harmonized System (HS) product level, then processed to produce 392 manufacturing industries. Trade amounts are inflated to 2007 U.S. dollars using the Federal Reserve's Personal Consumption Expenditure deflator. Manufacturing employment data come from the QCEW.

For simplicity, I follow Foote et al. and do not include controls and only display estimates for 1990-2000 in Table 9. The baseline ERS estimate is slightly different than Autor, Dorn, and Hanson's due to my use of data from the QCEW, rather than the 1990 and 2000 U.S. Census; some counties are missing from the QCEW data due to reporting limitations. Here, unlike in case study 1, however, the standard errors are larger for Louvain than ERS. This could be due to the smaller number of observations; in case study 1 there were thousands of observations so the standard errors were relatively unaffected by the smaller observation size. In general, the Louvain estimates may have larger standard errors than ERS for shorter panels.

CONCLUSION

Commuting zones are an important fundamental unit for conducting economic analysis at the local labor market level. Because of the modifiable areal unit problem, having an accurate delineation of commuting zones is imperative for producing accurate research to inform public

policy in a variety of areas. However, little work has been done on improving ERS commuting zones after they were first defined in 1980. This paper is the first to develop U.S. commuting zones using a non-agglomerative clustering algorithm.

I produce the commuting zones “TS Louvain” and “Sum Louvain,” which improve upon the existing ERS delineations. I use the Louvain community detection algorithm, which, unlike agglomerative clustering, does not require subjective parameter decisions or greedily produce some clusters too early. Instead, it optimizes for more connections within a commuting zone and fewer connections between commuting zones. Like the ERS delineations, the Louvain commuting zones are built up from counties, include rural areas, and cover the entire United States. I compare the ERS and Louvain delineations on several metrics. TS Louvain is on par with ERS’s containment level; Sum Louvain is an improvement. Both are an improvement upon ERS in terms of modularity. In two case studies, TS Louvain and Sum Louvain produce estimates of larger magnitude; TS Louvain also produces similarly sized or smaller standard errors. These tests show that TS Louvain and Sum Louvain better capture the true nature of labor markets than the original ERS delineations.

Future work could test these delineations on other metrics, such as examining variation in wages across versus within each local labor market, estimating the persistence of unemployment shocks, and examining the consistency of these definitions across years. Case studies should also be conducted using commuting zone definitions for years 1980 and 2010, as the commuting zones delineations diverge more in these years. Tests may find that certain delineations better capture some phenomena than others, and commuting zone choice should be tailored to the subject of interest. Future work could also examine other algorithms for developing definitions of local labor markets. Fowler suggests including measures of connectivity other than commuting; possibilities could include friendships on social media or trade in goods and services. Research could examine if the purely algorithmic methods of network science could be combined with economic models on labor market behavior to produce more meaningful labor market definitions.

Of course, with any of these definitions, delineations are bounded by the lowest possible unit. The impact of regional definitions on measurement error would be reduced by increasing the accessibility of more granular data, such as through the Census Bureau’s restricted access

data centers. If granular data is released, researchers can explore more accurate methods that better capture spillover effects between different markets.

Nevertheless, this paper produces two promising new candidates for defining local labor markets. As the fundamental unit of a large body of economics research, better defined labor markets could improve the accuracy of results for a wide array of studies. Given the impact of economic studies on policy — both domestic and international — these improved commuting zone definitions could help better inform the policy debate on issues ranging from minimum wage to education spending to trade agreements.

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APPENDIX

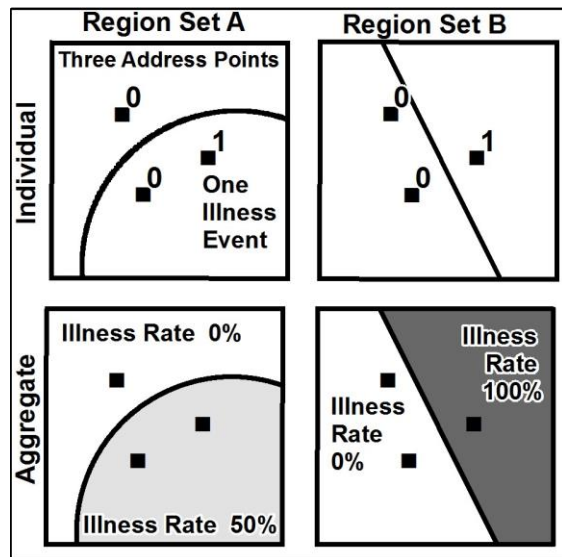


Figure 1: Illustration of MAUP

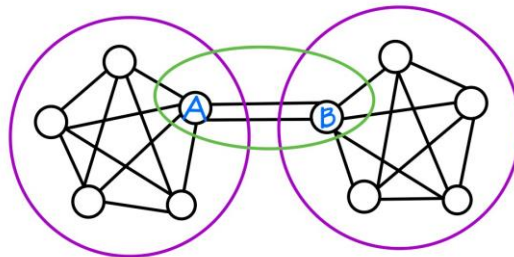


Figure 2: Stylized Commuting Graph

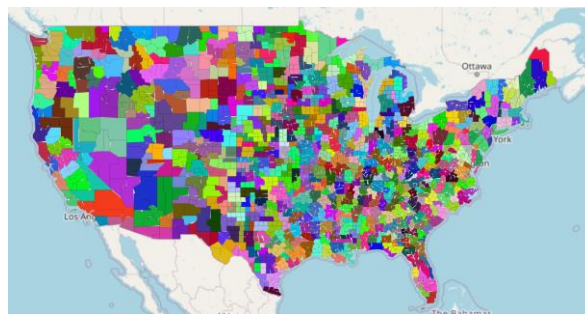


Figure 3: ERS Commuting Zones for 1990

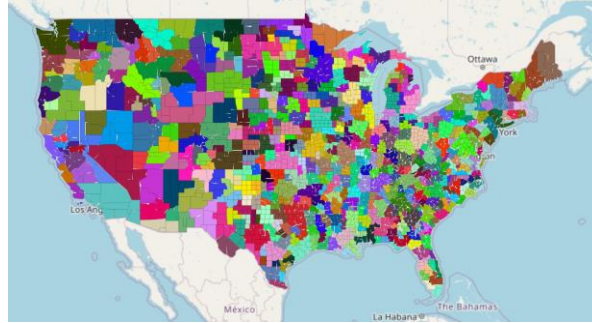


Figure 4: TS Louvain Commuting Zones for 1990

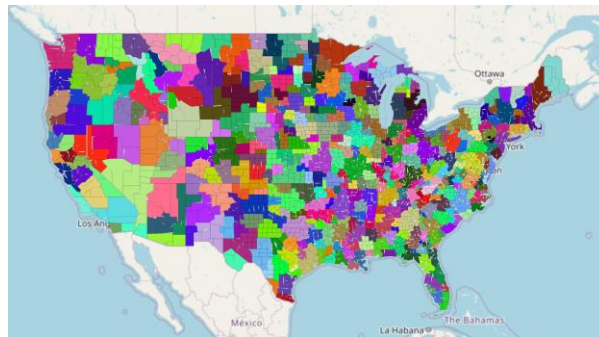


Figure 5: Sum Louvain Commuting Zones for 1990

Table 1: Number of Counties per Commuting Zone

		count	mean	std	min	25%	50%	75%	max
1980	ERS	765	4.05	2.48	1	2	4	5	23
	TS Louvain	645	4.8	3.46	1	3	4	6	24
	Sum Louvain	505	6.13	4.68	1	3	5	8	41
1990	ERS	741	4.24	2.5	1	2	4	5	19
	TS Louvain	603	5.21	4.23	1	3	4	6	34
	Sum Louvain	456	6.89	5.62	1	3	5	9	46
2000	ERS	709	4.43	2.48	1	3	4	6	19
	TS Louvain	586	5.36	4.29	2	3	4	6	29
	Sum Louvain	431	7.29	6.31	1	3	5	9	45
2010	ERS	625	5.03	2.77	1	3	5	7	20
	TS Louvain	589	5.34	4.22	2	3	4	6	33
	Sum Louvain	416	7.56	6.49	1	3	6	9	47

Table 2: Population per Commuting Zone

		count	mean	std	min	25%	50%	75%	max
1980	ERS	764	289978.08	822853.67	513	31478	81675	228337	11786924
	TS Louvain	645	343477.91	1004964.34	408	43148	102399	272721	15440346
	Sum Louvain	505	438699.51	983389.45	408	55538	144691	370604	10880774
1990	ERS	741	335640.85	934027.81	1324	34954	94372	263681	14545373
	TS Louvain	603	412454.18	1134780.02	130	47206	113371	336651	17803064
	Sum Louvain	456	545416.39	1253344.16	130	58508	161861	497524	14531529
2000	ERS	709	396927.94	1042772.32	1193	43254	115833	300329	16393360
	TS Louvain	586	480242.16	1366152.83	4191	54583	136322	334861	19509580
	Sum Louvain	431	652951.06	1497496.07	4191	68788	194477	587768	16373645
2010	ERS	625	493992.86	1223012.53	997	51787	148409	365723	17877006
	TS Louvain	589	524185.97	1370684.93	2681	58000	142227	406397	21363087
	Sum Louvain	416	742176.77	1525163.83	2697	76680	222112	670645	13652155

Table 3: F_{binary}

	1980	1990	2000	2010
ERS & TS Louvain	0.226	0.193	0.213	0.164
ERS & Sum Louvain	0.127	0.121	0.123	0.092
TS Louvain & Sum Louvain	0.251	0.226	0.213	0.216

Table 4: F_{share}

	1980	1990	2000	2010
ERS & TS Louvain	0.766	0.744	0.751	0.735
ERS & Sum Louvain	0.705	0.699	0.697	0.680
TS Louvain & Sum Louvain	0.784	0.783	0.768	0.780

Table 5: Mean Containment

		Home Containment	Work Containment	Total Containment
1980	ERS	0.94 (0.05)	0.95 (0.03)	0.95 (0.00)
	TS Louvain	0.94 (0.05)	0.95 (0.04)	0.96 (0.00)
	Sum Louvain	0.95 (0.04)	0.96 (0.03)	0.96 (0.00)
1990	ERS	0.91 (0.06)	0.93 (0.04)	0.94 (0.00)
	TS Louvain	0.91 (0.07)	0.92 (0.04)	0.94 (0.00)
	Sum Louvain	0.93 (0.04)	0.94 (0.03)	0.96 (0.00)
2000	ERS	0.89 (0.08)	0.91 (0.04)	0.93 (0.00)
	TS Louvain	0.89 (0.07)	0.91 (0.05)	0.94 (0.00)
	Sum Louvain	0.92 (0.05)	0.93 (0.04)	0.95 (0.00)
2010	ERS	0.89 (0.08)	0.91 (0.05)	0.93 (0.00)
	TS Louvain	0.89 (0.08)	0.90 (0.05)	0.93 (0.00)
	Sum Louvain	0.92 (0.06)	0.92 (0.05)	0.95 (0.00)

Note: Standard deviations in parentheses.

Table 6: Modularity

	1980	1990	2000	2010
ERS	0.849	0.927	0.912	0.752
TS Louvain	0.954	0.933	0.919	0.910
Sum Louvain	0.968	0.962	0.960	0.957

Table 7: Regression of Unemployment Receipt on Demand, 1990-2016

	(1)	(2)	(3)
	ERS	TS Louvain	Sum Louvain
Demand Bartik Instrument	-8.807*** (1.05)	-10.907*** (0.89)	-10.640*** (1.25)
Observations	18500	14950	11300

Note: Clustered standard errors in parentheses.

Table 8: Regression of Unemployment Receipt on Demand, 2000-2016

	(1)	(2)	(3)
	ERS	TS Louvain	Sum Louvain
Demand Bartik Instrument	-10.910*** (0.97)	-12.405*** (0.97)	-13.858*** (1.34)
Observations	10612	8715	6420

Note: Clustered standard errors in parentheses.

Table 9: 2SLS Regression of Manufacturing Employment Decline on Chinese Import Exposure

	ADH	ERS	TS Louvain	Sum Louvain
Change in Import Exposure	-0.8875*** (0.1812)	-0.8432*** (0.0992)	-0.8995*** (0.0997)	-0.9758*** (0.1004)
Observations	741	667	577	434

Note: Clustered standard errors in parentheses.

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