



# The Fellows Review

2018 - 2019



CSPC

# The Fellows Review

SELECTED PAPERS  
OF THE  
2018-2019 PRESIDENTIAL FELLOWS PROGRAM

CENTER FOR THE STUDY OF THE PRESIDENCY & CONGRESS

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ERICA NGOENHA

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The Fellows Review: 2018-2019

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## FOREWORD

The Presidential Fellows program began in 1970 with the mission of inspiring young people to pursue careers in public service. As we get ready to celebrate the program's 50<sup>th</sup> anniversary next year, I am delighted to see how the fruits of that initial idea have come to bear. Today, we have former Fellows serving as lawmakers in the U.S. Congress and the Canadian Parliament, top officials in state and municipal governments, journalists in leading media organizations, policy experts in non-profits and international organizations, as well as civically-minded corporate leaders. I am confident that the 2018-2019 class will continue this legacy of excellence.

Over the course of their Fellowship year, this cohort had the opportunity to learn about bipartisanship in our hyper-partisan times from Colorado Governor John Hickenlooper and Ohio Governor John Kasich; discuss U.S. trade policy with Dr. Peter Navarro, Assistant to the President and Director of the Office of Trade and Manufacturing Policy; and explore challenges to U.S. national security with the Director for Strategic Planning at the National Security Council, Colonel Stephanie Ahern. They took the lessons garnered in these and other conversations and developed research projects on some of the most challenging issues of our times from the path forward on healthcare to diplomatic pursuits with our adversaries.

Each year we have the pleasure of publishing the best of the Fellows' work in the *Fellows Review*. This year, 15 research papers were chosen for publication. Of those, 5 were selected for special recognition for extraordinary research:

The David M. Abshire Award for Most Outstanding Paper by an International Fellow was awarded to Chinami Takeichi of Sophia University in Japan for her exploration of legislative versus executive branch powers through the lens of immigration policy ("What DACA Reveals about U.S. Immigration Structure and Presidential Power").

The Donald B. Marron Award for the Best Historical Analysis was presented to Brooke Harkrader from the United States Coast Guard Academy. In her research, Brooke examined Article V of the Constitution, which sets the rules for proposing and adopting amendments. ("The Lost Article").

Benjamin Flanagan from the United States Air Force Academy was recognized with the Robert A. Kilmarx Award for the Best Military, Intelligence, or National Security Strategic Analysis for his research on the utility of limited air strikes in pursuit of the president's foreign policy agenda ("The Use of Limited Airstrikes to Further the President's Foreign Policy Goals").

Georgetown University student Micah Musser won the James R. Moffett Award for the Most Original Paper on the Modern Presidency or Congress for his review of presidential



bioethics commissions (“Bioethics in Public Policy: Examining the Factors Contributing to the Success of U.S. Presidential Bioethics Commissions?”).

David Tallents of the University at Buffalo took home the Richard H. Solomon Award for the Most Original Paper on Foreign Policy or Diplomacy for his analysis on the role Congress plays in shaping the president’s foreign policy agenda (“Executive Agreements and American Foreign Policy”).

We are proud to recognize these Fellows for their outstanding work, and we congratulate all of the members of the 2018-2019 class on their successful completion of the Presidential Fellows program.

We are deeply grateful to the fellowship sponsors for their generous support of the program and the participation of these rising leaders. Without their help, we could not provide such a substantive and meaningful experience for our Fellows. We are also thankful to the participating universities, for their guidance and support to their students.

We are indebted to Carlota Cumella, Stephanie Lizzo, Sarah Weintraub, Crystal Staebell, and Madison Howell for their editorial work on the 2018-2019 Fellows Review under the guidance of Erica Ngoenha, Director of the Presidential Fellows Program. I hope you enjoy exploring the thoughtful questions and insightful analysis in the pages that follow as much as I did.

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

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# **Part 1**

# Campaigns, Candidates, and Elections

## YEAR OF THE FEMINIST? ANALYSIS OF 2018 CONGRESSIONAL CAMPAIGN WEBSITES

MELODY RODRIGUEZ  
*Stanford University*

*Media outlets deemed 2018 to be “The Year of the Woman” based on the significant numbers of new women who ran for congressional office. However, the majority of these women were Democrats, indicating that the term “The Year of the Woman” is a misnomer due to partisan disparities. Being that many correlated the electoral success of women to the strength of the Women’s March movement, “The Year of the Feminist” may be a more accurate description of 2018. To evaluate this title, this study performs an analysis of the websites of 2018 House candidates in races that featured at least one female major party candidate to assess how men and women of both parties presented feminist issues, as defined by Women March Inc.’s Unity Principles. If 2018 truly were “The Year of the Feminist,” we should observe not only women being elected at higher rates but also all candidates, not just Democratic women, supporting feminist issues. This analysis may provide insights about the current state of gender progress in the United States as well as electoral insights and strategies for Congressional candidates.*

### INTRODUCTION

On November 8, 2016, Donald Trump defeated Hillary Clinton in the Electoral College to become the 45th President of the United States of America. For some Americans, this outcome represented both a “stunning repudiation of the establishment” as well as a failed “referendum on gender progress.”<sup>1</sup> While Hillary Clinton was the first woman to receive a major party’s nomination for the presidency, Donald Trump consistently made sexist comments towards women and has been accused of sexual misconduct by at least eighteen women.<sup>2</sup> The day after President Trump’s inauguration, millions of people, primarily women, participated in marches across the country to emphasize that “women’s rights are human rights and human rights are women’s rights.”<sup>3</sup> In 2018, women flooded not only the streets to march, but congressional ballots as well. Four-hundred seventy-six women filed as candidates for House

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<sup>1</sup>Matt Flegenheimer and Michael Barbaro. "Donald Trump is Elected President in Stunning Repudiation of the Establishment." *The New York Times*, November 9, 2016, <https://www.nytimes.com/2016/11/09/us/politics/hillary-clinton-donald-trump-president.html>.

<sup>2</sup>Burns, Alexander, Maggie Haberman, and Jonathan Martin. "Donald Trump Apology Caps Day of Outrage Over Lewd Tape." *The New York Times*, Oct. 7, 2016, <https://www.nytimes.com/2016/10/08/us/politics/donald-trump-women.html>.

<sup>3</sup>"Our Mission." <https://www.womensmarch.com/mission/#>

primaries, which broke the previous record for the number of female candidates by 178.<sup>4</sup> Additionally, a record 235 women won their primaries, which represents a thirty-two percent increase from the 167 female victories in 2016.

Yet, although the *New York Times* declared 2018 to be the “Year of the Woman Indeed” in the aftermath of the 2018 election cycle, this title is not accurate due to the partisan disparities between female Democrats and Republicans.<sup>5</sup> Of the 476 female candidates who filed for office, only 120 were Republican, and of the 235 women who won their primaries, only fifty-two were Republican.<sup>6</sup> Similarly, only one of the record-setting thirty-five new women elected to Congress is Republican.<sup>7</sup> Additionally, even though the 116th Congress will have a record-setting 101 women, less female incumbents were re-elected in 2018 compared to the previous two elections. In a true “Year of the Woman,” women would constitute approximately half of the national legislature and the party breakdown amongst women would be roughly that of the total partisan breakdown of Congress. Thus, referring to 2018 as the “Year of the Woman” is a misnomer due to the partisan imbalance of women’s electoral successes.

Perhaps, when people refer to 2018 as the “Year of the Woman,” what they really mean is the “Year of the Democratic Woman” or the “Year of the Feminist” due to the progressive gender policy stances that the newly elected women supposedly represent. On average, the thirty-five new women elected to office are ideologically more liberal than their incumbent counterparts.<sup>8</sup> Additionally, the media reports that many of the candidates explicitly campaigned on issues related to the #metoo movement, which, in the words of its founder Tarana Burke, seeks to provide “empowerment through empathy” by revealing “how widespread and pervasive sexual violence is” while also ensuring “survivors know that they are not alone.”<sup>9</sup> Furthermore, the chairwomen of Women’s March Inc., the organization that has planned many of the women’s marches throughout the country over the past two years, and the media attribute the rise in

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<sup>4</sup> “2018 Summary of Women Candidates,” October 23, 2018, <http://cawp.rutgers.edu/potential-candidate-summary-2018>.

<sup>5</sup> Denise Lu and Keith Collins, “‘Year of the Woman’ Indeed: Record Gains in the House,” *The New York Times*, - 11-09, 2018, <https://www.nytimes.com/interactive/2018/11/09/us/women-elected-midterm-elections.html>.

<sup>6</sup> “2018 Summary of Women Candidates”

<sup>7</sup> Lu and Collins, “‘Year of the Woman’ Indeed”

<sup>8</sup> Ibid.

<sup>9</sup> Alex Seitz-Wald, “Meet the Women Candidates Taking #MeToo to the Ballot Box,” July 24, 2018, <https://www.nbcnews.com/politics/elections/meet-women-candidates-taking-metoo-ballot-box-n894106>; Abby Ohlheiser, “The Woman Behind ‘Me Too’ Knew the Power of the Phrase when She Created it — 10 Years Ago,” Oct. 19, 2017, <https://www.washingtonpost.com/news/the-intersect/wp/2017/10/19/the-woman-behind-me-too-knew-the-power-of-the-phrase-when-she-created-it-10-years-ago/>.

female candidates in the 2018 election cycle to the success of Women’s March Inc.’s mission, which is to “harness the political power of diverse women and their communities to create transformative social change.”<sup>10</sup> However, were the candidates as feminist as they were perceived to be? In other words, did they campaign on feminist issues to win their seats? Does having more Democratic women in Congress signal that gender progress will be made? Was 2018 truly the “Year of the Feminist”?

1992 serves as a basis with which to compare 2018 because it previously held the title “Year of the Woman.” Clarence Thomas’s 1991 Supreme Court confirmation hearings invigorated women who were upset at how the all-white male panel of senators treated Thomas’s former aide, Anita Hill, who accused Thomas of sexual harassment. Women ran for office in unprecedented numbers in 1992, and for the first time in U.S. history, four women simultaneously held seats in the Senate.<sup>11</sup> Subsequently, Congress passed bills that involved women-focused issues, including the Family and Medical Leave Act and the Violence Against Women Act.<sup>12</sup> Thus, in both 1992 and 2018, the alleged sexual misconduct of men in top positions of power prompted women to seek positions in the government. However, it is unclear what impact the increase of women, particularly Democratic women, will have on national policy because passing bills relies on congressional members of both parties and genders.

While we know that progressive Democratic women had success in the 2018 election, this fact alone may not be enough to declare 2018 the “Year of the Feminist” because these statistics reveal little about how Democratic men, Republican women, and Republican men talked about the issues around which feminists united during this election cycle. If 2018 truly were the year of the woman, all candidates, not just Democratic women, should support feminist issues. Being able to draw a distinction between Democratic women and their male and Republican counterparts would mean that feminist issues are not universally endorsed, which weakens the case of 2018 being the “Year of the Feminist” because lack of widespread support would hinder substantive policy changes. Furthermore, it is possible that the media focused on

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<sup>10</sup> Mihir Zaveri, "Next Women’s March is Set for January, with Main Protest in Washington." *New York Times*, Sep. 29, 2018, <https://www.nytimes.com/2018/09/29/us/womens-march-2019.html>; “Our Mission.”

<sup>11</sup> "The Year of the Woman, 1992 | US House of Representatives: History, Art & Archives." Accessed April 29, 2019. <https://history.house.gov/Exhibitions-and-Publications/WIC/Historical-Essays/Assembling-Amplifying-Ascending/Women-Decade/>

<sup>12</sup> Li Zhou, "The Striking Parallels between 1992's "Year of the Woman" and 2018, Explained by a Historian." *Vox*. November 02, 2018. Accessed April 29, 2019. <https://www.vox.com/2018/11/2/17983746/year-of-the-woman-1992>.

Democratic women who were particularly strong feminists, even if they were not representative of most female Democratic candidates. Therefore, further analysis must be performed to evaluate how feminist all candidates were during the 2018 election cycle, what that says about the policy preferences of the general electorate, and how much substantive change on gender policy might be expected in the House of Representatives.

Given that the definition of feminism is “the theory of the political, economic, and social equality of the sexes” or “organized activity on behalf of women’s rights and interests,” the issues around which feminists unite may seem intuitive.<sup>13</sup> However, prior feminist intergroup studies suggest that local factors influence feminists’ identities and perspectives regarding what qualifies as oppression and how best to combat it.<sup>14</sup> According to Women’s March Inc., the unity principles of the marchers are reproductive rights, LGBTQIA rights, workers’ rights, civil rights, disability rights, immigrant rights, environmental justice, and ending violence.<sup>15</sup> These broader principles emphasize the importance of securing rights for all women, not just a specific subset. However, despite the stated goal of inclusivity, the women’s marches have been criticized for being too focused on the needs of white women.<sup>16</sup> Thus, it is necessary to delve deeper into how often congressional candidates of both parties and genders mention intersectional feminist ideas on their campaign websites to determine whether the 2018 congressional election cycle is truly exceptional in terms of the issues that candidates are raising.

This study seeks to explore the current state of American feminism by examining how 2018 U.S. House of Representatives candidates in races that featured at least one major party female candidate portrayed the unifying issues of feminism on their campaign websites. Specifically, it will examine how the party, gender, and incumbency status of one’s self and one’s opponent impacts the prominence of and tone towards feminist issues on one’s campaign

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<sup>13</sup> “Feminism.” *Merriam-Webster*, [www.merriam-webster.com/dictionary/feminism](http://www.merriam-webster.com/dictionary/feminism). "Feminism, N." *Oxford English Dictionary*. Accessed April 29, 2019. <http://www.oed.com/view/Entry/69192#eid4611075>.

<sup>14</sup> Jo Reger, "Organizational Dynamics and Construction of Multiple Feminist Identities in the National Organization for Women," *Gender and Society*, vol. 16, no. 5 (2002), pp. 710-727. *CrossRef*, <https://www.jstor.org/stable/3081956>, doi:10.1177/089124302236993; Kirstie McClure, "The Issue of Foundations: Scientized Politics, Politicized Science, and Feminist Critical Practice," In *Feminists Theorize the Political*, edited by Judith Butler, and Joan W. Scott (Routledge, New York, 1992), 353.

<sup>15</sup> “Our Mission.”

<sup>16</sup> Layanya Ramanathan, "Was the Women's March just another Display of White Privilege? some Think So," *Washington Post*, Jan. 24, 2017, [https://www.washingtonpost.com/lifestyle/style/was-the-womens-march-just-another-display-of-white-privilege-some-think-so/2017/01/24/00bbdcca-e1a0-11e6-a547-5fb9411d332c\\_story.html?utm\\_term=.06bf71d26c17](https://www.washingtonpost.com/lifestyle/style/was-the-womens-march-just-another-display-of-white-privilege-some-think-so/2017/01/24/00bbdcca-e1a0-11e6-a547-5fb9411d332c_story.html?utm_term=.06bf71d26c17).



website. Given that there are multiple definitions of the word feminism, this study utilizes Women's March Inc.'s platform to define what qualifies as a feminist issue due to the media and pop culture's tendency to conflate the women's marches with contemporary American feminism. These analyses will help to determine whether 2018 is, in fact, a monumental year for progressive women, which would be revealed by a lack of distinctions between the behavior of candidates from both genders and parties. More broadly, the findings of this study could provide insights regarding the current state of U.S. feminism and congressional election strategy.

In summary, this research asks: How did House candidates who were in a race that featured at least one female major party candidate talk about feminist issues on their campaign websites during the 2018 election cycle and what does that say about the current status of feminism in the United States? My hypotheses are as follows:

H1: Democrats, especially Democrat women, will talk about feminist issues with higher frequency and positivity than Republicans.

H2: Female Democratic incumbents will be equally as "feminist" as their non-incumbent counterparts.

### **The Gender Gap in American Politics**

Although the gender gap in American politics has been widely studied, the impact of the gender gap in Congress is a bit more nuanced than it is for the general electorate due to the altered incentive structure of representatives. While voters traditionally perceived female candidates as more liberal than their male counterparts, this viewpoint is diminishing.<sup>17</sup> This change in mindset is perhaps due to the fact that from 1993-2014, the gender gap between the

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<sup>17</sup> Deborah Alexander and Kristi Andersen, "Gender as a Factor in the Attribution of Leadership Traits." *Political Research Quarterly*, vol. 46, no. 3 (1993), pp. 527; Michael J. Epstein, "Do Women and Men State Legislators Differ?" In *Women and Elective Office: Past, Present, and Future*, edited by Sue Thomas. Oxford University Press, Cary, 2005; Jeffrey W. Koch, "Do Citizens Apply Gender Stereotypes to Infer Candidates' Ideological Orientations?" *The Journal of Politics*, vol. 62, no. 2, (2000), pp. 414-429. *CrossRef*, [http://journals.cambridge.org/abstract\\_S0022381600000190](http://journals.cambridge.org/abstract_S0022381600000190), doi:10.1111/0022-3816.00019; Monika L. McDermott, "Voting Cues in Low-Information Elections: Candidate Gender as a Social Information Variable in Contemporary United States Elections," *American Journal of Political Science*, vol. 41, no. 1, (1997), pp. 270-283. *CrossRef*, <https://www.jstor.org/stable/2111716>, doi:10.2307/2111716; Paul S. Herrnson, J. C. Lay, and Atiya K. Stokes, "Women Running "as Women": Candidate Gender, Campaign Issues, and Voter-Targeting Strategies," *The Journal of Politics*, vol. 65, no. 1 (2003), pp. 244, <https://search.proquest.com/docview/214959210>. Jennifer L. Lawless and Richard L. Fox, *Women, Men & U.S. Politics: Ten Big Questions*. W.W. Norton and Company, New York, NY [u.a.], 2018.

number of bills a senator cosponsors with a member of the opposing party became negligible, and likewise, between 1987 and 2014, the gender gap for procedural vote scores and ideology scores of U.S. House members became inconsequential within each party.<sup>18</sup> In other words, party appears to play a greater role in predicting congressional behavior than gender does.

However, despite no significant difference between male and female members of Congress based on these metrics, women are more inclined to introduce legislation regarding women's or feminist issues. Past literature has broadly defined women's issues to be "issues that are particularly salient to women because they seek to achieve equality for women; they address women's special needs, such as women's health concerns or child care; or they confront issues with which women have traditionally been concerned in their role as caregivers, such as education or the protection of children."<sup>19</sup> Previous scholarship considers feminist issues to be a subset of women's issues and defines them as policies that "seek to achieve role equity or role change for women."<sup>20</sup> By examining the pairs that emerged when the gender of a representative for a particular district changed from the 1970s to the 1990s, MacDonald and O'Brien found that women were more likely to sponsor bills regarding women's or feminist issues but that the percentage of women in the legislature also played a role.<sup>21</sup>

However, my research concerns not what representatives do once in office but upon which issues they campaign. As the ultimate goal for candidates is to be elected, strategically, they must focus on the issues that they believe are most salient to their constituents, even if these issues are not the most important to a candidate personally. While some previous research finds that women are more likely to campaign on social issues but not to the exclusion of "male topics" like the economy and war, other research suggests that women who play to gender issues during elections are eleven percent more likely to win.<sup>22</sup> Given that these studies employed data

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<sup>18</sup> Lawless and Fox, *Women, Men & U.S. Politics*, 108-112

<sup>19</sup> Michele L. Swers, *The Difference Women Make: The Policy Impact of Women in Congress* (University of Chicago Press, Chicago, 2002), 10.

<http://parlinfo.aph.gov.au/parlInfo/search/summary/summary.w3p;query=Id:%22library/lcatalog/00113464%22>.

<sup>20</sup> *Ibid*, 12.

<sup>21</sup> Jason A MacDonald and Erin E. O'Brien, "Quasi-Experimental Design, Constituency, and Advancing Women's Interests: Reexamining the Influence of Gender on Substantive Representation." *Political Research Quarterly*, vol. 64, no. 2 (2011), pp. 472-486. *Social Science Premium Collection*, <https://www.jstor.org/stable/23056405>.

<sup>22</sup> Kathleen Dolan, "Do Women Candidates Play to Gender Stereotypes? Do Men Candidates Play to Women? Candidate Sex and Issues Priorities on Campaign Websites," *Political Research Quarterly*, vol. 58, no. 1 (2005) pp. 31. *CrossRef*, doi:10.2307/3595593; Hernson, Lay and Stokes, "Women Running "as Women."

from 2002, at which time not all candidates had campaign websites, it is necessary to reevaluate the electoral strategies of men and women during elections due to the vast change in the role of technology over the past two decades.

In addition to gender gaps regarding voting in presidential elections, general policy preferences, and congressional behavior, there is also a discrepancy between how the two major political parties perceive gender equality, suggesting that it is not sufficient to subset solely based upon gender when examining American feminism. While sixty-nine percent of Democrats say that the country “has not done enough” when it comes to gender equality, only twenty-six percent of Republicans agree. Interestingly, in this case, the partisan gap is wider than the gender gap, with forty-two percent of men and fifty-seven of women in consensus, implying that women’s preferences may not be as aligned as the presence of a gender gap would suggest.<sup>23</sup>

Interviews of Republican women conducted by Rebecca E. Klatch suggest that the lenses through which these women view the world result in two distinct philosophical reasons for them refraining from identifying as feminists.<sup>24</sup> According to Klatch, the first group, which she labels social conservatives, view the world through a religious lens, prioritize family, and believe that America is in moral decay. On the other hand, laissez-faire conservatives emphasize the rights of individuals and strongly oppose limitations on liberty. Although social conservative women often advocate for women’s interests, whereas self-identifying feminists tend to advocate for women’s rights in the workforce, female social conservatives generally advocate for women’s rights within the home.<sup>25</sup> Furthermore, social conservative women often feel as if feminists devalue the work of homemakers by implying that women must be employed to feel fulfilled.<sup>26</sup> On the other hand, laissez-faire conservatives agree with many feminist ideas about gender equality and do not view feminism as a threat to their way of life as social conservative women do. Nevertheless, they may refrain from identifying as feminists because feminist solutions often involve government intervention, which both laissez-faire and social conservatives oppose.<sup>27</sup> Klatch’s work provides great insights into how conservative women may think and why they

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<sup>23</sup> Juliana M. Horowitz, Kim Parker, and Renee Stepler. "Wide Partisan Gaps in U.S. Over how Far the Country has Come on Gender Equality," October 18, 2017, <http://www.pewsocialtrends.org/2017/10/18/wide-partisan-gaps-in-u-s-over-how-far-the-country-has-come-on-gender-equality/>.

<sup>24</sup> Rebecca E. Klatch, *Women of the New Right*. (Philadelphia: Temple University 1987).

<sup>25</sup> Ibid, 10 and 139.

<sup>26</sup> Ibid, 131.

<sup>27</sup> Ibid, 54 and 148.

may act in ways that feminists would classify as against their best interests as women. Given these findings, I hypothesize that a lesser percentage of the words on Republican women's campaign websites will relate to intersectional feminist issues than the campaign websites of their Democratic counterparts.

### **Feminism in the United States**

Despite feminism being a frequent topic of academic research, there does not appear to be a prevailing definition of the ideology upon which academics and the general public agree. While the Oxford English Dictionary defines feminism as the "advocacy of equality of the sexes and the establishment of the political, social, and economic rights of the female sex" in a 2016 survey jointly conducted by the Washington Post and the Kaiser Family Foundation, ninety-four percent of respondents expressed support for the equality of the sexes based on these metrics while only forty-seven percent of the sample self-identified as feminists.<sup>28</sup> Similarly, in a 2014 *Economist/YouGov* poll, only twenty-five percent of respondents initially identified with the term feminist, but after being given the definition of feminism, sixty percent of the sample identified with the label.<sup>29</sup> In general, the percentage of the population that identifies as feminists varies greatly between surveys.<sup>30</sup> These inconsistencies necessitate that I select a definition with which to frame my analysis. Due to widespread knowledge amongst the electorate of the women's marches and a frequent conflation of the women's marches with the feminist movement, I will use Women's March Inc.'s Unity principles as a guide to determine what qualifies as a feminist issue.

### **Methods**

My analysis will evaluate the relationship between party, gender, incumbency, and feminism by examining the prevalence of and attitudes towards the issues summarized by the Women's March unity principles on the campaign websites of 2018 United States House

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<sup>28</sup> "Feminism, N." *Oxford English Dictionary*; Liz Hamel, Jamie Firth, Scott Clement, and Mollyann Brodie. "Washington Post/Kaiser Family Foundation Feminism Survey." 2016. Retrieved May 5, 2018.

<http://kff.org/other/pollfinding/washington-post-kaiser-family-foundation-feminism-survey/>

<sup>29</sup> Kathy Frankovic, "Feminism Today: What does it Mean?", Aug. 1, 2014,

<https://today.yougov.com/topics/politics/articles-reports/2014/08/01/feminism-today-what-does-it-mean>.

<sup>30</sup> Lawless and Fox, *Women, Men & U.S. Politics*, 8.

candidates who ran in a race that featured a female major party candidate, which will aid in assessing whether 2018 truly was the “Year of the Feminist.” Choosing to examine solely the House is preferable to examining both chambers because Senators are only up for reelection every six years so the data would be skewed based upon which states have elections. Although it would be ideal to examine candidates in all races, not just those in which a woman appears, as well as to perform a time-series analysis, the quantity of hand coding involved in this analysis prevents a sample of that size from being feasible.

To quantify relevance of feminist issues on campaign websites, I will give each candidate a score ranging from -11 to 11 based on the presence and attitude towards feminist issues. The categories to be examined are based on the Women’s March unity principles and are as follows: reproductive rights, LGBT rights, workers’ rights, healthcare, disability rights, environmental justice, ending general violence, and ending sexual violence. To code health care, I gave candidates a 1 for supporting the Affordable Care Act (ACA), a 2 for supporting universal healthcare or any plan that expands government sponsored healthcare beyond the ACA, a -1 for opposing the ACA but supporting its fundamental principles like protection for people with pre-existing conditions or allowing children to stay on their parents’ plans until age twenty-five, and a -2 for opposing the ACA but providing no alternative proposals. For all other categories, I gave candidates a 1 for talking about the subject in a manner consistent with the Women’s March unity principles and a -1 for taking a stance that contradicts the principle. Candidates who did not mention a topic were given a score of 0. A further explanation of the coding can be found in the appendix. I also included a Boolean variable to indicate whether a candidate mentioned national security to explore whether a candidate’s score had any correlation to that topic.

For each of the categories, I will perform a multivariate regression to see how gender, party, and incumbency of oneself and one’s opponent as well as the presence of a third-party candidate correlate with a candidate’s mention of a particular issue. I will then compute a score for each candidate by summing the responses to the aforementioned categories. Finally, I will perform correlations between a candidate’s “feminist score” with election outcome and mention of war or international security concerns. If this were “the year of the woman,” the results should reveal a positive correlation between a candidate’s score and electoral victory as well as minimal disparities between the averages for each party and gender breakdown.

## Results

Overall, in the 2018 House elections, 28.725 percent of candidates identified as female, 52.324 percent ran as Democrats, and 44.458 percent of candidates were incumbents. However, because this analysis only examines races that included at least one female major party candidate, 58.011 percent identified as female, 51.105 ran as Democrats, and 41.160 were incumbents. Total, the sample includes 362 candidates. For the entire sample, we observe a mean score of 0.075 for reproductive rights, 0.204 for LGBT rights, 0.367 for workers' rights, 0.276 for civil rights, 0.251 for healthcare, 0.078 for disability, 0.080 for immigrant rights, 0.332 for environmental justice, 0.099 for ending violence, and 0.193 for ending sexual violence. When considering these averages, it is worth noting that we did not observe any negative values for workers' rights, disability rights, and ending sexual violence so in the case of these variables, the

Category	Regression Equation
Reproductive Rights	$-0.355 + 0.121 (\text{Female}) + 0.862 (\text{Democrat})^* - 0.115 (\text{Incumbent}) + 0.031 (\text{Open\_seat}) - 0.015 (\text{genderMakeup}) - 0.078 (\text{Indep\_in\_Race})$
LGBT Rights	$-0.052 + 0.064 (\text{Female}) + 0.442 (\text{Democrat})^* - 0.073 (\text{Incumbent}) + 0.023 (\text{Open\_seat}) + 0.097 (\text{genderMakeup}) + 0.007 (\text{Indep\_in\_Race})$
Workers' Rights	$-0.001 + 0.074 (\text{Female}) + 0.619 (\text{Democrat})^* - 0.041 (\text{Incumbent}) + 0.049 (\text{Open\_seat}) - 0.063 (\text{genderMakeup}) - 0.016 (\text{Indep\_in\_Race})$
Civil rights	$0.025 + 0.116 (\text{Female})^* + 0.376 (\text{Democrat})^* - 0.071 (\text{Incumbent}) - 0.050 (\text{Open\_seat}) + 0.044 (\text{genderMakeup}) + 0.054 (\text{Indep\_in\_Race})$
Healthcare	$-0.760 + 0.257 (\text{Female})^* + 1.979 (\text{Democrat})^* - 0.364 (\text{Incumbent})^* - 0.156 (\text{Open\_seat}) + 0.160 (\text{genderMakeup}) + 0.007 (\text{Indep\_in\_Race})$
Disability	$0.010 + 0.031 (\text{Female}) + 0.048 (\text{Democrat}) - 0.010 (\text{Incumbent}) + 0.077 (\text{Open\_seat})^* + 0.034 (\text{genderMakeup}) + 0.018 (\text{Indep\_in\_Race})$
Immigrant Rights	$-0.396 + 0.159 (\text{Female}) + 0.883 (\text{Democrat})^* - 0.080 (\text{Incumbent}) + 0.049 (\text{Open\_seat}) + 0.010 (\text{genderMakeup}) - 0.110 (\text{Indep\_in\_Race})$
Environmental Rights	$-0.023 - 0.070 (\text{Female}) + 0.899 (\text{Democrat})^* - 0.152 (\text{Incumbent})^* - 0.017 (\text{Open\_seat}) + 0.158 (\text{genderMakeup}) - 0.050 (\text{Indep\_in\_Race})$
Ending Violence	$-0.305 + 0.085 (\text{Female}) + 0.894 (\text{Democrat})^* - 0.152 (\text{Incumbent})^* + 0.039 (\text{Open\_seat}) + 0.061 (\text{genderMakeup}) - 0.126 (\text{Indep\_in\_Race})^*$
Ending Sexual Violence	$0.027 + 0.128 (\text{Female})^* + 0.094 (\text{Democrat})^* + 0.065 (\text{Incumbent}) + 0.039 (\text{Open\_seat}) + 0.019 (\text{genderMakeup}) - 0.013 (\text{Indep\_in\_Race})$
War/Security	$0.589 - 0.035 (\text{Female}) - 0.202 (\text{Democrat})^* + 0.071 (\text{Incumbent}) + 0.076 (\text{Open\_seat}) + 0.068 (\text{genderMakeup}) + 0.009 (\text{Indep\_in\_Race})$

average represents the percentage of respondents who mentioned these topics. The results of the multivariate regressions are displayed in the table above.

Adding each category together to create a “feminist score,” incumbents were less “feminist” than their counterparts of the same party and gender except for Republican women. Democratic women were the most feminists on this scale, followed by Democratic men then Republican women, then Republican men. Interestingly, on this scale, female incumbent Democrats were less feminist than non-incumbent male Democrats. Being that candidates were often ambiguous, likely strategically so, about their positions on the ACA, it is also worth computing a score without this category included. Perhaps due to the relevance of Obamacare in the 2018 election, removing this category had a substantive impact on the feminist scores for candidates in each category. However, the general trends observed with the ACA included persisted.

### **Analysis**

Overall, party affiliation was the strongest predictor of candidates mentioning issues related to Women’s March Unity principles, with party being statistically significant in predicting mention and tone regarding all unity principles except disability rights. Additionally, being an incumbent led to a predicted decrease across all categories, although it was often not substantively significant. Generally, the gender of one’s opponent, whether the seat was open, and whether an independent was in the race had no substantive impact on a candidate’s presentation of issues. The means for each category broken down by party, gender, and incumbency can be found in the appendix.

The strongest party dichotomies occurred on the issues of reproductive rights, immigrant rights, healthcare rights, and gun control. This result is not surprising given the societal divisiveness of these issues and that it is socially acceptable to take either a strong negative or positive stance on them. On the contrary, for example, although most candidates did not mention disability rights, nobody would actively campaign against them, as doing so would elicit a strong negative reaction from the public. Ending sexual violence was the only category for which the female variable was a significant predictor, likely due to the disparate impact that sexual violence has on women. Although reproductive rights also are more firmly tied to women,

Americans generally believe that sexual and domestic violence are objectively bad, whereas abortion and birth control are much more contentious issues.

Finally, even though the multivariate regressions predict a higher feminist score for Democrats, the sample is slightly more Democratic than Republican, and the sample contained just one more Republican than Democrat victory, thus a higher feminist score was not indicative of electoral victory. The correlation between feminist score and mention of war or international security was -0.213, which can likely be attributed to party differences, as the correlation between Democratic identification and mention of war was -0.238. However, the correlation between feminist score and victory was -0.114 while the correlation between Democrat identification and victory was -0.028. In other words, being “more feminist” had a negative impact on electoral success beyond that of party. Even amongst non-incumbent Democrat women, the most feminist group, the mean feminist score was only 6.454 out of 11. Thus, it is difficult to claim that 2018 was the “Year of the Feminist.”

### **Conclusion**

The results of this analysis suggest that 2018 was not the “Year of the Feminist” due to a negative correlation between feminist score and electoral victory as well as observing significant behavior discrepancies between Democratic and Republican candidates. In a true “Year of the Feminist” all parties and genders would support feminist issues at equal rates. Beyond these results, it is worth noting that even though the media celebrated 2018 as the “Year of the Woman” due to the landmark success that new female candidates had, women still only comprise twenty percent of the U.S. House of Representatives and twenty-three percent of the U.S. Senate, both clearly far short of fifty percent.<sup>31</sup> Furthermore, of that twenty-three percent, only about one-fourth are Republican. Therefore, although it is worth celebrating any amount of gender progress in Congress, dubbing 2018 to be the “Year of the Woman” or the “Year of the Feminist” is an overstatement.

Although using the Women’s March unity principles as a feminist metric has its drawbacks, the findings of this paper are still valuable. Firstly, as the unity principles are progressive in nature, using them as a metric biases the aggregate scores to show that Democrat

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<sup>31</sup> “Women in Congress 2018”



women are more feminist than other candidates. However, the magnitude of the differences between groups based on gender, party, and incumbency are still relevant to observe, and the binary coding of each individual principle reveals which issues are most divisive between the groups. Secondly, the unity principles are specific to the past few years and would not be appropriate to use in a time-series analysis. Yet, as feminism and what it represents is constantly evolving, perhaps no single metric would yield accurate results for such a study. Finally, one could argue that the unity principles do not represent many feminists' beliefs. While this may be the case, that could be said of any definition of feminism. Thus, due to the prevalence of women's marches in media and thus recognizability of the organization, this study employs the unity principles because the organization has the power to influence what the feminist agenda is.

Another limitation of this analysis is that it heavily relied on hand coding of campaign websites. To draw more robust conclusions, it would be preferable to perform both a time series analysis as well as include all candidates, not just those who appeared in a race with a major party female candidate, in the sample. However, the difficulty in an analysis of that style is that hand-coding is cumbersome and time-consuming while a textual analysis via a computer algorithm may have difficulty picking up on nuances. Many congressional candidates keep their stances on certain issues relatively vague or use quite positive rhetoric to describe negative, coercive policies. Furthermore, many candidates abstained from using specific words such as "abortion" In favor of using phrases such as "a woman's right to make decisions about her body." Therefore, scanning for key words or performing a sentiment analysis with a computer algorithm may produce inaccurate results.

Regardless, the conclusions of this study are important in that they provide a framework with which to contextualize the 2018 election. Although some gender progress was made, not all Women's March unity principles featured prominently in the campaigns, and disparities appeared along the expected party and gender divides. However, despite party typically being more predictive of issue stances than gender, with regards to ending sexual violence, the female variable was found to be statistically significant, suggesting that there do exist issues around which women unite, regardless of party affiliation. Collectively, these findings indicate that the American electorate has not unified behind feminist principles broadly, as the issues upon which candidates campaign serve as a proxy for the topics that candidates perceive to be important to their constituents. While progressive women had great success in the 2018 election cycle, it is

difficult to declare 2018 to be the “Year of the Feminist,” absent any substantial policy changes during the 116<sup>th</sup> Congress.

## Appendix

### Coding of Variables

Variable	-1	1
<b>Reproductive Rights</b>	“Pro-life,” women should not have the right to abortions	“Pro-choice,” women should have the right to abortion
<b>LGBT Rights</b>	Mentions need to “preserve traditional family values” or explicitly against policies like marriage rights for gays or gender-neutral bathroom	Expresses explicit support for the LGBT community or policies that would help the community like equal marriage rights or gender-neutral bathrooms
<b>Workers’ Rights</b>		Supports policies like parental leave, equal pay, equal opportunity for advancement, raising minimum wage
<b>Civil Rights</b>		Expresses explicit support for minority communities or mentions the need to combat effective voter disenfranchisement
<b>Disability Rights</b>		Explicitly expresses support for the general disabled community or policies that would help the community
<b>Immigrant Rights</b>	Supports building a wall and being tough on immigrants to protect Americans physically and economically (i.e. low to zero tolerance)	Advocates for policies like DACA, expanding worker programs, creating pathways to citizenship, sanctuary cities, the need to humanize immigrants, etc.
<b>Environmental justice</b>	Prioritizes economic growth over the environment, either with respect to emissions or resource extraction	Emphasizes the need to reduce fossil fuel emissions and other environmentally friendly policies
<b>Ending Violence</b>	Staunch supporter of 2 <sup>nd</sup> Amendment rights; does not believe in any limitations to gun ownership	Believes in limiting guns in some way
<b>Ending Sexual Violence</b>		Explicitly mentions the need combat sexual/domestic violence/abuse and support victims

Category Means

	Reproductive	LGBT	Workers	Civil_Rights	Healthcare	Disability	
New GOP Man	-0.333	0	0.042	0.042	-0.958	0.083	
New Dem Man	0.538	0.462	0.692	0.308	1.308	0.077	
New GOP Woman	-0.273	-0.03	0	0.091	-0.606	0.03	
New Dem Woman	0.571	0.487	0.748	0.563	1.546	0.134	
Inc. GOP Man	-0.513	-0.115	0	0	-1.038	0.013	
Inc. Dem Man	0.077	0.154	0.308	0.308	0.846	0	
Inc. GOP Woman	-0.5	0.056	0.111	0.111	-0.5	0.111	
Inc. Dem Woman	0.625	0.425	0.675	0.45	0.875	0.075	
	Immigrant	Environmen	EndViolence	EndViolence	War	Securit	Incumbent
New GOP Man	-0.458	0	-0.396	0.062	0.667	0	
New Dem Man	0.538	0.846	0.615	0.231	0.615	0	
New GOP Woman	-0.333	-0.121	-0.273	0.061	0.485	0	
New Dem Woman	0.639	0.807	0.664	0.294	0.378	0	
Inc. GOP Man	-0.487	-0.231	-0.487	0.115	0.628	1	
Inc. Dem Man	0.231	0.692	0.308	0	0.231	1	
Inc. GOP Woman	-0.278	-0.056	-0.333	0.333	0.889	1	
Inc. Dem Woman	0.475	0.675	0.425	0.3	0.45	1	
	Won seat	Open seat	Indep in Ra	Unconteste	Total Score	No ACA	
New GOP Man	0.271	0.438	0.396	0	-1.917	-0.958	
New Dem Man	0.615	0.462	0.385	0	5.615	4.308	
New GOP Woman	0.03	0.364	0.364	0	-1.455	-0.848	
New Dem Woman	0.277	0.252	0.454	0	6.454	4.908	
Inc. GOP Man	0.859	0	0.474	0	-2.744	-1.705	
Inc. Dem Man	1	0	0.385	0	2.923	2.077	
Inc. GOP Woman	0.722	0	0.333	0	-0.944	-0.444	
Inc. Dem Woman	0.975	0	0.35	0	5	4.125	

## **Part 2**

## The Presidency

## THE RISE OF THE PERSONAL PRESIDENCY

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*The mass media landscape in America has drastically changed over time, and so has a president's ability to influence the media and reach the public with their message. While the media has always played a significant role in framing and setting a president's agenda, that role has been markedly reduced due to the advent of social media. Contemporary administrations have been able to utilize social media in an increased fashion, thus finding ways of circumventing the mass media. As a result, presidents have been able to formulate a direct line of communication between themselves and the public. In candidly sharing their unfiltered messages, Presidents Barack Obama and Donald Trump have redefined the media's role with the modern presidency, establishing a reliance on their direct communication (tweets, posts, etc.) to inform the world on their administration's agenda in addition to the holistic policy positions of the United States of America.*

### INTRODUCTION AND THESIS

The evolution of the mass media and the President of the United States' need to "go public" has established a precedent for the president to utilize various forms of media sources to convey his message.<sup>1</sup> As media technology has advanced over time, so has the president's ability to influence the public through persuasion, rhetoric, and appealing to the national constituency. However, in the dawn of the social media age, Presidents Barack Obama and Donald Trump have had measurable success circumventing mass media by way of establishing direct communication between themselves and the American public via Twitter, Facebook and Instagram.<sup>2</sup> As a result, these individuals have been able to share their unfiltered messages openly with the public, set the presidential agenda without the typical filters of the media, frame their own views as the national rhetoric, and directly drive public opinion and national policy, thus establishing the era of the personal presidency.

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<sup>1</sup> Samuel Kernell, *Going Public: New Strategies of Presidential Leadership*, 2nd ed. Washington DC: Congressional Quarterly Inc., 1993. 1.

<sup>2</sup> @realDonaldTrump, "Fake News," *Twitter*, 17 Feb. 2017, 1:48 p.m.

## HISTORICAL PERSPECTIVE OF THE MASS MEDIA

Presidential leadership has always necessitated that a president garners the support of the public in order to drive policy. As Woodrow Wilson put it, “the president represents the people as a whole, exercising a national choice.”<sup>3</sup> Historically, presidents bargained with other political elites on Capitol Hill to shape and determine their national agenda and enact policy. This was encouraged at the time due to the involvement of congressional representatives and their local constituencies and the lack of a nationwide medium for the president to inform and persuade the public. Consequently, the development of the Washington Press Corps and other media institutions, mass media’s involvement with the presidency was born.

From its inception, mass media served a gatekeeping function regarding their ability to control the information provided by the president to the public.<sup>4</sup> While public opinion originated in elite discourse, the media typically transcribes information in a way that features agenda setting and framing.<sup>5</sup> Thus, making the president serve the media’s agenda as a means of serving the national constituency.<sup>6</sup> As communication and transportation technology increased, it became easier for the media to cover the entire United States. With the increased coverage in the news, the desire for a president to go public ensued, as did the public’s reliance on the media for attaining its political information.<sup>7</sup> After a period of dormancy, the press was able to enter the White House routinely under the McKinley administration and was regularly briefed on the engagements of the president and his national policies.<sup>8</sup> President McKinley decisively used this increased exposure with the press to “place [his] own spin on the... news” and extend his agenda to the American people, foregoing the traditional route of appealing directly to Congress and establishing the idea of a “Rhetorical Presidency.”<sup>9</sup> President Theodore Roosevelt furthered this concept by establishing the presidency as the bully pulpit of America, “[reaching] out to the

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<sup>3</sup> Richard Ellis, *The Development of the American Presidency*. New York: Routledge, 2018. 111.

<sup>4</sup> Communication in the Real World: An Introduction to Communication Studies, Minneapolis: Open Textbook Library, 2016. <http://open.lib.umn.edu/communication/chapter/15-2-functions-and-theories-of-mass-communication/>.

<sup>5</sup> Adam Simon and Michael Xenos, "Media Framing and Effective Public Deliberation," *Political Communication* 17, no. 4 (October 1, 2000): 363-376.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ellis, *American Presidency*, 106.

<sup>9</sup> Ibid., 107.; James Caesar, Glen Thurow, Jeffrey Tulis, and Joseph Bessette, "The Rise of the Rhetorical Presidency," *Presidential Studies Quarterly* 11, no. 2 (April 1, 1981): 162.

public hoping to affect current views with the goal of gaining congressional support,” appealing directly to the American people.<sup>10</sup> In this regard, the president would promote his rhetoric through the media down to the public affecting public discourse and gain their support, with the hope that it could affect mass opinion and the people would reach out to their congressman and advocate for his agenda.<sup>11</sup> Political scholar Lori Cox Han describes this version of the rhetorical presidency as an institutional dilemma, stating, “by fulfilling popular functions and serving the nation through mass appeal, the presidency has now greatly deviated from the original constitutional intentions of the framers, removing the buffer between citizens and their representatives that the framers established.”<sup>12</sup> Additionally, the bully pulpit could provide a medium for the president to “manipulate the American public through demagoguery,” which the media ostensibly provided a new means of constitutionally balancing policy by filtering the news and providing various layers of analysis to presidential communication.<sup>13</sup>

Franklin Delano Roosevelt (FDR) became the first president to challenge the media and its ability to frame the news directly in the form of the radio and FDR’s fireside chats to the nation. Instead of the president traveling to various regions of the country to speak to a limited crowd or speak directly to reporters, he was able to reach a larger American audience directly without leaving his own office.<sup>14</sup> In essence, he was able to connect the public with his own agenda, enabling him to subject them to his administration’s framework of policy concepts. The creation of the radio revolutionized the manner in which a president could reach the public without having to go through the media first. However, even after the onset of the television, a president only had limited direct exposure to the American public. Presidents are framed by the various news stations and trends show that in contemporary America, the amount of coverage in the news media devoted to public affairs has declined.<sup>15</sup> Yet, the power of a president’s direct message is moving. Presidential scholar Amnon Cavari stated that “following an address of the president, public opinion moves in favor of the president’s advocated policy, an effect that is

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<sup>10</sup> Amnon Cavari, "The Short-Term Effect of Going Public," *Political Research Quarterly* 66, no. 2 (2012): 338, doi:10.1177/1065912912448931.

<sup>11</sup> *Ibid.*, 337.

<sup>12</sup> Lori Cox Han, "The President Over the Public: The Plebiscitary Presidency at Center Stage," *The Presidency and the Challenge of Democracy* (2006): 190. doi:10.1057/9780230600744\_6.

<sup>13</sup> *Ibid.*, 207.

<sup>14</sup> Richard Ellis, *The Development of the American Presidency*, New York: Routledge, 2018, 117.

<sup>15</sup> Cavari, "Effect of Going Public," 339.



strongest among the attentive audience [of the speech].”<sup>16</sup> Still, support may quickly decline as policy alternatives are presented to the public and the president has limited follow-on exposure with the public. In fact, a president is limited primarily to setting their agenda to the public on television through the State of the Union Address and occasional televised addresses.

## AGENDA SETTING

Presidents go public to reach the “representative public” and change public opinion through agenda setting.<sup>17</sup> This idea of agenda setting, or influencing how the public thinks about what is important, has become the cornerstone of presidential influence.<sup>18</sup> However, due to a president’s limited ability to reach the public directly in the past, the media has had an increased role in projecting both the agenda of the president to the public, and the desires of the public to the president. As a result, the information provided by the mass media becomes the primary contact that many Americans have to think about politics.<sup>19</sup> Two basic assumptions contextualize agenda setting in politics: the press and the media do not reflect reality, they filter and shape it; and media concentration on a few issues and subjects leads the public to perceive those issues as more important than other issues.<sup>20</sup> Media agenda setting is still concurrent today, evidenced by the fixation of issues in the news by party identification—increasing the polarity of party identity and further dividing the American public.

## FRAMING

The idea of defining and constructing a political issue, in line with party or demographic ideals, is known as framing and it is just as prevalent as agenda setting in the media. Essentially, a news source will “frame a message in a given way ... [so] that the message is constructed... to contain certain associations rather than others.”<sup>21</sup> The organization of the president’s original

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<sup>16</sup> Ibid., 347.

<sup>17</sup> Cavari, “Going Public,” 337.

<sup>18</sup> Matthew Eshbaugh-Soha, “Going Public and Presidential Leadership,” *Oxford Research Encyclopedia of Politics*, 2016. doi:10.1093/acrefore/9780190228637.013.57.

<sup>19</sup> Maxwell Mccombs, and Donald Shaw, “The agenda-setting function of mass media.” *The Agenda Setting Journal* *the Agenda Setting Journal. Theory, Practice, Critique* 1, no. 2 (2017): 177, doi:10.1075/asj.1.2.02mcc.

<sup>20</sup> “Mass Media | Agenda Setting Theory,” Universiteit Twente, [https://www.utwente.nl/en/bms/communication-theories/sorted-by-cluster/Mass%20Media/Agenda-Setting\\_Theory/](https://www.utwente.nl/en/bms/communication-theories/sorted-by-cluster/Mass%20Media/Agenda-Setting_Theory/).

<sup>21</sup> Simon, “Media Framing,” 367.

message drastically affects subsequent thoughts and actions of the public.<sup>22</sup> Therefore, the media is extremely powerful in shaping the voice of the president to create public support or dissent among the political base of the news source.<sup>23</sup> For example, the current homepage of CNN, a liberal news source, typically features rhetoric aimed at attacking Republicans or agreeing with Democrats, while Fox News, a conservative news source, stands to do the exact opposite. Due to the increasing divide between favorable and unfavorable news sources in regards to President Donald Trump, a unique transition has occurred from our current president being forced to have his message filtered through the media to him increasingly seeking ways to speak directly to the public, typically by means of Twitter.

### **FAKE NEWS RHETORIC**

President Donald J. Trump's rise from political outsider and showman to the leader of the free world has been an unorthodox series of events centered on his ability to demand media attention. Candidate Trump's harsh tone on polarizing issues during his campaign, such as illegal immigration, free trade, and terrorism, drew the news toward him—granting him free advertisement much to the demise of his competitors on both sides of the aisle. His rhetoric appealed to populism and was able to draw out the middle class and rural lower class in support, as a result. One of his trademarks throughout the election and continuing throughout his presidency was the labeling of the media as “fake news,” in regards to what he felt was inaccurate reporting.<sup>24</sup> Since first using the term in December of 2015, President Trump has demolished the public trust in the media and continually refers to the press as “fake news,” some 150 times in the six month period following his 2017 inauguration on Twitter alone.<sup>25</sup> In fact, a Gallup poll from September 2016 found that Americans' trust and confidence in the mass media's ability to report the news fairly and accurately dropped to its lowest level in the

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<sup>22</sup> Ibid., 366.

<sup>23</sup> Azadeh Aalai, “Media Framing Effects,” *Psychology Today*, June 21, 2017, <https://www.psychologytoday.com/blog/the-first-impression/201706/media-framing-effects>.

<sup>24</sup> Steve Coll, “Donald Trump's Fake News.” *The New Yorker*, December 04, 2017, <https://www.newyorker.com/magazine/2017/12/11/donald-trumps-fake-news-tactics>.

<sup>25</sup> Coll, Fake News.

organization's polling history, with just 32% saying they trust the media.<sup>26</sup> As a result, the President has established a standard of personalizing the media by way of selecting and only listening to "trusted" news sources, as well as projecting his own news directly to the public by means of Twitter and other social media platforms.<sup>27</sup>

In addition to being selective of his own news, President Trump actively rejects or disparages everything else.<sup>28</sup> As a result of breaking down the credibility of most news sources, President Trump has, according to John Lloyd of the Reuters Institute for the Study of Journalism, "succeeded in building an alternative reality separate from the mainstream media's efforts at democratic rational politics."<sup>29</sup> He portrays the media as an arrogant, out-of-touch elite, who use that tool to keep down the marginalized.<sup>30</sup> While staunch opposition of the President's administration generally negates these claims, a majority of his base believes it, and many individuals on both sides have become skeptical of the media either way. David Cameron, the United Kingdom's former Prime Minister, recently said that "US President Donald Trump's "fake news" attacks on the media are undermining democracy and drowning out genuine reporting."<sup>31</sup> The President's denotation of the news as fake, paired with a medium to directly reach Americans via twitter, has started a presidential communications' revolution, similar to that of the radio and FDR.<sup>32</sup> The President has over 58 million followers, enabling a direct contact to the mobile phones and computers of the public.<sup>33</sup>

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<sup>26</sup> Cody Lyon, "How Dangerous is President Trump's "Fake News" Rhetoric?" The Huffington Post, July 24, 2017, [https://www.huffingtonpost.com/entry/how-dangerous-is-president-trumps-fake-news-rhetoric\\_us\\_5973a737e4b0545a5c310094](https://www.huffingtonpost.com/entry/how-dangerous-is-president-trumps-fake-news-rhetoric_us_5973a737e4b0545a5c310094).

<sup>27</sup> Lyon, Fake News Rhetoric.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> "David Cameron: Trump misuse of term fake news is dangerous," BBC News, December 14, 2017, <http://www.bbc.com/news/uk-politics-42350887>.

<sup>32</sup> Lyon, "President Trump's Rhetoric."

<sup>33</sup> Donald J. Trump, "Donald J. Trump (@realDonaldTrump)," Twitter, <https://twitter.com/realDonaldTrump?lang=en>.

## PERSONAL POLITICS

In his 1993 book on Presidential Leadership, “Going Public,” Samuel Kernell alluded to the style of a president’s leadership reflecting the individuals’ accumulated skills and experiences outside of office and the possibility of a personal president.<sup>34</sup> In fact, he stated that:

The outsider whose career success is founded largely upon the stylized public presentation of self will derive greater gratification and even stimulation from traveling around the country delivering speeches and appearing on television than in following the private, daily, all-too-mysterious rituals of cultivating support from public opinion.<sup>35</sup>

President Trump’s disjointed relationship with the liberal media has undeniably led to increased distrust and contention surrounding news sources. However, it could be that the President’s ultimate goal is to erode the public’s trust in the media enough so that he can set his own agenda and frame public opinion by speaking out to the people on Twitter and through his public appearances and addresses. Since the media, along with other agencies, institutions, and states, already over-analyze each tweet and appearance while providing around-the-clock attention and review of his quotes and statements, the President is connecting with the households of America on a daily basis. Studies have shown that combining like-minded networks of constituents and unfiltered communication from elites keep messages intact and allow for opinion leaders, like the president, to have unprecedented message control and persuasive impact.<sup>36</sup> In fact, his use of Twitter further establishes a manipulation of the media as President Trump has continually used “well-timed, newsworthy tweets to disrupt the news cycle of mainstream media” throughout his campaign and presidency.<sup>37</sup> In fact, 43% of the President’s tweets occur between 5:00am and 1:00pm, ensuring that he dominates the mainstream media’s reflection of his tweets throughout the entire day.<sup>38</sup>

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<sup>34</sup> Kernell, *Going Public*, 39.

<sup>35</sup> *Ibid.*

<sup>36</sup> Doris Graber and Johanna Dunaway, *Mass media and American politics*, (Los Angeles: Sage, 2015), 116.

<sup>37</sup> *Ibid.*, 112-113.

<sup>38</sup> Luke Perry and Paul Joyce, "Trump's Use of Twitter in the 2016 Campaign." Utica College Center of Public Affairs and Election Research, <https://www.ucpublicaffairs.com/home/2017/3/19/trumps-use-of-twitter-in-the-2016-campaign-by-luke-perry-and-paul-joyce>.

Moreover, the President tweets over 5 times per day, or 920 times between his inauguration and July 7, 2017 alone.<sup>39</sup> In regards to his positions, the President has spoken on a variety of topics including: 113 tweets about the media, by far the largest category; 99 tweets about Russia; 98 tweets about the economy, jobs, and trade; 98 tweets about health care; 83 tweets about speaking with foreign leaders; and 74 tweets about immigration and the travel ban, among others in his entire tweet database during his first year in office.<sup>40</sup> In comparison, President Barack Obama tweeted far less than President Trump did, and the majority of his tweets were crafted by his public affairs staff. President Trump, on the other hand, originally writes almost all of his tweets.<sup>41</sup> Twitter has given President Trump the ability to have a direct one-way communication with the people, unfiltered by the mass media. His tweets are usually contentious and spark widespread media attention, thus keeping his content in the news cycle until a new tweet sparks more debate. As a result, President Trump has changed how the traditional media receives news from the White House, forcing their hand in reacting to his pre-framed agenda wrapped up into 140 characters. By appealing directly to the public and circumventing the media, President Trump is able to garner increased issue attention and public support from his base.

## REPERCUSSIONS

While President Trump has used this disconnect between the media and the public to reach them directly, it has demolished a lot of the trust that American's have in the free press and speech—a First Amendment right. This concept is in line with the previously mentioned statement by Lori Cox Han, in which she denoted an institutional dilemma separating the buffer between the citizens and their representatives.<sup>42</sup> However, as political time has evolved, it has further

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<sup>39</sup> Andy Kiersz, "13 charts reveal Donald Trump's Twitter habits - from his favorite topics to time of day," Business Insider, July 14, 2017, <http://www.businessinsider.com/president-trump-twitter-by-subject-2017-7/#there-have-been-2-notable-recent-twitter-outbursts-from-potus-against-the-media-one-was-on-june-29-when-he-went-after-mika-brzezinski-6>.

<sup>40</sup> Graham Lanktree, "Are Trump's tweets derailing his administration's message?" Newsweek, September 06, 2017, <http://www.newsweek.com/who-writes-trumps-tweets-660074>.

<sup>41</sup> Tim Marcin, "Trump loves Twitter-but Obama was better at it," Newsweek, July 03, 2017, <http://www.newsweek.com/trumps-twitter-loses-obamas-performance-social-media-site-631394>; Lanktree, Trump's tweets

<sup>42</sup> Han, "President Over the Public, 190.

separated the processes of the media, in place of a more direct diplomacy, that could steward demagoguery and autocratic appeals to the nation.<sup>43</sup>

In addition to jeopardizing the faith in the American media, leaders around the world have used the phrase “fake news” to attack their critics, undermining the institutions of democracy.<sup>44</sup> In fact, many authoritarian leaders in countries where free press is restricted or under fire, including Russia, China, Turkey, Libya and Somalia, have labeled their media as providing false news to the public as well. This evisceration of the media on the global stage will undoubtedly affect the future of the media’s relationship with leaders around the world.

From a foreign policy standpoint, individuals can set their state’s strategies and intentions through their rhetoric.<sup>45</sup> President Trump is very used to framing his opinion from a domestic standpoint; yet, on the international stage, his tweets and statements nested within his own personality transcend to establish the personality of his administration, and thus the nation.<sup>46</sup> The state behavior of the United States is dictated by the president, and other states are prompted to respond to what the president says and how he acts. For example, the President’s twitter rhetoric regarding “Little Rocket Man,” North Korea’s leader Kim Jong-un, sparked international attention and fear of a North Korean nuclear strike through the words of a tweet.<sup>47</sup> President Trump’s impact on personalizing media affects his national constituency and the entire world because policy does not occur in a vacuum. His rhetoric and appeals directly represent the American people and are more apt for international dispute without the filters of the American media. Moreover, scholars fear that his rhetoric can potentially stem demagoguery, as it is in line with Woodrow Wilson’s rhetoric comparing a demagogue with a public official: “if you will justly observe the two, you will find the one trimming to the inclinations of the moment, the other obedient only to the permanent purposes of the public mind.”<sup>48</sup> As a result, some individuals are skeptical about the presidential leadership of Donald Trump and his motivation for seeking office and attempting to ruin the credibility of the free press.

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<sup>43</sup> James Ceaser, "Demagoguery, Statesmanship, and The American Presidency," *Critical Review* 19, no. 2-3 (2007): 260, doi:10.1080/08913810701766157.

<sup>44</sup> Steven Erlanger, "'Fake News,' Trump's Obsession, Is Now a Cudgel for Strongmen," *The New York Times*, December 12, 2017, <https://www.nytimes.com/2017/12/12/world/europe/trump-fake-news-dictators.html>.

<sup>45</sup> Daniel L. Byman and Kenneth M. Pollack, "Let Us Now Praise Great Men: Bringing the Statesman Back In," *International Security* 25, no. 4 (2001): 112-123. doi:10.1162/01622880151091916.

<sup>46</sup> *Ibid.*, 108.

<sup>47</sup> @realDonaldTrump. "Little Rocket Man." *Twitter*, 23 Sep. 2017, 11:08 p.m.

<sup>48</sup> Woodrow Wilson, "Leaders of Men," Speech, June 17, 1890, 13.

## CONCLUSION

The American media throughout time has played an important role in conveying a president's message to the public through agenda setting and framing. However, with the rise of President Donald Trump's twitter inspired personal presidency, he has found a way to go around the filtering processes of the media and communicate directly to the American people.<sup>49</sup> Due to his labeling of the media as "Fake News" and harming the media's reputation, the President has enabled foreign leaders to do the same, which differs from the media's concurrent obligation to truthfully and accurately provide the public with news. He has also been able to drive public opinion and foreign policy from the confines of his cell phone, using Twitter to communicate with the world. Due to President Trump's disposal of the media to convey his message, he has been able to reduce the media's trust and establishment as the "fourth branch of government."<sup>50</sup> As a result, the public and the media rely on the President's tweets to inform the world on policy positions of the United States and the White House's agenda. This change has been ensuing throughout political time as the public has increasingly relied on the media to provide the policy standpoint of the president. In conclusion, it is the president's responsibility to read public thought, represent the people and shape public opinion.<sup>51</sup> As the framing processes of the media expanded, it was a matter of time before the president would find a new way to appeal directly to the American people. President Trump's usage of twitter has fueled a more personal political environment and was a dominant force in his political rise to the American presidency.<sup>52</sup>

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<sup>49</sup> Jason Galui, Interview by author, October 15, 2018.

<sup>50</sup> Rachel Lubarda, "The Fourth Branch of the Government: Evaluating the Media's Role in Overseeing the Independent Judiciary," *Notre Dame Journal of Law, Ethics & Public Policy* 22 (2008): 507.

<sup>51</sup> Wilson, "Leaders of Men."

<sup>52</sup> Perry, "Trump's Use of Twitter."

## **ITS MYTHIC POWER: THE AMERICAN DREAM AS A TOOL OF PRESIDENTIAL RHETORIC**

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*The American Dream, an equally ubiquitous and ambiguous phrase in American politics, has served as a staple of presidential rhetoric for over half a century. This paper posits that use of the American Dream in presidential rhetoric is situation-dependent and deeply connected to the economy. Using the weekly radio address as a unit of analysis, this paper hypothesizes that essential measures of economic health, such as the unemployment rate, and important political factors, such as the presence of a unified government, prove to be statistically significant factors in a president's likelihood of tying the American Dream to their legislative agenda.*

### **INTRODUCTION**

In today's modern age, the American public is inundated with speeches, videos, tweets, and press releases from the president, each intended to persuade the public and set the nation's political agenda. Put simply, the president's words matter. Over the course of centuries, presidents have used their words to shape national identity. For many, their words and life stories mold perceptions of an often-ambiguous American Dream.

This paper posits that presidents possess a rhetorical toolkit and that the American Dream is one of those tools. Due to its historical salience as a piece of American national identity, the American Dream has been frequently co-opted by presidents to advocate for pieces of legislation. I hypothesize that due to the Dream's primary focus on individual economic success, presidents will most frequently use the phrase in speeches associated with the economy. However, this paper also argues that presidents are limited in when they can and cannot utilize the American Dream. Metrics like the unemployment rate and the makeup of Congress will affect the likelihood that a president will employ Dream rhetoric.

Before diving into the data, it is important to frame this research in the context of scholarly debates over the importance of presidential rhetoric. While critiqued and seen by many



subsequent scholars as incomplete, Jeffery Tulis' 1977 foundational work for the theory of presidential rhetoric, *The Rhetorical Presidency*, continues to frame and inform debate over the effectiveness of the bully pulpit. Tulis is largely credited by his peers with "rediscovering a forgotten topic" in the study of politics.<sup>1</sup> According to Tulis, the study of presidential rhetoric for the modern age requires an understanding of the history of modern presidential speech. For Tulis, and others after him, the 20<sup>th</sup> century—in particular, the presidency of Woodrow Wilson— led to a sea change in the way presidents utilized their power of speech and necessitated a new pedagogy for their examination. Wilson's conception of the presidency leaned towards one of greater public leadership; as such, Wilson oriented his addresses for the masses, a practice more or less followed by all subsequent presidents. For Tulis, this change in rhetorical style had serious consequences. While Wilson was the first president since John Adams to publicly deliver his State of the Union address to the 63<sup>rd</sup> Congress, he also ushered in a new era in which rhetoric played an increasingly important role in the day to day operations of the presidency from FDR's radio address to Reagan's Oval Office speeches.

Subsequent scholars have held up Tulis' claim that rhetoric did fundamentally shift after Wilson with a particular eye toward the public rather than Constitutional theory.<sup>2</sup> Research has shown that words like "democracy" and "we" appear with greater frequency in the post-Wilson State of the Union addresses, while "Constitution" declines.<sup>3</sup> Post-Wilson, the reading level and length of presidential speeches also declined significantly. This shift towards public-facing rhetoric made appeals to national ideals like the American Dream all the more likely.

Still, many of Tulis' contemporaries have argued his theories are completely off-base — that if the goal of modern presidential rhetoric is to change public sentiments about policy, the evidence clearly shows it does not actually do so. In his response to Tulis, George Edwards' book *On Deaf Ears* challenges the claim that presidential rhetoric actually sways public opinion.<sup>4</sup> In fact, public opinion on presidential priorities in the aftermath of major political speeches rarely shifted, even during the presidencies of Ronald Reagan or Bill Clinton, two of the most

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<sup>1</sup> Jeffrey K. Tulis, *The Rhetorical Presidency*, 1st ed. (Princeton, N.J: Princeton University Press, 1988).

<sup>2</sup> Kenneth Cmiel, *Democratic Eloquence: The Fight over Popular Speech in Nineteenth-Century America* (New York: WMorrow, 1990).

<sup>3</sup> Elvin T. Lim, "Five Trends in Presidential Rhetoric: An Analysis of Rhetoric from George Washington to Bill Clinton," *Presidential Studies Quarterly* 32, no. 2 (2002): 328–66 ; Ryan Teten, "Evolution of the Modern Rhetorical Presidency: Presidential Presentation and Development of the State of the Union Address," *Presidential Studies Quarterly*; *Washington* 33, no. 2 (June 2003): 333–46.

<sup>4</sup> George C. Edwards, *On Deaf Ears: The Limits of the Bully Pulpit* (Yale University Press, 2006)

notable rhetoricians in the modern presidency.<sup>5</sup> Presidential approval ratings similarly are unaffected by the quality or content of presidential speeches, be they on a weekly radio address or in the Rose Garden.<sup>6</sup>

If, as Edwards claims, the president is unable to sway public opinion on himself or policy with speeches, why then do presidents continue to engage with the public so frequently? Many political scientists have found a middle ground that satisfies both Tulis' and Edwards' assertions about the presidency: that public opinion may be unchanged, but that the public agenda is changed.

The theory of presidential agenda setting relies on the belief that the president has the unique power to highlight issues of importance for the public. Through rhetoric, the president can signal to the American public that certain issues are worth their attention.<sup>7</sup> Those who back the agenda-setting theory generally ascribe its effectiveness to a "sustained public relations campaign" on behalf of the president and his party.<sup>8</sup> The Obama administration's strategic effort to discuss the Affordable Care Act at every opportunity is an example of agenda-setting on the topic of healthcare. Under this theory, Obama would not have been effective at changing the public's mind on the ACA but would have convinced more Americans that healthcare was an important issue. This theory was borne out in experiments performed on viewers of President Bush's 2002 State of the Union address. Those who watched the address believed the issues highlighted by Bush were more important than did those who watched other programming.<sup>9</sup>

If, as contemporary political scientists contend, Tulis is partially correct — the president utilizes his power to persuade in a vain effort to change public opinion and a purposeful effort to set the political agenda — then it is conceivable that the president has a toolkit of sorts to achieve this task. Certain phrases or rhetorical shifts may be effective at grabbing the listener's attention and highlighting a specific issue. This paper argues that the American Dream serves as one of those signals to help manage and shape the public agenda.

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<sup>5</sup> Lori Cox Han, "New Strategies for an Old Medium: The Weekly Radio Addresses of Reagan and Clinton," *Congress & the Presidency* 33, no. 1 (March 2006): 25–45, <https://doi.org/10.1080/07343460609507687>.

<sup>6</sup> Edwards, *On Deaf Ears*.

<sup>7</sup> Jeffrey E. Cohen, "Presidential Rhetoric and the Public Agenda," *American Journal of Political Science; Oxford* 39, no. 1 (February 1995): 87.

<sup>8</sup> *Ibid.*

<sup>9</sup> James N. Druckman and Justin W. Holmes, "Does Presidential Rhetoric Matter? Priming and Presidential Approval," *Presidential Studies Quarterly* 34, no. 4 (2004): 755–78.

## AN ACADEMIC HISTORY OF THE AMERICAN DREAM

Research on the American Dream as an ideal has also been rather limited to scholars of history, the arts and humanities. In fact, the first author to mention “The American Dream” in writing was a historian, James Truslow Adams in the 1930s.<sup>10</sup> He defined it rather simply, stating the ideal of the American Dream was related to living a “better, richer, and happier life.” Indeed, attempts to identify those central themes of American conceptions of self have often gone unconsidered by political scientists. In fact, political scientists have been known to view the study of the American Dream as “a dowdy, if not downright disreputable, topic.”<sup>11</sup> Furthermore, the dynamism of the Dream narrative makes it particularly difficult to analyze its core principles with any mathematical precision.

Scholars of political rhetoric often view the Dream as “entrenched” in American society, so much so that all politicians utilize the phrase with similar relative frequencies.<sup>12</sup> Its ubiquity across partisan lines have led some scholars to assert that Americans believe the Dream to be their “birthright,” and presidents have willingly entertained this idea by likening the Dream to an “American promise.”<sup>13</sup> Yet, despite its all-encompassing nature in modern political rhetoric, the American Dream has been, and continues to be, ill-defined.

Due to its ambiguity, the narrative of the American Dream has taken many political forms: a celebration of classical liberalism, a call for social and racial justice, a theory of economic prosperity, and a reminder of the pioneering spirit of American settlers, to name a few. So too has it influenced American culture. According to scholars of the arts, authors including John Steinbeck, James Baldwin, and Herman Melville and films like *It's A Wonderful Life* and *Forrest Gump* have continually reinvigorated or redefined the American Dream as a national creed, further “entrenching” it as a part of the collective national psyche.<sup>14</sup>

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<sup>10</sup> Sarah Churchwell, *Behold, America: The Entangled History of “America First” and “The American Dream,”* 1st ed. (New York: Basic Books, 2018); Jim Cullen, *The American Dream: A Short History of an Idea That Shaped a Nation*, vol. 1st (Oxford University Press, 2003).

<sup>11</sup> Cullen, 1st:191.

<sup>12</sup> This is with regards to members of Congress, not necessarily Presidents of the United States. My research will show that Democratic presidents tend to use the phrase slightly more than their Republican presidential counterparts.; Robert C. Rowland and John M. Jones, “One Dream: Barack Obama, Race, and the American Dream,” *Rhetoric & Public Affairs; East Lansing* 14, no. 1 (Spring 2011): 125–54.

<sup>13</sup> Cal Jillson, *The American Dream: In History, Politics, and Fiction* (University Press of Kansas, 2016), 16.

<sup>14</sup> John Archer, “The Resilience of Myth: The Politics of the American Dream,” *Traditional Dwellings and Settlements Review* 25, no. 2 (2014): 10; Jillson, *The American Dream*, 164–71.

While politicians, authors, and playwrights have used the Dream narrative for these and other purposes, the past half-century has seen the American Dream used most frequently by presidents to describe two ideals, the first of which is a forward looking vision of economic mobility—in particular, the idea that one’s children will be better off than themselves. This vision concedes that the idea of the Dream is most frequently defined in terms of financial security and “in the contemporary United States, one could almost believe this is the only definition.”<sup>15</sup> Indeed, political scientists and scholars often associate economic mobility with the crux of the modern American Dream, asserting that children judge their own success by frequently comparing their economic situation to that of their parents.<sup>16</sup>

Parent-child comparisons are perhaps the clearest example of generational progress and the vitality of the Dream for each generation. Even in difficult economic times, President Carter referred to such incremental “progress” as the very “essence” of the American Dream.<sup>17</sup> In this way, the Dream serves as a generational contribution to “the gradual perfecting of society,” not as a specific, achievable goal.<sup>18</sup>

The second most “widely realized” modern use of the American Dream is more tangible: home ownership.<sup>19</sup> The necessity of home ownership, Cullen argues, is derived from America’s history of frontierism and manifest destiny.<sup>20</sup> From early speeches by Roosevelt to the Bush-era American Dream Downpayment Act of 2003, the idea of the “dream home” has been an integral part to the vitality of the Dream.<sup>21</sup> In many respects, homeownership served as a physical representation of the Dream, in a way that economic mobility could not.

This is not to say there are no other conceptions of the American Dream. Dubbing DACA recipients as “Dreamers” implies an American Dream centered on immigration and current political debates over education frequently reference the American Dream.

These conceptions of the American Dream from literature and history do more than merely frame the debate over the Dream’s veracity. They imply that the Dream is something every

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<sup>15</sup> Cullen, *The American Dream: A Short History of an Idea That Shaped a Nation*, 1st:19.

<sup>16</sup> Raj Chetty et al., “The Fading American Dream: Trends in Absolute Income Mobility since 1940,” *Science* 356, no. 6336 (April 28, 2017): 398–406, <https://doi.org/10.1126/science.aal4617>.

<sup>17</sup> Jimmy Carter, “B’nai B’rith International Remarks at the Closing Banquet of the Biennial Convention. | The American Presidency Project,” American Presidency Project, September 4, 1980.

<sup>18</sup> Rowland and Jones, “One Dream,” 132.

<sup>19</sup> Cullen, *The American Dream: A Short History of an Idea That Shaped a Nation*, 1st:136.

<sup>20</sup> Theoretically, one could view The American Dream as the logical successor to Manifest Destiny as the national creed. No scholars have taken it upon themselves to track this change, but their relative importance and prevalence do come in adjacent eras of American history. Further research could attempt to bridge the gap between these two inherently American concepts.

<sup>21</sup> Archer, “The Resilience of Myth: The Politics of the American Dream,” 12.

American somehow understands and recognizes. Such a revelation is important when considering the Dream as a signal for the president's agenda setting power. Perhaps no phrase has more ubiquity among the American populace and therefore no equal in political signaling power.

## RESEARCH & METHODS

In an effort to better understand the role of the American Dream in presidential speeches, I took a quantitative approach to analyzing rhetoric based almost entirely in the Presidential Weekly Radio Address. The radio addresses are catalogued in the American Presidency Project, an effort by University of California, Santa Barbara researchers Gerhard Peters and John Woolley to assemble and index all public presidential documents. Utilizing the APP's comprehensive database of weekly presidential addresses, I documented instances between the Reagan and Trump presidencies in which the president utilized "American Dream," "American dream," "american Dream," and "american dream" into one standardized database.

Presidents Reagan through Trump in 2017 were selected for consistency and feasibility. Between Franklin Delano Roosevelt and Reagan, radio addresses were common but not standardized on a weekly basis. Since Reagan, the weekly radio address became an established part of American presidential rhetoric.<sup>22</sup> Only Reagan's immediate successor, George H.W. Bush, did not produce a weekly radio address during his one-term presidency, though he frequently addressed the American people in other ways — often from the Oval Office.<sup>23</sup> For that reason, the four years of the H.W. Bush presidency were not included in this analysis.

The data end in October 2017 when the Trump administration put the weekly radio address on an indefinite hiatus. According to White House Press Secretary Sarah Huckabee Sanders, "the weekly address wasn't being used to its full potential."<sup>24</sup> Rather than include the sporadic 2018 data, the analysis ultimately ends in October 2017.

In total, 1720 weeks are accounted for in the dataset, and the overwhelming majority of those weeks, 1611, included a radio address.<sup>25</sup> Of those hundreds of weeks, 119 (roughly 7%) mentioned the American Dream. Given that each weekly radio address has a policy theme, I then sorted each of the 119 speeches which mentioned the American Dream into seven policy "buckets"

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<sup>22</sup> Han, "New Strategies for an Old Medium," 8.

<sup>23</sup> According to the American Presidency Project's database, H.W. Bush only made 18 "weekly addresses."

<sup>24</sup> Sarah Sanders, 11/20/17: White House Press Briefing, November 20, 2017.

<sup>25</sup> Occasionally from Reagan to Obama there would go a week or two without a presidential address, though these 109 instances are far and few enough between to maintain relative consistency.

— along with numerical codes for the date, president, and the direct quotation referencing the Dream. Those seven policy buckets included the Economy, Education, Foreign Affairs, Ceremonial, Social Issues, Healthcare, and Campaign.

After categorizing the various speeches into buckets, each speech was then given a unique legislative identifier. Using the date of the speech and any specific mentions from the president as a guide, I tracked down the specific bills associated with each speech if possible. Certain categories — like Campaign and Ceremonial — did not lend themselves to individual legislative identifiers, while other topics — like Healthcare and Economics — frequently were entrenched in the policy debates of the day. In total, 37 unique pieces of legislation were tied to the Dream-focused weekly radio addresses. Some speeches mentioned more than one piece of legislation, while individual pieces of legislation were often mentioned in more than one speech, perhaps as kind of public relations campaign.

I supplemented this original dataset with a number of contextual variables. Using the weekly radio address as the unit of analysis, I included a number of indicators for monthly unemployment rate, quarterly homeownership rate, yearly GDP growth rate, a monthly aggregate of presidential approval ratings, the president's political party, and dummy variables for the president, divided government, and the year to account for fixed effects.<sup>26</sup> As I explain below, I included these variables in a linear regression framework to identify the political conditions that are associated with a president's invocation of the American Dream.

Given both the power of the presidential bully pulpit and the limited political currency of the president's messaging tools, a number of predictions can be made regarding when a president would utilize dream rhetoric. Knowing though historical analysis that many Americans associate the Dream with economic mobility, I hypothesize that a president is more likely to reference the Dream when promoting legislation related to economic issues, especially if the economy is doing well.<sup>27</sup> Empirically, this can be measured in a variety of ways, though this paper will focus on three particular economic indicators: unemployment, GDP growth, and rates of home ownership. These indicators were chosen because they reflect the overall health of the economy, as well as two historically important components of the American Dream: employment and home ownership. By this logic, I predict that if the economy is witnessing low unemployment, high GDP growth rates

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<sup>26</sup> Databases with these data are catalogued in the Works Cited page.

<sup>27</sup> Audiences would likely find a Dream-based narrative more appealing if they themselves were also experiencing economic prosperity.

and/or high rates of home ownership, then the weekly radio address will be more likely to feature Dream rhetoric.

More broadly, if, as I hypothesize, presidents employ Dream rhetoric to advance policy initiatives, then other factors which affect a president's ability to pass legislation will necessarily also impact the frequency of Dream rhetoric. Presumably, if the president is in his first term, boasts high approval ratings, and/or serves within a unified government, then I predict there is an increased chance he will utilize Dream rhetoric in the weekly radio address. High approval ratings, the presence of unified government, and the first term "honeymoon period" all increase the president's likelihood of passing legislation — economic or not.

### CATEGORICAL FINDINGS

Figure 1 (Appendix) provides a descriptive overview of presidential references to the American Dream using the policy "bucket" framework. The higher the bars, the more frequently a president mentioned the American Dream in his weekly radio address. Figure 2 presents the same data, but as a percentage of all mentions. The height of each of the bars shows the percentage of radio addresses in which presidents used the American Dream and the colors are indicative of the policy areas to which presidents connected the Dream.

Party appears to play a role in the frequency of mentions. Clinton, who established the phrase as a staple of his administration, appealed to the American Dream in weekly radio addresses with greater frequency than all other presidents during the time period combined. He averaged 8.75 weekly radio address mentions each year during his two-term presidency. Obama, comparatively, mentioned the phrase 3.875 times each year during his two-term presidency. Trump, who mentioned the American Dream in four weekly radio addresses in his first nine months, appealed to the Dream with greater average frequency than any Republican presidents before him. If extrapolating from his first year, Trump would mention the phrase 5.33 times each year in a one-term presidency. His Republican counterparts comparatively averaged much lower, Bush at 1.875 Dream appeals per year and Reagan at 0.875 Dream appeals per year.

By and large, as Figure 2 shows, the American Dream is used most frequently in connection with economic issues, followed closely by education. By sheer number of mentions and as a percentage of mentions within presidencies, the economy reigns supreme. Differences among presidents on the topic of the economy are largely accounted for by their legislative agendas and

the economic demands of the day. The following is a short summary of the major legislative agenda items, economic and otherwise, featured in Dream-based weekly radio addresses.

For Reagan, economic speeches largely focused on two major issues: tax reform and homeownership. He touted the Tax Reform Act of 1986 as the “single most important step we’ll take in this decade to fulfill the American dream” while also lamenting the housing crisis that occurred in the late 1970s under the Carter administration.<sup>28</sup>

In his early presidency, Clinton’s economic speeches frequently focused on the congressional budget and the Clinton “Middle Class Bill of Rights,” while by the second half of his presidency he had turned his focus toward welfare reform. Again, sprinkled throughout the dozens of speeches are references to homeownership and minimum wage increase proposals.<sup>29</sup>

After the turn of the century, George W. Bush spent most of his economic speeches trying to sell his homeownership-focused legislative agenda, culminating in the carefully named “American Dream Downpayment Fund.”<sup>30</sup>

While Bush was pushing spending on homes, Obama was comparatively facing the greatest financial crisis in the nation’s history since the Great Depression. He devoted over twenty speeches to the economy, focusing on pushing through the American Recovery and Reinvestment Act of 2009 and later the American Jobs Act of 2011 and Dodd-Frank. By Obama’s account, the stakes were higher than they had been in years past. “The dream of a middle class life—that American Dream—is slipping away,” he said in 2009, and his legislative agenda would, by his account, serve to help “renew” that Dream.<sup>31</sup>

In his first year Trump’s economic speeches focused almost entirely on pushing through the Tax Cuts and Jobs Act of 2017 and railing against the budgets of previous Congresses which had, in Trump’s words, ensured that “the American Dream has slipped from the grasp of more and more of our people.”<sup>32</sup> Trump’s speeches were, proportionally, more likely to use the American Dream in ceremonial fashion. Most notably, Trump’s White House team named the first week of August 2017 “American Dream Week,” the latest in a series of themed weeks aimed at promoting Trump’s broader agenda.<sup>33</sup>

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<sup>28</sup> Ronald Reagan, “Radio Address to the Nation on Tax Reform,” American Presidency Project, May 25, 1985.

<sup>29</sup> William Clinton, “Address to the Nation on the Middle Class Bill of Rights,” American Presidency Project, December 15, 1994.

<sup>30</sup> George W. Bush, “The President’s Radio Address,” American Presidency Project, June 15, 2002.

<sup>31</sup> Barack Obama, “The President’s Weekly Address,” The American Presidency Project, November 26, 2009.

<sup>32</sup> Donald J. Trump, “The President’s Weekly Address,” The American Presidency Project, May 26, 2017.

<sup>33</sup> Donald J. Trump, “The President’s Weekly Address,” The American Presidency Project, August 4, 2017.



Even the other categories of Dream rhetoric, while focused different legislative issues, are frequently tied back to the economy and an individual's economic prospects. Many speeches on education reform specifically mention economic policy like in 1994 when Clinton said reform would "help educate more Americans with better education and training to face the challenges of a global economy in the future." Under Obama, healthcare reform was pitched as a benefit to small businesses: "Reforming our health insurance system will be a critical step in rebuilding our economy so that... our entrepreneurs can pursue the American Dream again and our small businesses can grow and expand and create new jobs again."

In these speeches, presidents also frequently call upon Congress or the American people to act in weekly radio addresses, directly utilizing the bully pulpit to achieve legislative goals. During the Reagan administration, the president said he sought "to include everyone in the success of the American dream" and asked Congress "to unite with [him] for intelligent policies that provide farmers needed help."<sup>34</sup> Clinton made similar appeals to Congress after associating the American Dream with his proposed trade policy, "I ask every Member of Congress, Republican and Democrat alike, to look to the future," Clinton said, "Cast the vote you know is right."<sup>35</sup> This direct interaction with members of Congress implies that the president may believe representatives and senators are listening and could potentially heed his advice.<sup>36</sup> It also raises questions about the president's perceived effectiveness at communicating with the legislative branch. Is the weekly radio address a last ditch effort? A more ceremonial affair once the votes have already been ensured? Or an actual earnest plea with the hopes it will change partisan minds?

## MULTIVARITE FINDINGS

A deeper statistical analysis of mentions of the American reveal certain limitations on the president's ability to utilize Dream rhetoric. Figure 3 presents the aforementioned regressions and p-values associated with monthly unemployment rates, home ownership rate, yearly GDP growth rates, unity of government, monthly average presidential approval ratings, the party of the president, term of the president and year.

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<sup>34</sup> Ronald Reagan, "Radio Address to the Nation on the Farm Industry," The American Presidency Project, November 14, 1985.

<sup>35</sup> William Clinton, "The President's Radio Address," The American Presidency Project, November 8, 1997.

<sup>36</sup> Or perhaps equally likely, their constituents are listening.

In this simple linear regression, all variables except for home ownership, GDP growth rates and presidential approval ratings are statistically significant in determining whether or not a president mentions the American Dream in the weekly radio address.<sup>37</sup> Consistent with the categorical observations, Democrats are statistically significantly more likely to mention the American Dream. Clinton and Obama each mention the Dream more often than their Republican counterparts on and overall basis, and for Clinton, on a year by year basis.

The political makeup of the federal government at the time of the speech influences whether or not a president employs Dream-rhetoric. Presidents are more likely to mention the American Dream in weekly radio addresses if their party also controls the Senate and the House of Representatives. This finding could imply that Presidents may be more likely to link a national ideal like the American Dream to policy proposals when they are more confident those proposals will eventually turn into law. The president's term is also an indicator of whether or not they will mention the American Dream in weekly radio addresses. First term presidents are more likely to appeal to the American Dream than are second term presidents.

Other indicators like the unemployment rate are also statistically significant indicators. The more the unemployment rate climbs, the less likely the president will mention the American Dream. If one believes the weekly radio address to be an opportunity for the president to speak to the people and Congress, this makes sense intuitively. Mentioning a national ideal that in times of high unemployment may be out of reach for millions of Americans could come across as out of touch. Even in times of high unemployment, the rhetoric around the American Dream, when mentioned, is more negative. Obama's use of the American Dream frequently rests on the notion that it is "slipping away," especially in the throes of the Great Recession.

Home ownership rates, produced by the Federal Reserve each month, are notably not statistically significant. This may be for an obvious and aforementioned reason. As previously noted, speeches that mention home ownership are almost always tied to policy proposals on the floor of Congress. Major pushes for home ownership legislation occurred during the early years of the Bush presidency *and* in the beginning of Obama's second term, though they could not have come at more different times for the nation's home ownership rate. While Bush pushed for home ownership legislation, the rate was rising and sat between 68 and 69 percent. Conversely, Obama's policies coincided with a steep decline in the home ownership rate to roughly 65 percent. It would continue to fall, bottoming out at roughly 63 percent at the end of the Obama presidency. In short,

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<sup>37</sup> Defined in this paper as a p-value of less than 0.05.

legislative pushes for home ownership seem to have a greater effect on whether or not a president will speak on the American Dream as opposed to the actual rate itself.

That national GDP growth rates are not correlated with mentions is unsurprising. The American Dream, as described by historians and presidents alike, is a deeply individual or familial concept. Therefore, no matter how successful GDP growth rates are at determining the health of an economy, it measures a phenomenon that is unrelated to the American Dream narrative.

Perhaps more surprisingly, the lack of statistical significance when accounting for presidential approval ratings makes less intuitive sense. Further research may be necessary to understand the ways public approval factors into presidential appeals to national identity.

Overall, the categorical and multivariate findings paint a clear picture of the American Dream as an effective tool of presidential rhetoric. Presidents sporadically link the American Dream to important policy initiatives, mostly related to economic proposals. Presidents frequently are beholden to economic and political factors when utilizing this type of rhetoric. The unemployment rate and the unity of a government are two examples of conditions correlated with American Dream mentions.

### **BEYOND THE WEEKLY RADIO ADDRESS**

While this paper has thus far focused on the weekly radio address, both for quantitative comparison over decades as well as ease of analysis, presidents use their rhetorical powers in other situations as well including campaign rallies, ceremonial addresses, and Rose Garden speeches. Despite the difficulty of analyzing the American Dream in this broad a context, a few findings can be gleaned by simple descriptive statistics.

Figure 4 presents a timeline of *all* public mentions of the American Dream since the Johnson administration, the first president to utilize the phrase with relative frequency.<sup>38</sup> This chart tracks the total number of public mentions of the Dream in each individual year. Election years where the president of the United States was running as an incumbent are marked with a red star. Economic recessions are shaded in grey. A basic linear regression showing the growth of the phrase is also included as a dotted red line.

While not standardized like the weekly radio address analysis, a number of interesting

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<sup>38</sup> Public mentions here are defined as instances in which the president either delivered a speech, submitted a public letter to Congress, or signed a resolution. These also come from the American Presidency Project.

findings do emerge from this chart. Firstly, there has undoubtedly been growth in the number of times presidents utilize the phrase in *all* forms of public address over the past half century, with particularly large increases coming at the beginning of the Reagan administration and Clinton administrations. President Trump appears to be on track to continue this general trend.

It is also clear from the graphs that presidents use the phrase more frequently during election years in which they are running as incumbents, though concluding there is any correlation between an election and Dream-rhetoric frequency does present a few endogeneity problems. It is also possible that in election years presidents simply deliver more speeches, and therefore have more opportunities to utilize the phrase the American Dream. Though it is worth noting that an increase in mentions is not prevalent in presidential election years when the president is *not* running as an incumbent or in midterm election years, despite the fact that the president often engages in campaign rallies for members of his own party in those contests.

After 1980, the American Dream was referenced more frequently in and around a recession, most dramatically in the early 1990s and at the onset of the Great Recession. These spikes could simply be the result of new Democratic presidents taking over the White House, though if that were true, similar—albeit smaller—spikes would not occur in the middle of the George W. Bush presidency or the Reagan presidency.

It is worth briefly noting the difference in style of mentions in the more formal addresses. Inaugural addresses and State of the Union addresses, while more public than the weekly radio address, tend to speak of the American Dream in greater abstraction. In these addresses, rooted in political theater, history, hopes, and ideals are more associated with the Dream than any specific policy agenda. Richard Nixon, in his inaugural address famously asserted that “the American dream does not come to those who fall asleep;” while in 1986, during his State of the Union Address, President Reagan noted “the American dream is a song of hope that rings through night winter air;” and in his 2018 State of the Union address Trump claimed “There has never been a better time to start living the American Dream.”<sup>39</sup> The abstraction in these references is not for a lack of policy proposals. The State of the Union address is known for frequently serving as a laundry list of legislative agenda items. So it is all the more interesting that references to the American Dream, while expressly linked to over 35 pieces of legislation in weekly radio addresses

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<sup>39</sup> Richard Nixon, “First Inaugural Address,” The American Presidency Project, January 20, 1969; Ronald Reagan, “Address Before a Joint Session of Congress on the State of the Union,” The American Presidency Project, February 4, 1986; Donald J. Trump, “Address Before a Joint Session of the Congress on the State of the Union,” The American Presidency Project, January 30, 2018.

from 1981 to 2017, rarely do the same in more public speeches that also focus so heavily on policy.

The frequency of the American Dream in these ceremonial speeches is also sporadic. In total only 16 inaugural addresses and State of the Union addresses combined mention the American Dream from the Johnson administration to the Trump administration. However small though, similar trends do emerge. Democrats mention the phrase more often than Republicans and Bill Clinton mentions the phrase the most frequently — five times.

## **CONCLUSIONS AND FURTHER RESEARCH**

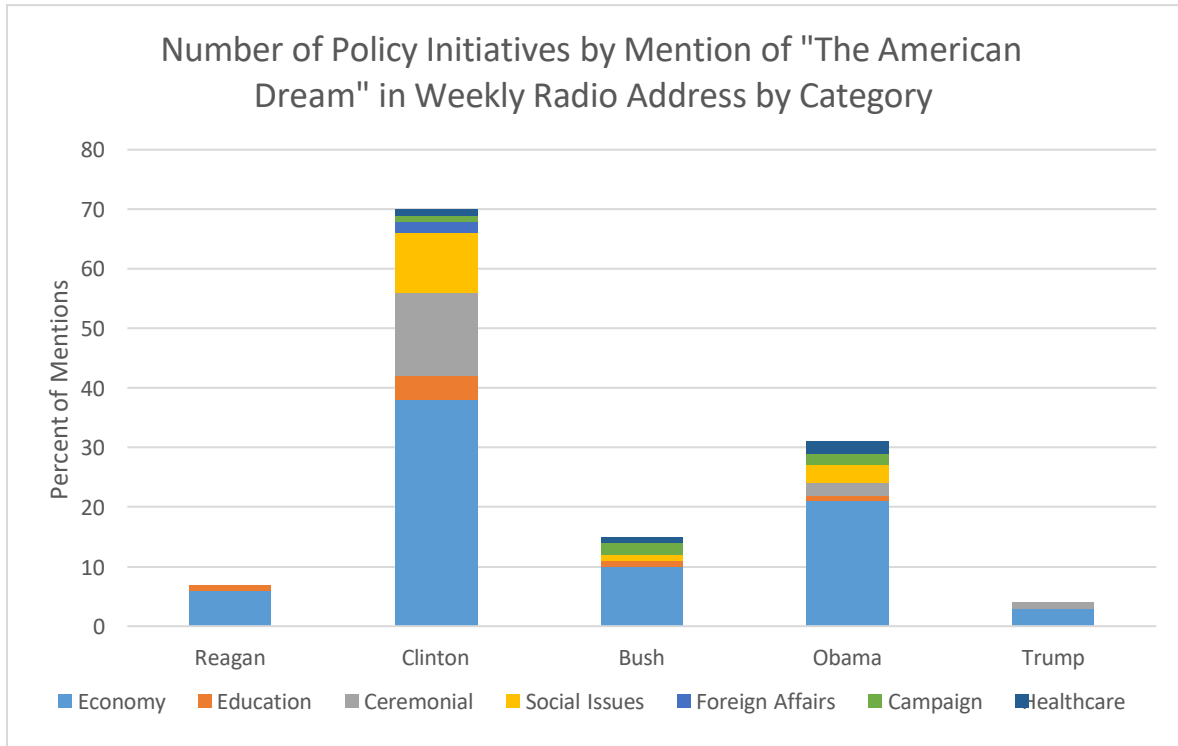
This paper tested the conditions under which presidents utilize the American Dream in their public addresses for two reasons: to determine potential limitations on the applicability of Dream-related rhetoric and to discover tangible evidence of presidential agenda setting utilizing the American Dream. It examined the ways presidents mentioned the American Dream from an historical and quantitative perspective, placing emphasis on causal factors as opposed to individual case study examples.

The history of the American Dream in the modern presidential era is focused almost entirely on the economy, and predictably, the cultural focus on individual economic success is mirrored in presidential weekly radio addresses. In the weekly radio address, Democratic presidents used the phrase with greater frequency than Republicans and when they did, it was overwhelmingly with regards to economic policy initiatives. Further statistical analysis indicated that the unemployment rate, the presence of unified government and party among other factors was significantly correlated with American Dream-based presidential rhetoric.

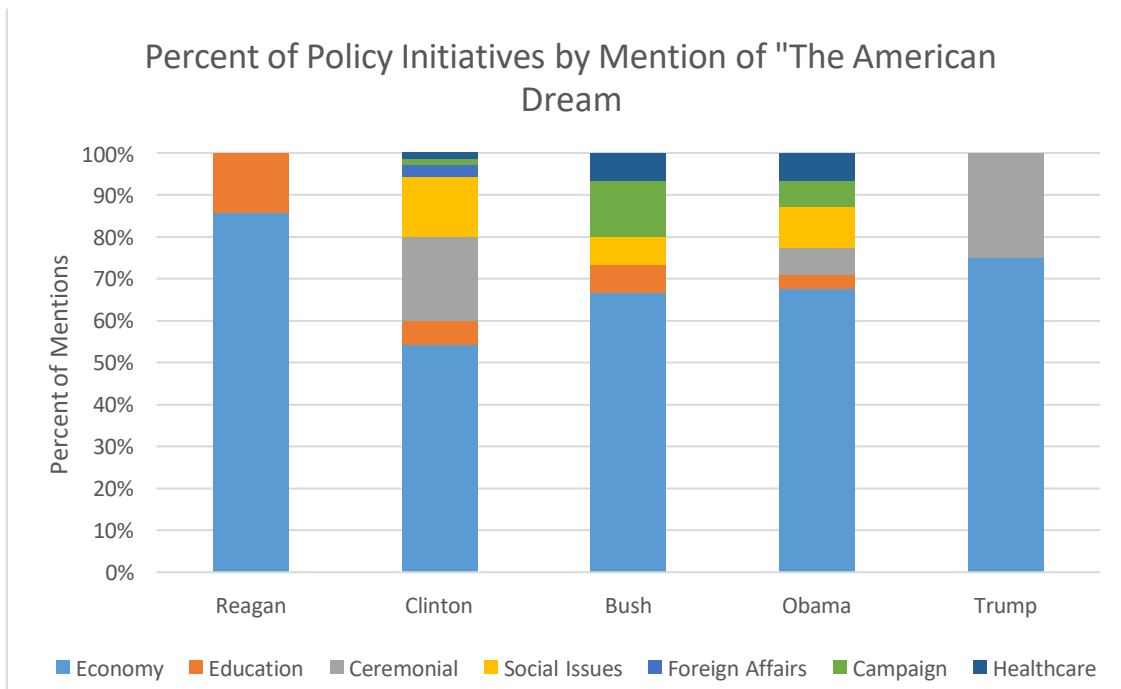
The findings in this paper also raise more important questions that could be answered in subsequent research. First and foremost, the effectiveness of Dream rhetoric is still inconclusive. Further research could test if Dream rhetoric increases the potential for legislative items to receive greater bipartisan support. While mentioned earlier in the paper, permutations of Dream rhetoric, like those associated with “Dreamers” are also worth further examination. In the foreign policy arena, there remain important questions as well. Why does the American Dream fail to play a large role in foreign policy speeches? And how should political scientists understand the ways in which other world leaders, like China’s President Xi Jinping, borrow from American political rhetoric to create ideals like the Chinese Dream?

**APPENDIX**

**Figure 1:** American Dream Mentions in Weekly Radio Address Sorted by Policy (Frequency)



**Figure 2:** American Dream Mentions in Weekly Radio Address Sorted by Policy (Percentage)



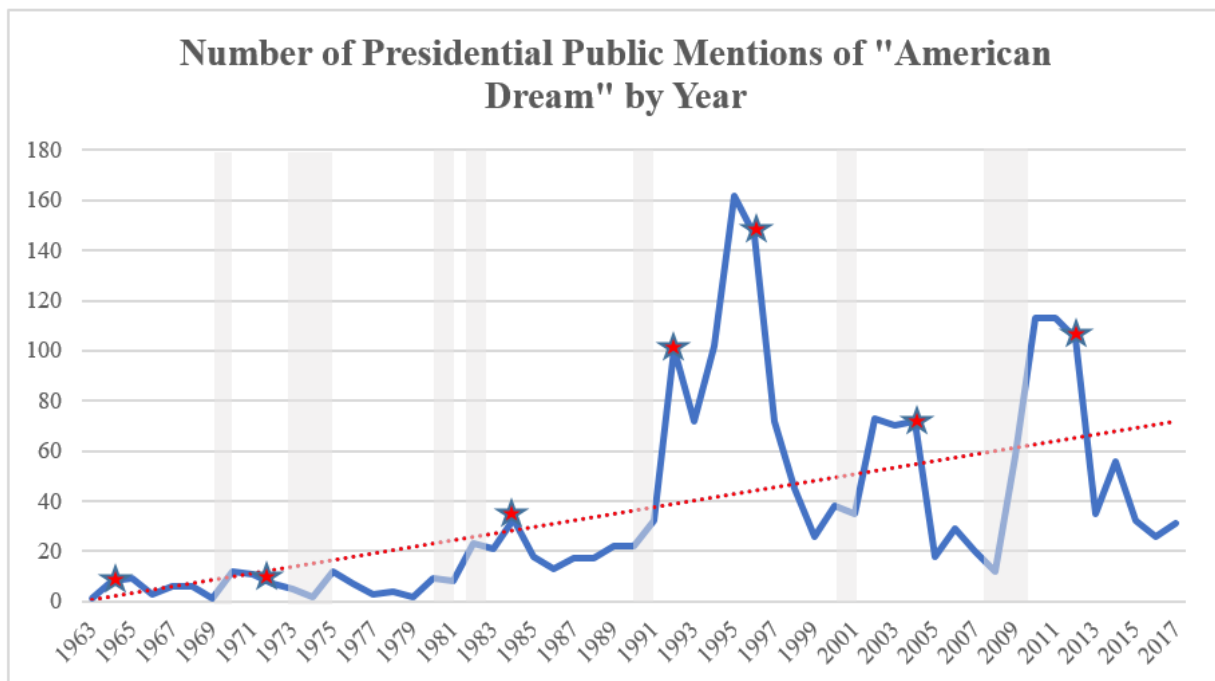
**Figure 3:** Stata Output for Multivariate Regression

Source	SS	df	MS	Number of obs	=	1,667
Model	7.25781397	8	.907226746	F(8, 1658)	=	15.20
Residual	98.9461452	1,658	.059678013	Prob > F	=	0.0000
				R-squared	=	0.0683
				Adj R-squared	=	0.0638
Total	106.203959	1,666	.063747875	Root MSE	=	.24429

dream_speech	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]
ue_rate	-.0145143	.0048506	-2.99	0.003	-.0240282 - .0050004
home_ownership	-.002569	.00423	-0.61	0.544	-.0108657 .0057278
gdp_growth	-.0061236	.0038844	-1.58	0.115	-.0137425 .0014952
agg_approval	-.0009273	.0007043	-1.32	0.188	-.0023088 .0004541
unified_govt	.0841911	.0162961	5.17	0.000	.052228 .1161543
party	-.1132368	.014693	-7.71	0.000	-.1420556 -.084418
term	-.0379937	.0158381	-2.40	0.017	-.0690585 -.0069288
year	-.0032811	.0007873	-4.17	0.000	-.0048252 -.0017369
_cons	7.027852	1.551343	4.53	0.000	3.985055 10.07065

**Figure 4:** Frequency of American Dream Mentions in All Presidential Speeches by Year



## **MID-CENTURY OPPORTUNITY: AN ANALYSIS OF THE KENNEDY AND JOHNSON PRESIDENTIAL ADMINISTRATIONS**

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*The presidencies of John F. Kennedy and Lyndon B. Johnson occurred in the tumultuous era of the 1960s, where domestic change occurred at a hasty pace. Despite both Kennedy and Johnson's similar domestic agendas in an era of political authority for the modern presidency, only Johnson achieved lasting and substantial change in the field of domestic civil rights and welfare policy. An analysis of both presidencies with respect to Neustadt's theory put forth in "Presidential Power and the Modern Presidents" and Cronin et. al. in "The Paradoxes of the American Presidency," Johnson's unique background, political savvy, and the circumstances of his succession to his office were instrumental in using presidential soft power to influence outcomes where the power of his office was limited, and in his ability to navigate the often-contradictory expectations that Americans have of their executive.*

### **INTRODUCTION**

Despite their shared ticket in the 1960 election, John F. Kennedy and Lyndon Baines Johnson were substantially different in their career paths, upbringings, and leadership style. John F. Kennedy, the wealthy scion of the powerful Kennedy family of Massachusetts, could be classified as an American aristocrat, his father's riches acquired through guile and patronage. On the other hand, Lyndon B. Johnson had grown up in relative poverty on a Texas homestead. While both men served in both houses of Congress, Johnson's career in that body was the more notable, as he was Senate majority leader before being chosen as Kennedy's running mate in the leadup to the 1960 Presidential election. Upon Kennedy's assassination in November 1963, Johnson ascended to the presidency during a time of great need for decisive leadership in the office. Despite both Kennedy and Johnson's lofty domestic political agendas that included civil rights reform and a war on poverty in an age where expanded presidential leadership was becoming more and more decisive, only Johnson achieved lasting and substantial change in that regard due to a combination of extraordinary leadership skills and the unique circumstances of his succession to the office of the president.

A contemporaneous academic viewpoint articulated by Richard Neustadt in 1960 designated the office of the presidency as a "glorified clerkship" that required an energetic leader



who had persuasive skill to navigate differences and pursue the means by which they could implement their policy. Furthermore, Neustadt stresses the importance of five constituencies that a president must appeal to: his party, Congress, his cabinet, the general public, and foreign leaders in order to succeed with an initiative. Thus, an individual who is skilled at exploiting such relationships, or one who is present during extenuating circumstances like those of war, is more likely to be successful.<sup>1</sup> Yet another frame of analysis for the modern presidency, as developed by Thomas Cronin et. al., stresses the importance of conflicting expectations, or paradoxes that modern-day presidents face. In particular, an analysis of the expectation of a virtuous individual to hold the office despite the inherent horse-trading and dealing necessary in the process of political negotiations as well as the expectation of a leader to stick to a specific programmatic agenda, yet to also be a pragmatist open to compromising or abandoning certain positions should they not be politically possible.<sup>2</sup>

### **JFK: BACKGROUND AND POLITICAL POSITIONS**

John Fitzgerald Kennedy was born in 1917 in Massachusetts to Rose Fitzgerald and Joseph Kennedy Sr. After earning his degree at Harvard, Kennedy enlisted in the Navy and served as the commander of the torpedo boat PT-109. His actions during the tragic sinking and unlikely rescue of that boat gained him notoriety as a war hero, and in 1946, he was elected as a Democrat to the House of Representatives for Massachusetts's eleventh district, a position he held for six years until his election to the Senate in 1952. Kennedy held that seat until he was elected president in 1960.<sup>3</sup> Kennedy campaigned on the basis of assuaging the ills of those who were poor, unable to acquire healthcare, or unemployed as a part of his "New Frontier" agenda for the country in his acceptance speech for the 1960 Democratic nomination for the presidency. Perhaps the most memorable quote from his speech was his call for members of his party not "to curse the darkness, but to light the candle that can guide us to a safe and sane future," a position at odds with Richard Nixon, his opponent, whom Kennedy characterized as an individual whose

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<sup>1</sup> Neustadt, Richard E. *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. New York: Free Press, 1991.

<sup>2</sup> Cronin, Thomas E., Michael A. Genovese, and Meenekshi Bose. *The Paradoxes of the American Presidency*. Fifth ed. New York: Oxford University Press, 2018.

<sup>3</sup> "The Life of John F. Kennedy." John F. Kennedy Presidential Library and Museum. Accessed May 08, 2018. <https://www.jfklibrary.org/JFK/Life-of-John-F-Kennedy.aspx>.

agenda looked like four more years of the Eisenhower presidency.<sup>4</sup> Indeed, the 1960 Democratic Party platform agreed to at the convention affirmed the cause of the civil rights movement in its commitment to supporting the elimination of race-based boundaries in the United States, despite a considerable degree of controversy from Democrats in the conservative and segregated “Solid South.”<sup>5</sup> Kennedy himself supported civil rights as a candidate and in office, yet considerable debate has followed over his willingness and ability to deal with such an issue.

### **OPERATIONALIZING VICTORY: THE NEUSTADY MODEL, PARADOXES, AND KENNEDY**

The results of the 1960 election were far from decisive. Despite Kennedy’s lead in the Electoral College over Nixon of 303 to 219 delegates, the popular vote was decided only by a miniscule margin of only 117,000 voters.<sup>6</sup> Furthermore, while the 87<sup>th</sup> Congress was controlled by Democrats in both chambers, Kennedy would be hard pressed to assemble an ideologically-comprehensive caucus given the substantial number of senators and representatives in the conservative South.<sup>7</sup> Given the narrow result and ideologically unfavorable caucus, one could surmise that Kennedy would therefore moderate his position. While Kennedy’s position as presiding officer of the federal government carried immense power on its face, the domestic situation was more complicated. As far as operationalizing his public and partisan support into domestic change, Kennedy has a more mixed record. Unlike the great reformer FDR before him, Kennedy had no presiding national crisis or massive majority to bargain with. Furthermore, Kennedy’s bargaining and negotiations with congressmen had the effect of forcing him to moderate his position, lest his reforms fail, resulting in compromise bills which did not achieve the lofty promises of the “New Frontier.”<sup>8</sup> Kennedy was also a weak persuasive force within government. Despite his attempts to convince Mississippi Governor Ross Barnett, a member of

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<sup>4</sup> Kennedy, John F. "Acceptance Speech of Senator John F. Kennedy Democratic National Convention The New Frontier July 15, 1960." National Archives and Records Administration. Accessed May 08, 2018. <https://catalog.archives.gov/id/193148>.

<sup>5</sup> "Democratic Party Platforms: 1960 Democratic Party Platform - July 11, 1960." The American Presidency Project. Accessed May 08, 2018. <http://www.presidency.ucsb.edu/ws/index.php?pid=29602>.

<sup>6</sup> "1960 Presidential Election Results." The American Presidency Project. Accessed May 08, 2018. <http://www.presidency.ucsb.edu/showelection.php?year=1960>.

<sup>7</sup> "Congress Profiles: The 87th Congress." US House of Representatives: History, Art & Archives. Accessed May 08, 2018. <http://history.house.gov/Congressional-Overview/Profiles/87th/>.

<sup>8</sup> Hart, John. "Kennedy, Congress, and Civil Rights." *Journal of American Studies* 13, no. 2 (August 1979): 165-78. Accessed May 8, 2018.

his party, to de-escalate the University of Mississippi civil rights crisis where Barnett protested the federally-mandated racial integration of the school, the governor instead chose to balk and openly refuse Kennedy's overtures. Kennedy was thus forced to call in the National Guard until Barnett relented, costing him political capital: the authority of his power to persuade was denied<sup>9</sup>

Domestically, Kennedy's pragmatically-influenced legislative legacy was one of moderate expansion of New Deal polices and the failure of more revolutionary ones despite the programmatic reach of the "New Frontier" he initiated, and one of escalating commitment to civil rights that was so tragically cut short. As far as Kennedy's virtuous qualities, the oft-quoted agate he coined in his inauguration speech to "ask not what your country can do for you, ask what you can do for your country" has merit to this day; however, his inability to overcome a divided caucus via compromise and backroom deals does not.<sup>10</sup>

## CASE STUDY

### *Civil Rights*

Several major race-related incidents occurred during Kennedy's term, such as the violence faced by the Freedom Riders, the desegregation of the University of Mississippi followed by substantial protests, and the Birmingham race riots.<sup>11</sup> These incidents were highly polarizing and heavily publicized for their time, with the Birmingham riots notoriously put down by firehoses and attack dogs. However, Kennedy failed to ask Congress for comprehensive reform until rather late in his term, and instead delegated authority to Robert F. Kennedy, his brother and Attorney General. While RFK dealt with these problems on a case-by-case basis, President Kennedy favored taking a stand on the issue of civil rights "when he thought that they would have a negative effect of the nation's international image."<sup>12</sup> As such, Kennedy first addressed the nation with the intent of promoting a comprehensive reform of civil rights policy

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<sup>9</sup> Perry, Barbara A. *The Presidents and the Constitution: A Living History*. Edited by Ken Gormley. New York: New York University Press, 2016.

<sup>10</sup> Kennedy, John F. "John F. Kennedy Quotations: Inaugural Address." John F. Kennedy Presidential Library and Museum. Accessed May 08, 2018. <https://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Quotations/Inaugural-Address.aspx>.

<sup>11</sup> "John F. Kennedy - Key Events." UVA Miller Center. August 30, 2017. Accessed May 08, 2018. <https://millercenter.org/president/john-f-kennedy/key-events>.

<sup>12</sup> Ruprecht, Daniel. "Executive Inaction." *Vanderbilt Historical Review* 2016, no. Spring (2016): 22-27. doi:10.15695/vhr.2016spring.22.

in a televised address on June 11, 1963. In it, he vouches for Congress to commit to the belief that “race has no place in American life or law” after specifically invoking the events in Birmingham, where television crews captured the violent dispersal of a civil rights protest by local police with firehoses and dogs.<sup>13</sup> It is interesting to note here that Kennedy entered the presidency with the promise to reform civil rights law, yet it was only in the third year of his term when he resolved to attend to it. In any case, Kennedy’s bill outlived his administration. Three weeks after it passed the House Judiciary Committee that October, Kennedy was tragically assassinated in Dallas on November 22.<sup>14</sup>

### *War on Poverty*

An important plank in his 1960 campaign, the War on Poverty, or Kennedy’s attempts at procuring welfare reform for those who were impoverished, led to substantial attention by the Kennedy White House towards reform of such programs. Despite foreign policy controversy in the Bay of Pigs invasion and Berlin, the 87<sup>th</sup> Congress enacted several of his domestic priorities, such as economic redevelopment, federal housing aid, and minimum wage increases. However, some of his other efforts, such as medical insurance for senior citizens and expanded federal education funding, came to nothing. Contemporaneous commentators noted his progress along legislative reform to “New Deal” style programs, but his attempts to expand the welfare state beyond the bounds initially defined by his predecessors were unsuccessful.<sup>15</sup> With a volatile international situation, a Congress that did not support his full agenda due to intra-party, and inter-regional splits, Kennedy’s credibility on Capitol Hill with congressmen who held the same party affiliation but different ideologies and geographical origin like those in the South did not help his situation. Often, they were already opposed to Kennedy’s stance on civil rights and were unwilling to support expansion of welfare programs.<sup>16</sup> Thus, his legislative reforms did not fulfill his promises during his campaign.

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<sup>13</sup> Kennedy, John F. "June 11, 1963 Report to the American People on Civil Rights." John F. Kennedy Presidential Library and Museum. Accessed May 08, 2018. [https://www.jfklibrary.org/Asset-Viewer/LH8F\\_0Mzv0e6Ro1yEm74Ng.aspx](https://www.jfklibrary.org/Asset-Viewer/LH8F_0Mzv0e6Ro1yEm74Ng.aspx)

<sup>14</sup> "The Civil Rights Bill." The John F. Kennedy Presidential Library and Museum. Accessed May 08, 2018. <https://civilrights.jfklibrary.org/chapter-read-more/the-civil-rights-bill.aspx>.

<sup>15</sup> McAndrews, Lawrence J. "Beyond Appearances: Kennedy, Congress, Religion, and Federal Aid to Education." *Presidential Studies Quarterly* 21, no. 3 (Summer 1991): 545-57. Accessed May 8, 2018.

<sup>16</sup> "John F. Kennedy: Domestic Affairs." UVA Miller Center. April 10, 2018. Accessed May 08, 2018. <https://millercenter.org/president/kennedy/domestic-affairs>.

Kennedy was succeeded by Vice President Lyndon B. Johnson after an assassin's bullet cut his term short and left his agenda incomplete. Johnson's presidency brought a unique skillset and strategy to the office that had some stark differences to Kennedy's.

### **LBJ: BACKGROUND AND POLITICAL POSITIONS**

Lyndon Baines Johnson was born in 1908 to a relatively poor rural family in central Texas. Despite this, Johnson graduated from Southwest Texas State Teachers College and later became a member of the House of Representatives in 1937 after winning his first Congressional race on a New Deal platform, enlisted in the Navy for a brief period in World War II, and won a seat in the Senate in 1948. Five years later in 1953, Johnson was selected as Senate Majority Leader. In the leadup to the 1960 election, Johnson was picked as John F. Kennedy's running mate and was one of his most dogged defenders. On November 22, 1963, Johnson assumed the office of the president of the United States after Kennedy's assassination and brought his commitment to civil rights and a war on poverty with him.<sup>17</sup> Johnson carried with him a reputation as a master negotiator and a strong leader whose talent for twisting arms and tallying votes had no equal. His career in the Senate demonstrated this. Johnson's management of a slim majority in the chamber with a Republican president that simultaneously managed to pass substantial legislation such as the Civil Rights Act of 1957 was by all means exceptional. Furthermore, his refusal to sign the "Southern Manifesto" of resistance to civil rights reform set him as an outlier in his region.<sup>18</sup> Along with civil rights reform, Johnson also espoused faith in a greater war on poverty than Kennedy did, perhaps due to his upbringing. Early in his term, he confided this to one of his colleagues in a phone conversation, stating that a widely expanded welfare policy was "the only Johnson proposal I've got."<sup>19</sup> Indeed, a mere five days after assuming the office, Johnson pledged himself to continuing the path of JFK, including that of civil rights and healthcare reform, and he implored the nation to "continue the forward thrust of

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<sup>17</sup> "LBJ: Biography." Lyndon B. Johnson Presidential Library. Accessed May 08, 2018. <http://www.lbjlibrary.org/lyndon-baines-johnson/lbj-biography>.

<sup>18</sup> "Senate Leaders: Lyndon Johnson." U.S. Senate. January 12, 2017. Accessed May 08, 2018. [https://www.senate.gov/artandhistory/history/common/generic/People\\_Leaders\\_Johnson.htm](https://www.senate.gov/artandhistory/history/common/generic/People_Leaders_Johnson.htm).

<sup>19</sup> McKee, Guian A. "Lyndon B. Johnson and the War on Poverty." University of Virginia Miller Center. Accessed May 08, 2018. <http://prde.upress.virginia.edu/content/WarOnPoverty>.

America that he began.” In this speech, the emotional gravitas of the situation was not lost on Johnson, who entreated American society to continue in spite of adversity.<sup>20</sup>

### **ASSUMING THE OFFICE: JOHNSON’S USE OF THE NEUSTADT MODEL AND THE PARADOXES**

Lyndon B. Johnson’s legislative accomplishments were largely a result of his unique ability to persuade and cajole Congress to accept his program. Johnson’s successful framing of his administration as a continuation of Kennedy’s went beyond that of rhetoric as well, as he kept most of Kennedy’s cabinet personnel in the beginning of his administration.<sup>21</sup> The general public supported this move, and Johnson enjoyed an average approval rating of 74.2% throughout his first year in office.<sup>22</sup> As such, Johnson had a stronger hold on public opinion and the other political constituencies in the first half of his administration than many presidents may achieve during their entire terms.

The landslide victory won by LBJ in 1964 helps highlight this; along with winning the electoral vote by a landslide, Johnson also won by one of the largest popular vote margins in American history.<sup>23</sup> His experience in the Senate, where many bills of his administration like the Civil Rights Act experienced difficulty, proved invaluable for assembling a bipartisan coalition in the chamber and being able to manage and influence party leaders and Southern political figures who may have broken with party leadership otherwise is admirable.

Furthermore, Johnson’s unique and often threatening negotiating style, immortalized as the “Johnson Treatment,” was unique to his tenure as president as well, sometimes involving physical imposition of power or harsh rhetoric to demand the compliance of an individual. Famously, this happened to Southern Democrat Richard Russell on the occasion of his

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<sup>20</sup> Johnson, Lyndon B. "American Rhetoric: Lyndon Baines Johnson - Let Us Continue." American Rhetoric: Lyndon B Johnson Transcribed. Accessed May 08, 2018. <http://www.americanrhetoric.com/speeches/lbjletuscontinue.html>.

<sup>21</sup> "Lyndon B. Johnson - Cabinet Members." POTUS: Presidents of the United States. Accessed May 08, 2018. <http://www.potus.com/lbjohnson.html>.

<sup>22</sup> Gallup, Inc. "Presidential Approval Ratings -- Gallup Historical Statistics and Trends." Gallup.com. Accessed May 08, 2018. <http://news.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx>.

<sup>23</sup> "1964 Presidential Election Results." The American Presidency Project. Accessed May 08, 2018. <http://www.presidency.ucsb.edu/showelection.php?year=1964>.

appointment to the Warren Commission to investigate the death of JFK.<sup>24</sup> Thus, as far as the Neustadt model is concerned, Johnson had the necessary persuasive skills to navigate a divided caucus during a period when public trust in him was at an all-time high due to his handling of the Kennedy assassination and insistence that he continue his agenda, the success of the “Johnson Treatment” in working with possible opposition, and the ultimate fulfillment of policy goals. Thus, his success is due to a combination of his personality and his circumstances.

Johnson also successfully navigated the paradoxes of presidential life as well. His charismatic endorsement of all things Kennedy after his predecessor’s tragic assassination proved to show a virtuous man in the eyes of the people, and one who resolved to fight Congress tooth and nail in achieving Kennedy’s goals, as seen in his proposal of the Voting Rights Act. Thus, Johnson effectively threaded the needle between showing a compassionate side to the nation and one of Machiavellian negotiation to officials. This would wear off later in his term with the failure of Johnson’s foreign policy strategy in Vietnam, but such a topic is beyond the timeframe and scope of this paper. Furthermore, upon passing Kennedy’s Civil Rights Bill, Johnson’s legislative program obtained a greater programmatic breadth when it came to the War on Poverty and the Voting Rights Act, which significantly expanded the promises he planned to uphold. Given the circumstances of a government controlled by Democrats in both chambers, Johnson had to compromise little after overcoming the Southern Democrats after the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were passed. As such, a great deal of the “Great Society” was implemented as planned and with little incident, with discussion of rolling back such reforms only arising in the following decades.

## CASE STUDY

### *Civil Rights*

Not long after Kennedy’s assassination, Johnson’s vow to continue Kennedy’s civil rights initiative bore fruit. The 1964 Civil Rights Act was held up in the Senate due to the cloture rule, which required a two-thirds majority to overcome a filibuster rather than the three-fifths required

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<sup>24</sup> American Public Media. "Executive Decision to Appoint Russell to Warren Commission | The President Calling." APM Reports - Investigations and Documentaries from American Public Media. Accessed May 08, 2018. <http://americanradioworks.publicradio.org/features/prestapes/b4.html>.

today. Johnson was pressed to reach across the aisle and appeal to Minority Leader Everett Dirksen of the Republican Party in several meetings, while also keeping close tabs on Democratic leaders of the operation. The president would constantly ask Majority Leader Mike Mansfield and Majority Whip Hubert Humphrey to extend Senate meetings throughout the night in an effort to tire out Southern holdouts. Both politely declined, though the vote to end the filibuster was ultimately successful. In the end, the Civil Rights Act of 1964 passed the Senate in a 73-27 margin, and Johnson signed it soon after.<sup>25</sup> However, this was not the end of Johnson's campaign for further civil rights plans. The next year, Johnson's proposal and support of the Voting Rights Act was framed as a need to right a wrong as old as the Civil War: the right of all people in the United States to vote regardless of race, creed, or ethnicity. Johnson's approach to Congress was one punctuated by strong language. He lambasted Congress by mentioning that "the last time a President sent a civil rights bill to... Congress it contained a provision to protect voting rights... when that bill came to my desk... the heart of the voting provision had been eliminated." Johnson's plea for racial equality not only served as a chief point of his civil rights plan, but also as a point in his plan for the War on Poverty, decrying ignorance and poverty as two similar ills that could only be solved with the help of Federal policy.<sup>26</sup>

### *The War on Poverty*

In his first State of the Union address before Congress in 1964, Johnson singled out the issue of poverty as a "national problem" and in fact coined the very term "War on Poverty" right there. He focused his chief policy areas on housing, education, healthcare, and the needs of children.<sup>27</sup> This stance later translated into the legislative program known as the "Great Society," which included civil rights as well. With Johnson's landslide victory in 1964 granting him a vast popular mandate and Democrats making gains in congress, he was privy to more favorable conditions in passing his agenda. The Great Society's legislative accomplishments were widespread and still stand to this day, with more than two hundred individual pieces of

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<sup>25</sup> "U.S. Senate: Civil Rights Act of 1964." U.S. Senate. April 30, 2018. Accessed May 08, 2018. [https://www.senate.gov/artandhistory/history/civil\\_rights/civil\\_rights.htm](https://www.senate.gov/artandhistory/history/civil_rights/civil_rights.htm).

<sup>26</sup> "Transcript of the Johnson Address on Voting Rights to Joint Session of Congress." *The New York Times*. Accessed May 08, 2018. <https://archive.nytimes.com/www.nytimes.com/books/98/04/12/specials/johnson-rightsadd.html?scp=38&sq=a basic civil right&st=cse>.

<sup>27</sup> Johnson, Lyndon B. "Lyndon B. Johnson: Annual Message to the Congress on the State of the Union. - January 8, 1964." The American Presidency Project: UC Santa Barbara. Accessed May 08, 2018. <http://www.presidency.ucsb.edu/ws/?pid=26787>.



legislation being passed as part of that agenda. The Economic Opportunity Act allowed for the Office of Economic Opportunity to coordinate employment and educational programs, the spending of federal money to help the poor doubled between 1965 and 1968, the Head Start program for local, low-income school districts was founded, and the Social Security Act was greatly expanded with the passage of both Medicare and Medicaid.<sup>28</sup> These wide-reaching programs went beyond just expansion of Social Security and permeated different sections of society that the federal government had not previously attempted to aid. As such, Johnson's legacy lies in many programs that persist to this day.

### **CONCLUSION: KENNEDY AND JOHNSON IN RETROSPECT AND CURRENT RELEVANCE**

The dichotomy between the Kennedy and Johnson administrations is especially apparent in their leadership style. While not a poor leader, John F. Kennedy's relative inexperience dealing with Congress compared to that of Johnson's, coupled with a focus on foreign policy and a slim electoral margin, effectively limited his ability to pass sweeping domestic legislation with an ideologically unified caucus. In contrast, Johnson's existing relationship with sitting senators, coupled with the high popular support in the first half of his administration and large margin of victory he achieved in 1964, helped him achieve most of his domestic goals. Furthermore, the fact that these circumstances befell an individual with unique and perhaps exceptional leadership qualities also helped Johnson sell civil rights and the Great Society to the American public and to Congress.

In the modern day political climate where such massive overhauls of government policy and optimistic proposals of an American future are lacking, it is important to understand how presidential leadership has shaped the modern society we live in and how the constantly changing circumstances of the early 1960s turned the bleak prospect of an assassinated president viewed as a visionary into some of the most revolutionary reforms to the American welfare system and civil rights in a very short time. For the modern-day presidency, opportunity is the result of astute, determined leadership, popular demand, and exceptional circumstances, culminating in real policy change.

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<sup>28</sup> "Evaluating the Success of the Great Society." *The Washington Post*. May 17, 2014. Accessed May 08, 2018. <http://www.washingtonpost.com/wp-srv/special/national/great-society-at-50/>.

## WHAT DACA REVEALS ABOUT U.S. IMMIGRATION STRUCTURE AND PRESIDENTIAL POWER

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*This paper aims to analyze the implications of the formulation and aftermath of President Obama's DACA program beyond the question of its legality. It makes a twofold argument that the executive actions of President Obama reveal the unbalance of divided immigration authority between Congress and the executive, which stems from legal uncertainty, and that under the current immigration structure, the president has capacity to utilize federalism to bypass Congress when shaping immigration policy. The jurisprudential history of the president's power over immigrant screening policy is first given to show the existence of separate claims over the sources of executive authority. The modern reality of enforcement priorities and use of prosecutorial discretion is then discussed to present the asymmetry created between front-end policymaking by Congress and back-end enforcement by the executive. In the second part, the paper suggests that the unbalance of screening authority leaves room for the president to shape immigration policy through states.*

### INTRODUCTION

On June 15, 2012, the Obama administration's then-Secretary of Homeland Security Janet Napolitano issued a memorandum entitled, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," initiating the Deferred Action for Childhood Arrivals (DACA) program.<sup>1</sup> The Obama-era DACA program permitted undocumented immigrants who met certain criteria to request temporary relief from deportation. Such criteria include having arrived in the United States under the age of sixteen; having resided in the country continuously since June 15, 2007; being under age 31; and being currently enrolled in or having graduated from high school, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States. DACA recipients are able to remain in the United States for a period of two years, which is subject to renewal, and are eligible to apply for work authorization during their stay.<sup>2</sup> Through DACA,

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<sup>1</sup> See *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, Memo from Janet Napolitano, Secretary of Homeland Security, to U.S.ICE Director John Morton et al., June 15, 2012.

<sup>2</sup> See U.S. Citizenship and Immigration Services, "Consideration of Deferred Action for Childhood Arrivals (DACA)," last updated Feb. 14, 2018, available at <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca>

President Obama was able to grant temporary relief from deportation to a large number of immigrants without legislative procedure.<sup>3</sup>

From its outset, President Obama's executive branch memorandum has stirred much controversy, with many scholars and lawmakers questioning its constitutionality. A group of immigration law scholars sent letters to the President on numerous occasions, advising that the president does have constitutional authority to exercise discretion; on the other hand, other scholars have deemed the executive actions unconstitutional.<sup>4</sup> On November 20, 2014, DHS Secretary Jeh Johnson expanded DACA to create the Deferred Action for Parents of Americans (DAPA) program.<sup>5</sup>

The series of Immigration Accountability Executive Actions again caused heavy controversy.<sup>6</sup> Following such controversy, on September 4, 2017, Attorney General Jeff Sessions sent a letter to the Department of Homeland Security stating the policy was "an unconstitutional exercise of authority by the Executive Branch," and consequently, on September 5, 2017, the Trump administration ordered the DACA program to an end.<sup>7</sup> Soon after, federal courts in jurisdictions including New York, California, and Washington, D.C. issued injunctions to block the decision to terminate DACA, allowing DACA recipients to renew their applications.<sup>8</sup>

Much of the news coverage and scholarship concerning DACA has focused on the legal debate of President Obama's executive actions and paid little attention to the

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<sup>3</sup> As of Aug. 31, 2018, there was an approximate total of 699,350 DACA recipients. See USCIS, "DACA Characteristics Data: Approximate Active DACA Recipients as of Aug. 31, 2018 (Population Data)," Oct. 2, 2018, available at

[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA\\_Population\\_Data\\_August\\_31\\_2018.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_Population_Data_August_31_2018.pdf)

<sup>4</sup> For examples of letters in support of the President's exercise of discretion, see Letter from Hiroshi Motomura et al., to Barack Obama, U.S. President, May 28, 2012, Letter from Lee C. Bollinger et al., Nov. 20, 2014. For examples of claims that challenge the President's use of executive authority, see Robert Delahunty & John Yoo, *Dream On: The Obama Administration's Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause*, 71 TEX. L. REV. & POL. 784 (2013); Zachary S. Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 760-762 (2014).

<sup>5</sup> See *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents*, Memo from Jeh Charles Johnson, Sec'y, Dep't Homeland Sec., to León Rodríguez, Dir., U.S. Citizenship & Immigration Servs., et al., Nov. 20, 2014.

<sup>6</sup> See Obama White House Archives, "FACT SHEET: Immigration Accountability Executive Action," Nov. 20, 2014, available at <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>

<sup>7</sup> See Department of Homeland Security, "Deferred Action for Childhood Arrivals (DACA)," June 23, 2018, available at <https://www.dhs.gov/deferred-action-childhood-arrivals-daca>

<sup>8</sup> See U.S. CIS, "Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction," Feb. 14, 2018, available at <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>

implications the controversy has regarding the current U.S. immigration system. This paper aims to analyze the implications of the DACA program beyond its legality, arguing that the executive actions of President Obama reveal the imbalance of divided immigration authority between Congress and the executive, as well as the President's capacity to utilize state-level policy making to bypass Congress when shaping immigration policy. The paper first provides a brief overview of the jurisprudential history and historical practice of immigration law which led to legal uncertainty of the distribution of authority in immigration law. The paper then points to the rise of prosecutorial discretion and enforcement priorities in immigration due to concerns of efficiency as well as humanitarian concerns following the rise of the population of unauthorized immigrants. This leads to the asymmetry of screening authority between Congress and the Executive, fully embodied in the formulation and aftermath of DACA. Lastly, the paper claims that through DACA, the President was able to shift the overall mood and direction of federal immigration policy through state policies without legislative reform, showing that one should not overlook the roles both the president and states play in shaping federal immigration policy.

## **I. ASYMMETRY OF SCREENING AUTHORITY BETWEEN CONGRESS AND EXECUTIVE**

### *1. Overview of Legal Uncertainty in Immigration Law*

The text of the United States Constitution does not explicitly specify a power to regulate immigration. Although Congress has power “to establish an uniform Rule of Naturalization” under Article 1, Section 8, the clause is vague and does not precisely delineate the relative powers of each political branch.<sup>9</sup> Therefore, the Supreme Court has been tasked with discerning the sources of immigration authority within the parameters of the Constitution. The canonical Court case that described the sources of immigration authority is *Chae Chan Ping v. United States*, which affirmed the federal government's power to regulate immigration, giving rise to the plenary power doctrine.<sup>10</sup> The Court has since heavily relied on the plenary power doctrine, allowing the political branches to regulate immigration without judicial intervention. This plenary power doctrine deems the political branches as a unitary power and has long disregarded the separation of powers question regarding the

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<sup>9</sup> U.S. Const. art. I, sec. 8.

<sup>10</sup> 130 U.S. 581 (1889).

distribution of power within the political branches among Congress and the executive.<sup>11</sup> In another case *Knauff v. Shaughnessy*, the Court indicated that the president has inherent executive authority to decide who to exclude from the nation. The Court stated that “the right to [exclude aliens] stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation,” suggesting that the executive does not need congressional delegation of power in the field of immigration.<sup>12</sup>

Furthermore, in 1981, President Ronald Reagan issued a presidential proclamation that declared the interdiction of Haitian flag vessels “in order to protect the sovereignty of the United States.”<sup>13</sup> The Office of Legal Counsel in the Department of Justice advised the President beforehand, pointing to Court decisions in cases such as *Knauff v. Shaughnessy* and saying that, under §212(f) of the Immigration and Nationality Act, the president had the power to impose restrictions on certain persons entering the country. INA §212(f) establishes presidential power to suspend entry of “any class of aliens” whose admission “would be detrimental to the interests of the United States.”<sup>14</sup> The vagueness of the provision leaves room for interpretation and brings about legal uncertainty. Providing a large scope of cases, scholars Cox and Rodriguez outline such jurisprudential history as well as the historical practice of immigration law to argue that the Court’s continued inattention to the scope of the president’s power over immigration policy led to doctrinal confusion.<sup>15</sup>

## 2. Rise of the Use of Prosecutorial Discretion in Immigration

Cox and Rodriguez then argue that the ever-growing population of undocumented deportable persons and the modern structure of immigration law gives the President vast discretion to shape immigration screening policy through deportation criteria. The President is able to possess such authority not through formal congressional delegation but through the rise of “de facto delegation.”<sup>16</sup> A significant milestone of de facto delegation is the Immigration and Nationality Act in which all noncitizens who entered the country without

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<sup>11</sup> See Adam B. Cox & Cristina M. Rodriguez, *The President and Immigration Law*, NYU Public Law and Legal Theory Working Papers 1 (2009). Available at:

[https://lsr.nellco.org/cgi/viewcontent.cgi?article=1120&context=nyu\\_plltwp](https://lsr.nellco.org/cgi/viewcontent.cgi?article=1120&context=nyu_plltwp)

<sup>12</sup> 338 U.S. at 542 (1950).

<sup>13</sup> *High Seas Interdiction of Illegal Aliens*, Proclamation 4865 of Sept. 29, 1981, 46 Fed. Reg. 48107 (Oct. 1, 1981).

<sup>14</sup> 8 U.S.C. § 1182(f)

<sup>15</sup> See *supra* note 9 at 6, 20.

<sup>16</sup> *Id.* at 42.

authorization were rendered formally deportable for the first time.<sup>17</sup> In the past, unauthorized entry did not necessarily make an immigrant deportable, and it was not until the 1920s that the practice of deporting illegal aliens became a possibility as it was difficult to identify unlawful entrants due to lack of documentation requirements.<sup>18</sup> There are specific provisions in INA that make any noncitizen who enters the country without authorization or anyone who overstays their visa deportable.<sup>19</sup> These provisions delegate tremendous authority to the executive branch, in practice, by making a huge fraction of immigrants deportable at the hand of the Executive.

According to Pew Research Center estimates in 2014, about one in four U.S. immigrants were unauthorized, and unauthorized immigrants accounted for 3.5% of the overall population.<sup>20</sup> Because there is a massive number of unauthorized aliens who are subject to deportation, it is logical to assume that only a tiny fraction of them will be placed in removal proceedings. Data disclosed by the Executive Office for Immigration Review (EOIR) indicates that as of 2018, 697,777 immigration court cases were pending, which amounts to approximately 2,090 cases per judge.<sup>21</sup> Due to such under-enforcement of the law, immigration agencies exercise prosecutorial discretion to select which cases to initiate proceedings, similar to the charging decisions of criminal prosecutors under criminal law.<sup>22</sup>

The memorandum issued by Secretary of Homeland Security Janet Napolitano that put the DACA program in place states that the “nation’s immigration laws must be enforced in a strong and sensible manner” so that those with criminal records are prioritized for deportation instead of undocumented individuals who are low enforcement priorities.<sup>23</sup> The need to respond to practical reality again echoes how the stringent admissions restrictions established by Congress which led to under-enforcement by the executive has, in effect, given the executive primary control over a large unauthorized population. In other words, there is asymmetry in the current screening process, with Congress setting admissions standards at

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<sup>17</sup> *Id.* at 43.

<sup>18</sup> MAE NGAI, IMPOSSIBLE SUBJECTS (2004).

<sup>19</sup> See INA §212(a)(6), §237(a)(1)(A), §237(a)(1)(B)

<sup>20</sup> Pew Research Center, “Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009,” September 20, 2016, available at <http://www.pewhispanic.org/2016/09/20/overall-number-of-u-s-unauthorized-immigrants-holds-steady-since-2009/>

<sup>21</sup> Department of Justice, “Executive Office for Immigration Review Releases Court Statistics, Announces Transparency Initiative,” May 9, 2018, available at <https://www.justice.gov/opa/pr/executive-office-immigration-review-releases-court-statistics-announces-transparency>

<sup>22</sup> See *Exercising Prosecutorial Discretion*, Memo from Doris Meissner, INS Commissioner, to District Directors of INS, Nov. 17, 2000; SHOBA SIVAPRASAD WADHIA, BEYOND DEPORTATION: THE ROLE OF PROSECUTORIAL DISCRETION IN IMMIGRATION CASES (2015) 7-13.

<sup>23</sup> See *supra* note 1.

the front-end of the immigration system and the executive operating at the back-end through enforcement decisions.

Not only is the limited availability of resources cited, but humanitarian reasons are given as justification for deferred action towards undocumented individuals. The 2012 Napolitano memo states the need to give consideration to undocumented immigrants who are “productive young people” that “may not have lived or even speak the language” of their countries of origin.<sup>24</sup> To justify DAPA, the Office of Legal Counsel stated that “DHS has explained that the program would also serve a particularized humanitarian interest in promoting family unity” and that this justification “appears consonant with congressional policy embodied in the INA.”<sup>25</sup> In *Arizona v. United States*, in which S.B. 1070 was struck down, the Court stated,

Discretion in the enforcement of immigration law embraces immediate human concerns. Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime. The equities of an individual case may turn on many factors, including whether the alien has children born in the United States, long ties to the community, or a record of distinguished military service.<sup>26</sup>

This statement is lumped together with the following statement:

The dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation’s foreign policy with respect to these and other realities.<sup>27</sup>

There is already vague foundation of the president’s immigration authority. Some cases give the president inherent executive authority in immigration, as it concerns a sovereign power to deal with foreign affairs, while other cases give the president power through congressional delegation. The memo for DAPA seems to be citing INA while *Arizona v. United States* seems to be echoing inherent executive authority to justify the need for discretion regarding humanitarian concerns. DACA seems to have been created against such

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<sup>24</sup> *Id.*

<sup>25</sup> See Memorandum from the Office of Legal Counsel to the Secretary of Homeland Sec. and the Counsel to the President 10, 26 (Nov. 19, 2014), <http://www.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/20/2014-11-19-auth-prioritize-removal.pdf> [ <http://perma.cc/85Y5-N94M> ]

<sup>26</sup> Support Our Law Enforcement and Safe Neighborhoods Act.

<sup>27</sup> 132 S. Ct. at 2499.

a backdrop of legal uncertainties surrounding the current immigration statutes and structure, combined with the realities of the rising unauthorized immigrant population.

## II. THE PRESIDENT ENTRENCHING POLICY THROUGH FEDERALISM

Past Supreme Court Cases have sustained the ruling that the federal government is vested with the authority to regulate immigration through the admission and expulsion of immigrants. The foundation for the federal government's exclusive control over immigration was established in the 1875 case, *Chy Lung v. Freeman*, where the constitutionality of a California law was challenged. The law in question allowed a state immigration official to demand a bond for certain classes of non-citizen passengers aboard a ship, and the Court struck down the statute stating,

[t]he passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States ... [T]he responsibility for the character of those regulations, and for the manner of their execution, belongs solely to the national government.<sup>28</sup>

Although sub federal governments cannot decide or control conditions for immigrant entry and exit, they have leeway to make laws, often referred to as "alienage laws," which affect how immigrants are treated once they are in the United States.<sup>29</sup> For example, states can require their residents to show legal status in order to access public benefits like education and social welfare, thereby denying unauthorized aliens' access to these benefits. In *Ambach v. Norwick* (1979), the Supreme Court upheld a New York law requiring citizenship to gain certification as a public school teacher.<sup>30</sup> This case shows that states have the capacity to control aspects of immigrants' daily lives and needs.

After the implementation of DACA, many states were impelled to reexamine their existing alienage policies involving the treatment of noncitizens, one of them being policies on driver's licenses. Following the implementation of DACA in June 2012, as of now, all fifty states and the District of Columbia allow DACA recipients who have an employment

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<sup>28</sup> *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875).

<sup>29</sup> See Karthick Ramakrishnan & Pratheepan Gulasekaram, *Understanding Immigration Federalism in the United States*, CTR. FOR AM. PROGRESS (Mar. 24, 2014), <https://www.americanprogress.org/issues/immigration/report/2014/03/24/86207/understandingimmigration-federalism-in-the-united-states/>

<sup>30</sup> 441 U.S. 68 (1979).



authorization document (EAD) to obtain driver's licenses.<sup>31</sup> Furthermore, twelve states as well as the District of Columbia enacted laws to permit not only DACA recipients but all unauthorized immigrants to obtain driver's licenses.<sup>32</sup> Although the three states of New Mexico, Utah, and Washington had already permitted the practice prior to 2012, other states seem to have enacted legislation in response to President Obama's executive action.

According to scholars, the terrorist attacks of 9/11 were an "exogenous shock" that stimulated a trend towards banning driver's licenses from unauthorized immigrants.<sup>33</sup> In 2005, Congress passed the REAL ID Act, in response to recommendations made by the 9/11 Commission. REAL ID set security standards for states' issuance of driver's licenses and identification cards, including proof of lawful presence, if they were to be used for federal purposes, such as access to federal facilities, nuclear power plants, or airline travel.<sup>34</sup> As of October 10, 2018, 37 states, territories, and the District of Columbia had been determined as compliant with all REAL ID requirements by the Department of Homeland Security, and most states are compliant with the prohibition on issuing licenses to those of unlawful status.<sup>35</sup> Following 9/11 and the enactment of the REAL ID Act, between the years 2003 and 2010, seven states reversed their policies and stopped granting driving privileges to unauthorized immigrants.<sup>36</sup> However, within eighteen months after the announcement of DACA in June 2012, nine jurisdictions altered their policies to provide access to driver's licenses regardless of immigration or citizenship status.<sup>37</sup> This number comprises a majority of the fourteen jurisdictions that currently offer driving privileges to unauthorized immigrants. Statistical analyses of scholars suggest that although other factors such as the

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<sup>31</sup> National Immigration Law Center, "Access to Driver's Licenses for Immigrant Youth Granted DACA," May 31, 2015, available at <https://www.nilc.org/issues/drivers-licenses/daca-and-drivers-licenses/>

<sup>32</sup> National Conference of State Legislatures, "States Offering Driver's Licenses to Immigrants," November 30, 2016, available at <http://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx>

<sup>33</sup> Karthick Ramakrishnan & Pratheepan Gulasekaram, "Driver's licenses for undocumented immigrants: How the Obama administration's deferred action policy paved the way," *San Jose Mercury News*, October 12, 2013, available at <https://www.mercurynews.com/2013/10/10/drivers-licenses-for-undocumented-immigrants-how-the-obama-administrations-deferred-action-policy-paved-the-way/>

<sup>34</sup> See REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302.

<sup>35</sup> See Department of Homeland Security, "REAL ID Compliance Extensions Update," October 19, 2018, available at <https://www.dhs.gov/news/2018/10/19/real-id-compliance-extensions-update> and JANICE KEPHART, CTR. FOR IMMIGRATION STUDIES, REAL ID IMPLEMENTATION EMBRACED BY 41 STATES (2011), <https://cis.org/REAL-ID-Implementation-Embraced-41-States>

<sup>36</sup> These states include Hawaii, Maryland, Maine, Michigan, Oregon, Tennessee, and California. MICHAEL CSERE, CONN. OFFICE OF LEGISLATIVE RESEARCH, ISSUANCE OF DRIVER'S LICENSES TO UNDOCUMENTED IMMIGRANTS 3 (2013), <https://www.cga.ct.gov/2013/rpt/pdf/2013-R-0194.pdf>

<sup>37</sup> The nine jurisdictions that enacted laws offering driver's licenses to unauthorized immigrants in the first eighteen months following DACA are California, Colorado, Connecticut, Illinois, Maryland, Nevada, Vermont, the District of Columbia, and Puerto Rico. Delaware and Hawaii enacted such laws later in 2015. See *supra* note 30.

growing influence of Latino voters and Democrats' increasing control over state governments can be suspected, the specific timing of the implementation of the new policies show that it was the administration's DACA program that spurred changes in state policy.<sup>38</sup> Former California Governor Jerry Brown's absolute shift in attitude towards driver's license legislation is also very suggestive. During his 2010 campaign for governor of California, he spoke of his opposition towards driver's license legislation for undocumented immigrants, saying it was a "little piecemeal" solution that "sends the wrong signal."<sup>39</sup> However, only three years later, he supported the passage of AB60, legislation that enables unauthorized immigrants to obtain driver's licenses.<sup>40</sup> Governor Brown commented, "This bill will enable millions of people to get to work safely and legally. Hopefully, it will send a message to Washington that immigration reform is long past due."<sup>41</sup> This statement seems to have been in response to the inaction of Congress regarding S.744, a comprehensive immigration reform bill that passed the Senate in June but stalled in the House of Representatives. The governor's allusion to Congress echoes President Obama's aim to galvanize congressional legislation on undocumented immigrants.

While the DACA program did not indicate anything about driver's licenses, it catalyzed states to reexamine their policies, and it can be said that in this way, President Obama was able to use states to entrench immigration policies without support or approval from Congress. Although changes in statutory law have occurred only on a sub federal level, these changes are significant as the altered policies are permanent, unlike DACA which provides temporary relief from prosecution and will not last beyond the allotted period of years. Additionally, quite a number of states expanded the legal beneficiaries who can acquire driver's licenses to include unauthorized immigrants beyond those specified as DACA recipients by the executive action. Thus, DACA demonstrates how within the current structure of the U.S. immigration system, the executive can exert power and shift the direction of immigration policy through state policies, and that federalism is closely intertwined with the separation of powers issue.

Another significant example that shows how Obama's executive action prevails in

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<sup>38</sup> See Pratheepan Gulasekaram & S. Karthick Ramakrishnan, *The President and Immigration Federalism*, 68 Fla. L. Rev. 155 (2016). Available at: <http://scholarship.law.ufl.edu/flr/vol68/iss1/3>

<sup>39</sup> David Siders, *Undocumented immigrants win access to driver's licenses in California*, Merced Sun-Star (Oct. 3, 2013), <https://www.mercedsunstar.com/news/state/article3279055.html>

<sup>40</sup> AB60, An act to amend, repeal, and add Sections 1653.5, 12800, 12801, and 12801.5 of, and to add Sections 12801.9, 12801.10, and 12801.11 to, the Vehicle Code, relating to driver's licenses.

<sup>41</sup> A.B. 60, 2013-2014 Leg., Reg. Sess. (Cal. 2013). See <https://www.ca.gov/archive/gov39/2013/09/12/news18203/index.html>

shaping the country's immigration policy is New York's decision to keep providing state-funded Medicaid for DACA recipients, even if the DACA program becomes terminated under the current Trump administration. Medicaid is a health coverage program for low income individuals that is jointly funded by states and the federal government. Federal law limits Medicaid eligibility to U.S. citizens and "qualified aliens" which include lawful permanent residents (or green card holders) and humanitarian immigrants such as refugees and asylees.<sup>42</sup> Under New York state law, DACA recipients are eligible to receive Medicaid funded exclusively by the state under an immigration category known as PRUCOL (permanently residing under color of law).<sup>43</sup> Governor Andrew Cuomo stated,

The federal government's failure to take action to protect DACA recipients is appalling, un-American, unjust and puts hundreds of thousands of children at risk. Here in New York we will do everything in our power to protect DACA recipients and ensure they receive health care.<sup>44</sup>

Such a response to President Trump's attempt to rescind the DACA program signifies that although the executive action by President Obama does not hold the same legal authority as statutory law enacted by Congress, the framework created by DACA still lives on within states. DACA creates a new category of immigrants who have unlawful status in terms of citizenship but are entitled to lawful presence in the United States. It is important to keep in mind that DACA recipients are not just granted deferred action but lead actual lives inside the country, which can last up to several years of their deferral period. The livelihood of these immigrants depends greatly on each state that they reside in, and states can play a major role in shaping the direction of how immigrants are treated in the country, even if who enters the country itself is regulated by the federal government.

President Obama was able to claim executive authority to grant temporary relief from deportation to a large number of immigrants without legislative procedure. According to a national survey conducted among 2,002 adults by Pew Research Center during June 5-12, 2018, 73% of Americans favor granting permanent legal status to immigrants who entered the United States illegally as children. Such broad support of DACA also suggests that the president has the capacity to shape U.S. immigration policy climate through executive action

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<sup>42</sup> 42 U.S.C. §1396 et seq

<sup>43</sup> See NY State of Health, "What you should know about applying for or renewing your Medicaid coverage through NY State of Health if Deferred Action for Childhood Arrivals (DACA) is Rescinded," January 23, 2018, available at <https://info.nystateofhealth.ny.gov/DACAFactSheet>

<sup>44</sup> See New York State, "Governor Cuomo Ensures Medicaid Coverage for DACA Recipients Regardless of Federal Action," January 23, 2018, available at <https://www.governor.ny.gov/news/governor-cuomo-ensures-medicaid-coverage-daca-recipients-regardless-federal-action>

by evoking public opinion.<sup>45</sup>

## CONCLUSION

President Obama's DACA program seems to be a culmination of the dysfunctional immigration structure of the United States. DACA reveals structural problems in the current U.S. immigration system with regards to issues of both separation of powers and federalism. The ambiguous allocation of immigration power between Congress and the executive, along with the reality of a rise in the undocumented population and need for enforcement discretion leads to an asymmetric immigration structure where Congress decides who enters the country at the front end while the president decides who to deport at the back end. The ambiguity of power allocation also leaves leeway for the president to initiate his own immigration policy and entrench the policy through state-level support.

This paper only mentioned instances where state-level policymaking supported the president's desired policy and how states can act as a legislative agent. However, it is worth noting instances where states may also counteract federal policy or instances where state-level policymaking catalyzed federal policymaking.

Although the executive action of DACA is being attempted to be phased out by the current administration, the DACA program raises much debate on the potentiality of presidential power in the field of immigration.

From December 22, 2018 to January 25, 2019, the United States experienced the longest government shutdown in history as President Trump demanded funding for a border wall along the U.S.-Mexico border. The President also seeks to sign an executive order to end birthright citizenship, a long-accepted constitutional guarantee of citizenship in the United States. If Congress continues to fail in passing policy for comprehensive immigration reform, the President may use his executive authority to come up with policies or temporary measures of his own to bypass Congress. Under the current immigration system where the distribution of immigration authority is vague between the political branches, the president holds more capacity to wield power and change the direction of the country's immigration rules, which can be potentially lethal if power falls in the wrong hands.

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<sup>45</sup> Pew Research Center, "Americans broadly support legal status for immigrants brought to the U.S. illegally as children," June 18, 2018, available at <http://www.pewresearch.org/fact-tank/2018/06/18/americans-broadly-support-legal-status-for-immigrants-brought-to-the-u-s-illegally-as-children/>

**Part 3**

Congress

## **FACTORS THAT PREDICT TWITTER USAGE FOR SENATORS IN A POST-2016 SOCIAL MEDIA LANDSCAPE**

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*The increased relevance of Twitter and the subsequent changes in usage patterns in the era of the 2016 election cycle and the Trump Presidency has not been fully considered in academia. To measure these changes in a manner that reflects a senator's maintenance of multiple Twitter accounts, each with different apparent goals, I sorted associated accounts into three categories (personal-appearing, staff-appearing, and campaign-appearing) and measured the factors that predict usage and changes in usage as an election approaches. I found that different types of accounts had different predictors, which included age, a state's population, gender, ideology, and a re-election campaign. These predictors had similarities and differences to the pre-2016 studies on Twitter usage by political leaders.*

### **INTRODUCTION**

Throughout the 2016 election cycle and continuing into the current presidential administration, Twitter has become the most politically salient form of social media. Much of this change in significance can be attributed to President Trump's use of the platform, through which he, "developed a rapport with his followers by maintaining his own Twitter account and personally tweeting throughout much of his campaign."<sup>1</sup> With the apparent success of this strategy, one might assume a subsequent change in patterns of usage among other political leaders. With the first post-2016 Congress completed, researchers are now able to fully assess the changes in the factors that predict Twitter usage in an era where the President of the United States constantly voices opinions and provides unfettered access through a personal Twitter account.

### **LITERATURE REVIEW**

Researchers have previously breached the subject of congressional Twitter use. Lassen and Brown's 2011 study on the then-new technology studied the predictability of Twitter usage for members of the 111<sup>th</sup> Congress based on a district's electoral competitiveness, a member's

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<sup>1</sup> Shontavia Jackson Johnson, "Donald Trump, Disruptive Technologies, and Twitter's Role in the 2016 American Presidential Election," *Widener Law Journal* 27, no 1 (2018): 77.

ideological fit with their district, a member's likelihood of being online (predicted through a combination of demographic variables), a district's likelihood of being online (predicted similarly), the number of years a member has been in Congress, a member's party identification, and whether or not a member holds a leadership position.<sup>2</sup> They measured Twitter usage through three indicators: 1) whether the member has a Twitter account, 2) whether the member has ever tweeted more than 30 times in one month, 3) the member's reach and influence (scored by a private research firm).<sup>3</sup> Lassen and Brown's regression determined that age produced a statistically significant effect for members of the House and Congress as a whole, with younger members more likely to have an account and actively use it. For senators, the existence of too few younger senators precluded a statistically significant measurement.<sup>4</sup> Party identity (with House Republicans more likely to have an account and have more influence with it) was also a statistically significant predictor of usage.<sup>5</sup>

In 2016, Straus, Williams, Shogan, and Glassman published their own study on Twitter usage for senators. They framed their research and analysis around Twitter's January 18, 2013 announcement that all 100 then-current senators had accounts on Twitter.<sup>6</sup> Studying the second session of the 113<sup>th</sup> Congress, they created a "power user" formula to evaluate usage, rating a senator's account based on "Retweets, Followers, Replies, Original tweets, and the percentage of the senator's tweets that were retweeted".<sup>7</sup> Their independent variables included age, time on Twitter (in days), ideology, partisanship, gender, state population, gender, whether or not the senator has a dedicated social media staffer, and whether or not the senator was up for re-election in 2014.<sup>8</sup> Their regression indicated that the number of days on Twitter, partisanship, state population, and the existence of a dedicated social media staffer were positive and statistically significant predictors of usage.<sup>9</sup>

Rather than purely focusing on measures of usage, other studies have taken content-based

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<sup>2</sup> David S. Lassen and Adam R. Brown, "Twitter: The Electoral Connection," *Social Science Computer Review* 29, no 4 (2010): 422-424.

<sup>3</sup> *Ibid.*, 424.

<sup>4</sup> *Ibid.*, 426-430.

<sup>5</sup> *Ibid.*, 430.

<sup>6</sup> Jacob R. Straus, Raymond T. Williams, Colleen J. Shogan and Matthew E. Glassman, "Congressional Social Media Communications: Evaluating Senate Twitter Usage," *Online Information Review* 40, no 5 (2016): 643.

<sup>7</sup> *Ibid.*, 647-648.

<sup>8</sup> *Ibid.*, 650.

<sup>9</sup> *Ibid.*, 651.

approaches. Evans, Cordova, and Sipole, focusing on candidates for the House in the 2012 election, also hand-coded tweets into content-based categories like “user interaction”, “mobilization”, and “personal.”<sup>10</sup> Their results revealed that “women, major party candidates, incumbents, and those in competitive races are more likely to have used Twitter than men, third-party candidates, challengers, and those in safe races.”<sup>11</sup> At the same time, the only difference in content was that Republican candidates were more likely to attack their rivals.<sup>12</sup>

However, an analysis of Twitter in a post-Trump era has yielded different results. Gunn Enli’s qualitative comparison between the Twitter presence of then-candidate Trump and Secretary Clinton demonstrated the extreme potential for variation in social media strategy. Secretary Clinton’s Twitter strategy reflected the professionalism and control of the traditional political campaign. On the other hand, then-candidate Trump’s usage, characterized by “de-professionalization and even amateurism,” appeared more authentic to voters and was invaluable to his victory.<sup>13</sup>

## METHODOLOGY

My study combined the usage and content-based approaches that previous studies have incorporated. However, instead of categorizing individual tweets, I categorized accounts based on how their content fits in with Senate campaign regulations. The Senate prohibits congressional staff acting in their official capacity from engaging in campaign activity.<sup>14</sup> This regulation applies to the social media staff, who control the office’s official account. I thought I found a clear delineation line between accounts that appear to be associated with a senator’s political campaign and ones associated with their congressional staff. Regardless of these rules, some accounts blurred the lines between staff-appearing and campaign-appearing accounts.

Emma Roller’s article on Senator Rand Paul’s Twitter presence clears up this confusion.

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<sup>10</sup> Heather K Evans, Victoria Cordova and Savannah Sipole, “Twitter Style: An Analysis of How House Candidates Used Twitter in Their 2012 Campaigns,” *PS: Political Science and Politics* 47, no 2 (April 2014): 455-456.

<sup>11</sup> *Ibid.*, 460.

<sup>12</sup> *Ibid.*

<sup>13</sup> Gunn Enli. “Twitter as Arena for the Authentic Outsider: Exploring the Social Media Campaigns of Trump and Clinton in the 2016 US Presidential Election,” *European Journal of Communication* 32, no 1 (2017), 50–61.

<sup>14</sup> Select Committee on Ethics, Campaign Activity: Quick Reference, Document, Campaign Activity: Quick Reference, 115AD.



She writes:

Although members are not allowed to use political speech on their official websites or accounts, there are no such speech restrictions on personal sites and accounts. That balance has become trickier with the emergence of social media as a new platform for political speech. Paul's Twitter account (@SenRandPaul) may have started out as an official account, but as it is used today, it's clearly personal—just look at all the potshots he's been taking at fellow potential presidential candidates via Twitter. Unlike many of his Senate colleagues, Paul does not have an official Senate Twitter account, opting instead to use his personal Twitter as an all-purpose account.<sup>15</sup>

Based on Roller's observation, I created the third category of the personal-appearing account.

I identified relevant accounts through basic Twitter searches, looking for either verified accounts or accounts with important followers that grant legitimacy (other politicians, journalists, etc.) that appeared to be associated with the senator, their office, or their election/re-election campaigns. To categorize these accounts, I created a series of criteria for each type of account. Staff-appearing accounts tend to focus on local news and legislative actions. They are sometimes explicitly marked as accounts of the senator's press shop or state that the staff run the account. Campaign-appearing accounts tend to only tweet during their campaign cycle (or send out a few tweets in off-years, often about voting for other candidates). They tweet about campaign stops or the current political issues of the day. Leading up to the election, they explicitly support a ticket. Personal-appearing accounts are the rarest. They often have bios that humanize the senator (like commonly mentioning family relationships). In terms of content, they blend the topics of campaign-appearing and staff-appearing accounts (a workaround to stay in line with ethics rules) with non-political content (like support for sports teams). While some accounts may indicate that some of the tweets are written by the senator and marked as such (often with a signature at the end of the tweet), these accounts are never personal-appearing, as they inherently admit to being staff-run.

However, many accounts associated with senators have fallen into disuse (or are rarely used) and would not serve as a good representation of a senator's Twitter presence during the Trump administration. To account for this, I removed inactive accounts (accounts that have

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<sup>15</sup> Emma Roller, "How Rand Paul Is Getting Around the Senate's Social-Media Rules," *The Atlantic*, last modified February 1, 2015, <https://www.theatlantic.com/politics/archive/2015/02/how-rand-paul-is-getting-around-the-senates-social-media-rules/455337/>.

tweeted 10 or fewer times in 2018) from the analysis. Furthermore, senators who did not complete their term were removed and replaced by the individual who held their position on November 6, 2018. For instance, Senator McCain was replaced by Senator Kyl and Senator Franken was replaced by Senator Smith.

## **DATA AND VARIABLES**

Twitter application programming influence (commonly abbreviated to API) restricts one's ability to retrieve tweets (including retweets) from someone's timeline, only allowing for the retrieval of the 3,200 most recent. To ensure the collection of the most tweets possible during the relevant period of time (the 2018 election cycle, from November 9, 2016 to November 6, 2018), I downloaded tweets on November 7, 2018 using Twlets, a cost-effective Google Chrome extension.

Moreover, Twitter's API's limitation on the number of tweets available on one's timeline required that usage, the dependent variable, needed to be measured in a manner that removes the impact of the 3200-tweet limit. To overcome this limitation, I measured usage in terms of a senator's tweets per month and the rate of change of a senator's tweets per month (to determine which variables predict an increase in tweets per month as Election Day approaches). To compile this dataset, I evenly divided the time from November 9, 2016 and November 6, 2018 into 28 day sections (herein referred to as "months"). For each month, I marked the number of tweets sent by an account. Using Microsoft Excel's SLOPE function, I calculated an overall slope and a rate of change for each account. To specifically calculate data for accounts that have tweeted more than 3,200 times between November 9, 2016 and November 6, 2018, I removed months with no available tweets or incomplete data for a month created based on the cutoff of the 3200 in order to accurately reflect the higher number of tweets per month.

In addition, I gathered data for nine independent variables. Due to wide availability, I gathered a senator's age (as of November 6, 2018), gender, and role in the 2018 midterm elections (whether or not they were seeking re-election in the 2018 midterms) through a simple web search. Senators were considered to have national ambitions if they were candidates in the 2016 presidential primary election or speculated candidates in the 2020 presidential election (this includes Republicans, Democrats, and Independents). The full list of senators that satisfied either

of these criteria can be found in Appendix A. I also noted membership in the Senate’s leadership (as of November 6, 2018). The full list of senators that satisfy this criterion can be found in Appendix B. I coded gender, 2018 re-election status, possible national ambitions, and participation in Senate leadership as dummy variables.

To calculate the number of months an account has been on Twitter, I noted the month and year the account joined (as publicly displayed on the account) and gave each account a numerical value based on the number of months between its join date and November 2018. I determined the population of the state the senator represents based on 2016 data from the Population Division of the United States Census Bureau.<sup>16</sup> I gathered ideological scores for each senator, ranging from -1 (very liberal) to +1 (very conservative), from Voteview’s NOMINATE dataset (specifically, the NOMINATE first dimension estimate, as calculated on November 8, 2018) for the 115<sup>th</sup> Congress.<sup>17</sup> Finally, I calculated partisanship scores for each senator by taking the square of the ideological score.

## RESULTS AND ANALYSIS

<b>Table 1: Summary of and Analysis of Variance for Tweets Per Month by Account Type</b>					
<b>Account Type</b>	<b>Mean</b>		<b>Std. Dev.</b>		<b>Frequency</b>
<b>Campaign-Appearing</b>	20.553		26.241		46
<b>Personal-Appearing</b>	88.644		72.600		30
<b>Staff-Appearing</b>	91.539		60.322		97
<b>Total</b>	72.162		63.806		173
<b>Source</b>	<b>SS</b>	<b>df</b>	<b>MS</b>	<b>F</b>	<b>Prob &gt; F</b>
<b>Between groups</b>	167092.954	2	83546.477	26.64	0.000
<b>Within groups</b>	533151.126	170	3136.183		
<b>Total</b>	700244.08	172	4071.187		
<b>Table 2: Summary of and Analysis of Variance for Rate of Change of Tweets Per Month by Account Type</b>					
<b>Account Type</b>	<b>Mean</b>		<b>Std. Dev.</b>		<b>Frequency</b>
<b>Campaign-Appearing</b>	2.533		4.202		46
<b>Personal-Appearing</b>	1.666		7.567		30
<b>Staff-Appearing</b>	-0.205		5.408		97
<b>Total</b>	0.847		5.665		173
<b>Source</b>	<b>SS</b>	<b>df</b>	<b>MS</b>	<b>F</b>	<b>Prob &gt; F</b>
<b>Between groups</b>	258.140	2	129.070	4.17	0.017
<b>Within groups</b>	5262.556	170	30.956		
<b>Total</b>	5520.700	172	32.097		

<sup>16</sup> U.S. Census Bureau, Population Division, “Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2016,” December 2016.

<sup>17</sup> Jeffrey B Lewis, Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin and Luke Sonnet, “Voteview: Congressional Roll-Call Votes Database,” <https://voteview.com/>; <https://voteview.com/>, 2018.

As Table 1 signifies, staff-appearing accounts, narrowly followed by personal-appearing accounts, tended to tweet the most in a single month. Campaign-appearing accounts appeared to dramatically lag behind. An analysis of variance indicated that the difference in the mean tweets per month between types of accounts was statistically significant at  $p < 0.01$ .

Conversely, as it appears in Table 2, the mean rate of change for tweets per month for campaign-appearing accounts was the highest of the three types, followed by personal-appearing accounts. Staff- appearing accounts were the only accounts that appeared to decrease their rate of tweets as Election Day approaches. An analysis of variance indicated that the difference in the mean rate of change of tweets per month between types of accounts was statistically significant at  $p < 0.05$ .

The variation between the tweets per month and the rate of change of tweets per month for campaign-appearing accounts can be explained by the fact that they tend to have gaps in off-years. In fact, several campaign-appearing accounts were rendered inactive based on this off-year designation. Even for the ones that were active, they tended to not tweet much until partway through the election cycle, explaining both the low average for an account’s tweets per month and the rapid increase in tweets per month as election day approaches (during which point campaign-appearing accounts tend to tweet more to promote events, mobilize voters, and respond to the news of the day). Conversely, staff-appearing accounts tended to have higher tweets per month due to the existence of dedicated social media staffers responsible for keeping the accounts updated. At the same time, the decrease in tweets per month as Election Day approaches can be explained by the fact that the senator spends more time on the campaign trail and less time in the office, giving the staffer less to tweet about.

<b>Independent variable</b>	<b>Tweets per month</b>	<b>Rate of change of tweets</b>
Age	-0.433 (0.510)	0.015 (0.046)
Re-election campaign	-3.355 (10.661)	1.658 (0.960)*
National ambitions	-2.310 (15.514)	-0.169 (1.396)
Leadership	7.851 (12.239)	1.039 (1.102)
State population	1.62e-06 (6.58e-07)**	1.38e-07 (5.92e-08)**
Months on Twitter	0.291 (0.177)	0.019 (0.016)
Gender	-16.566 (11.893)	-0.046 (1.070)
Ideology	-36.027 (13.722)***	2.715 (1.235)**
Partisanship	17.516 (39.735)	-4.549 (3.576)
Constant	64.489 (36.384)	-2.825 (3.275)
R <sup>2</sup>	0.1108	0.0863

**Notes:** \* $p < 0.1$ ; \*\* $p < 0.05$ ; \*\*\* $p < 0.01$

As shown in Table 3, a more liberal political ideology and a higher state population have a positive significant impact on a senator’s average tweets per month. At the same time, being up for re-election in 2018, having a higher state population, and a more conservative political ideology predict that a senator will increase their number of tweets per month as Election Day approaches.

<b>Table 4: Predictive Factors for Twitter Usage for Senators by Account Type</b>		
<b>Independent variable</b>	<b>Tweets per month</b>	<b>Rate of change of tweets per month</b>
<u>Personal-appearing (n=30)</u>		
Age	-3.670 (1.279)***	-0.095 (0.140)
Re-election campaign	5.382 (26.778)	3.557 (2.924)
National ambitions	22.408 (32.810)	-4.619 (3.583)
Leadership	54.991 (35.029)	1.384 (3.825)
State population	3.19e-06 (1.69e-06)*	6.54e-07 (1.85e-07)***
Months on Twitter	0.881 (0.591)	0.054 (0.065)
Gender	-74.409 (33.023)**	-0.768 (3.606)
Ideology	-10.395 (37.687)	2.925 (4.115)
Partisanship	-70.059 (103.449)	-0.839 (11.296)
Constant	203.347 (101.107)	-3.439 (11.040)
R <sup>2</sup>	0.5719	0.5301
<u>Campaign-appearing (n=46)</u>		
Age	-0.317 (.374)	-0.031 (0.061)
Re-election campaign	26.780 (7.214)***	4.378 (1.168)***
National ambitions	20.343 (12.667)	0.585 (2.051)
Leadership	-4.229 (8.519)	-1.308 (1.379)
State population	2.13e-07 (4.49e-07)	6.83e-08 (7.27e-08)
Months on Twitter	0.204 (0.159)	.000977 (0.257)
Gender	-12.403 (7.793)	-1.583 (1.262)
Ideology	-9.936 (9.839)	-2.245 (1.593)
Partisanship	-45.315 (30.194)	-5.490 (4.888)
Constant	18.010 (26.737)	3.497 (4.329)
R <sup>2</sup>	0.4343	0.4220
<u>Staff-appearing (n=97)</u>		
Age	0.526 (0.636)	0.106 (0.059)*
Re-election campaign	-7.181 (13.452)	-1.379 (1.238)
National ambitions	-24.645 (19.385)	2.935 (1.784)
Leadership	19.197 (15.227)	1.460 (1.402)
State population	1.74e-06 (8.58e-07)**	3.71e-08 (7.90e-08)
Months on Twitter	0.027 (0.209)	-0.00370 (0.019)
Gender	-6.083 (15.108)	0.832 (1.391)
Ideology	-52.107 (16.874)***	4.912 (1.553)***
Partisanship	15.030 (48.549)	-7.062 (4.469)
Constant	48.286 (44.068)	-6.323 (4.056)
R <sup>2</sup>	0.2050	0.1620
<b>Notes:</b> *p<0.1; **p<0.05; ***p<0.01		

On the other hand, Table 4 shows the results of the regressions performed to determine the statistically significant factors that predict Twitter usage for the different types of accounts senators use. Younger senators and senators that are men tended to have more tweets per month on their personal-appearing accounts than older senators and senators that are women.

In addition, state population is statistically significant in predicting tweets per month and rate of change of tweets per month for personal-appearing accounts, with senators representing states with higher populations using Twitter more. For campaign-appearing accounts, running for re-election in the 2018 cycle was a positive and statistically significant predictor of both the number of tweets sent per month and the rate of increase of the number of tweets as Election Day nears. Finally, for staff-appearing accounts, the staffs of older and more ideologically conservative senators tended to increase their rate of tweets per month as Election Day approaches. At the same time, more liberal senators and senators from states with higher populations tend to have a higher average of tweets per month.

Table 3's positive rate of change of tweets per month provided by a more conservative ideology initially appears to conflict with the overall higher average number of tweets per month provided by a more liberal ideology; however, further inspection of Table 4's stratified regression demonstrates that this significance comes from staff-appearing accounts. The lack of a decrease in the rate of tweets as the election approaches can be explained by the 2018 electoral map, where Republicans were defending only nine Senate seats. Without an upcoming re-election campaign for a senator, their social media staff would have more to discuss in terms of the senator's non-campaign activities.

The positive significance of a state's population for the overall regression as well as for staff-appearing and personal-appearing accounts can be explained by the advantage of social media as a form of mass communication. While social media platforms such as Twitter generally allow for more efficient communication to constituents, these advantages are even more drastic in states with higher populations. Other forms of constituent engagement based on personal appearances are inevitably less effective at communicating a message broadly, as they reach a lower percentage of constituents than they would in a less-populated state. Campaigns, on the other hand, can rely more on other tools of organizing (like a large volunteer network, state party infrastructure, and a larger dedicated staff) to spread a senator's message.

Considering the goal of authenticity for personal-appearing accounts attempting to

emulate President Trump, it makes sense that the personal-appearing accounts of younger senators tended to have more tweets per month. Due to a broad understanding that younger people have more social media savvy, the appearance of personal online activity for younger senators would automatically seem more authentic (with President Trump as the obvious exception). At the same time, this need for authenticity fails to explain the increase in Twitter usage as the election draws near for the staff-appearing accounts of older senators. Instead, it is possible that the existence of a specifically dedicated social media staffer, as studied in Straus, Williams, Shogan, and Glassman's 2016 regression, might act as an intervening variable between factors like age and social media presence in all forms.<sup>18</sup>

A comparison between the results of my regressions and the studies that came before the post-2016 emergence of Twitter into a new stratosphere of political relevance shows a mixed bag of changes and similarities between the two periods. Age had become a statistically significant predictor for senators, in line with the rest of Lassen and Brown's results.<sup>19</sup> A state's population had also remained a positive predictor for usage.<sup>20</sup> Partisanship and time on Twitter, while once statistically significant factors, seemed to no longer have a measurable impact.<sup>21</sup> This change can be explained by Twitter's likely increase in popularity since the 113<sup>th</sup> Congress, with more senators, regardless of location on the ideological spectrum or experience with the platform, taking it seriously as a political tool. Most surprisingly, Lassen and Brown's determination that the significant impact of party identity on usage in the House but not the Senate was due to leadership rather than simple minority status failed to hold up.<sup>22</sup> In my study, a more liberal ideology (substituting in for party leadership) predicted usage while leadership did not. It is possible that minority party status (with Republicans as the minority in Lassen and Brown's study and Democrats as the minority in mine) is a predictor of higher usage.

In reality, the results of my study require more measurement than possible over one election cycle and one chamber of Congress. Through a broader, multi-year commitment and many cycles of tweet collection (thus bypassing Twitter API's 3200 tweet limit), it would be possible to measure usage in terms of tweets rather than time. It is likely that senators, seeking to

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<sup>18</sup> Straus, Williams, Shogan and Glassman, "Congressional Social Media Communications," 653.

<sup>19</sup> Lassen and Brown, "Twitter: The Electoral Connection," 429.

<sup>20</sup> Straus, Williams, Shogan and Glassman, "Congressional Social Media Communications," 653.

<sup>21</sup> *Ibid.*, 652-653.

<sup>22</sup> Lassen and Brown, "Twitter: The Electoral Connection," 428.

create a more effective experience for followers and remove limitations over content, will continue to move towards personal-appearing accounts, which appear to toe a middle ground between staff and campaign-appearing accounts.



## APPENDIX

### Appendix A: Senators with National Ambitions

Senator Cory Booker (D-NJ)  
Senator Sherrod Brown (D-OH)  
Senator Bob Casey (D-PA)  
Senator Kirsten Gillibrand (D-NY)  
Senator Kamala Harris (D-CA)  
Senator Jeff Merkley (D-OR)  
Senator Bernie Sanders (I-VT)  
Senator Elizabeth Warren (D-MA)  
Senator Amy Klobuchar (D-MN)  
Senator Mark Warner (D-VA)  
Senator Rand Paul (R-VA)  
Senator Marco Rubio (R-FL)  
Senator Ted Cruz (R-TX)  
Senator Lindsey Graham (R-SC)  
Senator Jeff Flake (R-AZ)  
Senator Bob Corker (R-TN)  
Senator Ben Sasse (R-NE)

### Appendix B: Senate Leadership

Senator Orrin Hatch (R-UT)  
Senator Mitch McConnell (R-KY)  
Senator John Cornyn (R-TX)  
Senator John Thune (R-SD)  
Senator Roy Blunt (R-MO)  
Senator John Barrasso (R-WY)  
Senator Cory Gardner (R-CO)  
Senator Chuck Schumer (D-NY)  
Senator Dick Durbin (D-IL)  
Senator Patty Murray (D-WA)  
Senator Debbie Stabenow (D-MI)  
Senator Elizabeth Warren (D-MA)  
Senator Mark Warner (D-VA)  
Senator Amy Klobuchar (D-MN)  
Senator Bernie Sanders (I-VT)  
Senator Joe Manchin (D-WV)  
Senator Tammy Baldwin (D-WI)  
Senator Chris Van Hollen (D-MD)

## **THE ROLE OF CONGRESS IN TREATY TERMINATION: EXAMINING THE POLITICAL CONSIDERATIONS SURROUNDING *GOLDWATER V. CARTER* AND *KUCINICH V. BUSH***

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*While the United States Constitution outlines a clear process by which treaties are made, no such procedure exists for the withdrawal of the United States from these agreements. This constitutional ambiguity, and the development of the imperial presidency since the mid-twentieth century, has led to a shift from treaty termination being regarded as a shared power between the legislative and executive branches to one exclusively held by the president. Legal scholars have chimed in on both sides of the argument in an attempt to provide clarity on where this important power lies. In the two marquee cases contesting the unilateral termination of treaties by the president, *Goldwater v. Carter* and *Kucinich v. Bush*, the courts have placed the responsibility on Congress to first assert its authority on the issue before the judicial branch can consider the legal question. The reason for why Congress has been so reluctant to assert this authority has received considerably less attention than the legal arguments surrounding the power of treaty termination. This paper seeks to answer this question by looking at the political environment surrounding each case in an attempt to discern why Congress has been so hesitant to challenge the president's authority.*

### **INTRODUCTION**

While the Constitution clearly outlines the process by which treaties are made (with the advice and consent of two-thirds of the Senate), no such procedure exists for the termination of treaties. Because of the ambiguity on where this power lies, the executive branch has gradually moved the process of terminating treaties from a shared power with the legislative branch to an action that the executive can undertake unilaterally as the “sole organ” of the United States government in foreign affairs. There have been only two challenges to this gradual centralization of treaty power in the executive branch. The first took place under the Carter administration with the withdrawal of the United States from the Sino-American Mutual Defense Treaty of 1954. The second occurred more than two decades later, after the Bush administration's termination of the Anti-Ballistic Missile (ABM) Treaty with Russia in 2001.

In the first case, *Goldwater v. Carter*, Senator Barry Goldwater (R-AZ) filed a lawsuit with sixteen of his colleagues in both the United States House of Representatives and the Senate. After battles in the lower courts split decisions, the Supreme Court ultimately determined that the case did not merit judicial review, as Congress had not shown significant resistance to Carter's unilateral termination of the agreement. For instance, neither chamber of Congress passed formal

resolutions expressing a grievance against the action or rebuking the president for executive overreach. In *Kucinich v. Bush*, Congress again failed to show sufficient resistance to Bush's unilateral termination of the Anti-Ballistic Missile Treaty. In *Kucinich*, not only was there a failure to act by the legislative branch, but the United States Senate Ethics Committee actively blocked Senator Russ Feingold (D-WI) from joining Kucinich and thirty-one other members of the House of Representatives in the lawsuit against Bush. This became an integral part of the story when the Supreme Court opted to dismiss the case due to its lack of standing, citing the suit's lack of representation from both chambers of Congress. While there has been a copious amount of research dedicated to the legal arguments surrounding the presidential power to terminate treaties, there is almost none examining the political factors that influenced both cases. This paper seeks to answer the question of why Congress has been so reluctant to intervene in these situations. This paper will do so by comparing the reaction of Congress in both events, the factors that influenced the degree of these reactions, and the lasting effects of these two events on Congress's participation in the termination of future treaties.

## BACKGROUND

The question of Congress's role in the process of treaty making is one that is clearly defined by the United States Constitution as a shared power between the executive and legislative branches. As Article II, Section 2 of the Constitution states, the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur."<sup>1</sup> This article and section have served as the guidelines by which the United States has entered into treaties with international actors for more than two centuries, with few complaints from either side on the validity of the process. However, the process by which the United States terminates or breaks these agreements has produced much greater controversy as the Constitution is mysteriously silent on the issue. Because of this, the question of where this power lies, is one that has generated varied responses with no consensus on the correct answer. Proponents of unilateral termination by the executive branch argue that the termination of treaties is analogous to executive branch appointments. While these appointments

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<sup>1</sup> U.S. Const. art. 2. sec. 2

require the advice and consent of the Senate for the executive to seat these individuals in their positions, it is universally understood that the president has the authority to remove these appointees from office without consulting Congress at all.<sup>2</sup> On the other hand, detractors of this view on treaty power argue that termination of treaties is instead analogous to the process by which federal statutes are reversed, since both are considered to be the supreme law of the land. There is consensus among constitutional scholars that the same process by which federal statutes are passed (by both chambers of Congress before receiving the president's signature) must be followed for the termination of the statute as well. Therefore, the logic follows that treaties too should be reversed through the same process by which they are enacted. Regardless, the merits of these arguments on the constitutionality of unilateral termination of international treaties are outside of the purview of this paper. Instead, this paper will look at the political factors that have surrounded this issue and how they have shaped the procedures for termination of treaties today.

The power to terminate or end treaty agreements with foreign nations is one that has seen an evolution in where the power is held. Throughout the 1800s and early 1900s, both the legislative and executive branches acknowledged that the termination process necessitated input from Congress.<sup>3</sup> The primary controversy regarding the process during this period was not whether Congress had a say at all, but whether a vote from both chambers was required or just Senate approval was needed to terminate such an agreement. The first claims of a president's right to unilaterally withdraw the United States from treaties, and effectively sidestep Congress, arose in the beginning of the 20<sup>th</sup> century. It was at this point that some senators and bureaucratic officials floated the idea that with no clear procedure outlined in the Constitution, that the power to terminate treaties may in fact rest solely within the executive branch.<sup>4</sup> These arguments were not brought to any meaningful debates until the 1930s, when the threat of World War II combined with a one-party government saw Franklin D. Roosevelt's administration put forth claims of broader authority for the executive branch. This period is when we first see the political environment influence treaty termination justifications, as the national security threat of

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<sup>2</sup> McBain, H, and McBain, H. "Consequences of the President's Unlimited Power of Removal." *Political Science Quarterly* 41 (December 1, 1926): 596–597. <http://search.proquest.com/docview/58064499/>.

<sup>3</sup> Bradley, Curtis A. "Treaty Termination and Historical Gloss." *Texas Law Review* 92, no. 4 (March 1, 2014): 773–793.

<sup>4</sup> *Ibid.*, 801-806

the Japanese and Germans coupled with a unified government saw the president's reach expand dramatically in this area.

In 1939, President Franklin D. Roosevelt withdrew the United States from a commercial treaty with Japan behind the support of both chambers of Congress in the form of concurrent resolutions. Even still, the Department of State argued that President Roosevelt held the authority to unilaterally withdraw from the agreement on the basis of the "general spirit" of the Supreme Court's decision in *United States v. Curtiss-Wright Export Corp.* In this case, which debated the executive's ability to regulate international trade, the court referred to the executive branch as "the sole organ of the federal government in the field of international relations."<sup>5</sup> Under this one phrase, the State Department argued that the president had the ability to unilaterally terminate agreements with international actors.<sup>6</sup> Later that year, Roosevelt "suspended" two treaties for the duration of the war: the London Naval Treaty and the International Load Lines Convention. Pertaining to the International Load Lines Convention, Roosevelt's Attorney General, Francis Biddle, argued in a memo that, "the convention could be declared inoperative or suspended by the president without any action by the Senate or Congress."<sup>7</sup> This practice of unilaterally terminating or suspending commercial treaties continued through the next four decades with Truman, Eisenhower, and Kennedy all engaging in similar practices as they clearly recognized that it was more efficient and politically expedient to simply pull out of a treaty by themselves rather than going through the arduous process of whipping up the necessary votes in Congress. While this displayed a broadening of executive powers, these actions took place on relatively low-profile treaties that did not attract significant attention or scrutiny from either Congress or the media.

The gradual usurpation of what was once recognized as a shared power has continued even through today while congressional leaders stand idly by, putting up little to no resistance against these activities. Nevertheless, there have been instances in American history where legislators sought to challenge these unilateral terminations through the courts in an effort to force the president to seek congressional or senatorial approval before a withdrawal. The two most notable instances of resistance took place under the Carter administration when a group of

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<sup>5</sup> *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (United States Supreme Court. 1936).

<sup>6</sup> Bradley, Curtis A. "Treaty Termination and Historical Gloss." *Texas Law Review* 92, no. 4 (March 1, 2014): 808.

<sup>7</sup> Goldwater, Barry, and Goldwater, Barry. "Treaty Termination Is a Shared Power." *Policy Review* 0, no. 8 (January 1, 1979): 200. <http://search.proquest.com/docview/60282449/>.

legislators, led by Senator Barry Goldwater (R-AZ), contested the United States' withdrawal from the Sino-American Mutual Defense Treaty of 1954, and when Congressman Dennis Kucinich (D-OH) spearheaded a similar effort in 2002 after President George W. Bush's withdrawal from the Anti-Ballistic Missile Treaty. Both cases failed to produce any meaningful results, due in large part to the lack of support from their congressional colleagues. In both cases, the courts referenced the fact that the plaintiffs did not meet the requirements for having standing in the case, due to Congress's inaction after the withdrawal. This paper seeks to understand this inaction by Congress and why it has been so reluctant to insert itself into the debate on whether the legislative branch has a role in the treaty termination process. While this is a legal question at heart, the court has made clear that Congress must demonstrate a willingness to fight for the shared power. In other words, before the legal question can be decided, Congress must first make an effort to formally challenge the executive for the power in the form of a resolution or a lawsuit with substantial backing from congressmen and senators. Instead, it seems that Congress has abdicated this power and left it up to the executive without putting up much of a fight. This paper will focus on the two aforementioned cases of *Kucinich v. Bush* and *Goldwater v. Carter*, as the two most prominent instances where Congress has asserted itself, to understand why Congress has abdicated its role in treaty termination.

### **GOLDWATER V. CARTER**

A primary initiative that President Jimmy Carter inherited from his predecessor, Gerald Ford, was the establishment of diplomatic relations with China, an effort that had stalled under Ford. After a visit from the president's national security advisor, Zbigniew Brzezinski, to Beijing in May of 1978, it appeared that the United States was well underway to establishing these normalized relations with the People's Republic of China. Some legislators foresaw that these normalized relations may compromise the United States' relationship with its ally in the Republic of China (Taiwan). In a bipartisan effort, Senator Bob Dole (R-KS) and Senator Richard Stone (D-FL) offered an amendment to the International Security Assistance Act of 1978 that laid out Congress' demand for consultation before any executive action is taken affecting the Sino-American Mutual Defense Treaty with Taiwan, which reaffirmed the United

States' commitment the Taiwanese government.<sup>8</sup> This amendment was received favorably by their fellow senators and was included in the final text of the International Security Assistance Act that was signed into law on September 26, 1978 by President Carter. Yet four months later, President Carter blatantly ignored the Dole—Stone Amendment and announced his intentions to pull the United States out of the agreement without consulting Congress, effective the following year on January 1, 1980.

Congress, at the time of Carter's announcement, was dominated by the president's own party, with Democrats holding a 59-41 advantage over Republicans in the Senate and a near-supermajority in the House of Representatives as well.<sup>9</sup> Even still, the move by Carter received intense scrutiny for neglecting to consult with Congress beforehand. Senator Harry Byrd Jr. (I-VA), who caucused with the Democrats, proposed a non-binding resolution rebuking Carter's actions and reaffirming the Senate's position of advice and consent in the process.<sup>10</sup> The Senate Foreign Relations Committee held hearings on the withdrawal but rejected Byrd's resolution, and instead reported its own resolution justifying Carter's termination of the Sino-American Mutual Defense Treaty by providing fourteen instances in which unilateral withdrawal by the executive was justified.<sup>11</sup> However, once this resolution reached the floor, Byrd again moved to replace the committee's resolution with his original resolution that stated it was "the sense of the Senate that approval of the United States Senate be required to terminate any mutual defense treaty between the United States and another nation."<sup>12</sup> Democratic Senator Frank Church (D-ID), the chairman of the Senate Foreign Relations Committee, urged his colleagues to vote against Byrd's motion, arguing that the resolution could stall the president's China policy and signal to the American public that the Senate was repudiating the policy itself rather than the procedure.<sup>13</sup> The Senate nonetheless voted by 59-35 to replace the resolution proposed by Church and his committee with the Byrd resolution, a move that shocked the Democratic Senate

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<sup>8</sup> *International Security Assistance Act of 1978* : P.L. 95-384, 92 Stat. 730, September 26, 1978. Washington, D.C.: [Arnold & Porter], 1978.

<sup>9</sup> "Congress Profiles: US House of Representatives: History, Art & Archives." Congressional Profiles | US House of Representatives: History, Art & Archives. <https://history.house.gov/Congressional-Overview/Profiles/96th/>.

<sup>10</sup> Gaffney, Edward McGlynn, Jr. "Goldwater v. Carter: The Constitutional Allocation of Power in Treaty Termination." *Yale Journal of International Law* 6, no. 1 (1980): 83.

<sup>11</sup> *Ibid.*, 84-86.

<sup>12</sup> *Ibid.*, 83.

<sup>13</sup> Gwertzman, Bernard. "Senate Rebukes Carter Over Ending of Taiwan Pact." (New York), July 7, 1979. <https://www.nytimes.com/1979/06/07/archives/senate-rebukes-carter-over-ending-of-taiwan-pact-vote-on-amendment.html>.

leadership. However, Senate Majority Leader Robert Byrd returned the resolution to the calendar, and it never received a final vote of approval.<sup>14</sup> This would be a pivotal piece of political maneuvering that aided Carter substantially in the case brought against him by Goldwater.

The stifling of Byrd's resolution by Democratic leadership effectively killed the fight in the Senate; however, Republican Senator Barry Goldwater (R-AZ) decided to take the fight instead to the court system. Goldwater, accompanied by eight of his fellow senators and sixteen house members, including two Democrats [Rep. Larry McDonald (D-GA) and Rep. Bob Stump (D-AZ)], filed a lawsuit against President Carter arguing that he had violated Article II, Section 2 of the Constitution by unilaterally nullifying the Sino-American Mutual Defense Treaty.<sup>15</sup> The District Court for the District of Columbia decided in favor of the plaintiffs, noting that "Treaty termination generally is a shared power...any decision of the United States to terminate that treaty must be made with the advice and consent of the Senate or the approval of both houses of Congress."<sup>16</sup> The White House, unsatisfied with the district court's finding, appealed the case to a court of appeals who sided instead with Carter, reasoning that since the Constitution does not expressly forbid the Executive from terminating treaties, that the termination power "devolves upon the President."<sup>17</sup> The case was then taken to the Supreme Court, where it was reviewed and a decision was handed down to vacate the court of appeals decision and remand it to the district court with directions to dismiss Goldwater's complaint.

The court's opinion did not address the merits of the case against Carter, nor did it affirm the right of the president to unilaterally terminate such agreements. There were two perspectives given on the reasoning behind dismissing the case. The first was given by Justice Rehnquist, who while representing the plurality, argued that the case should be dismissed based on the fact that it is a nonjusticiable political question that would be better resolved between the legislative and executive branches themselves rather than the court system. Rehnquist stated that the case is nonjusticiable "because it involves the authority of the President in the conduct of our country's foreign relations and the extent to which the Senate or the Congress is authorized to negate the

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<sup>14</sup> Ibid.

<sup>15</sup> *Goldwater v. Carter*, 444 U.S. 996 (1979).

<sup>16</sup> *Goldwater v. Carter*, 481 F.Supp. 949 (D.D.C. 1979).

<sup>17</sup> *Goldwater v. Carter*, 617 F.2d 697 (D.D.C. 1979).



action of the President.”<sup>18</sup> Justice Powell agreed with the decision to dismiss the case, but instead argued that the case was not ripe for judicial review based on the fact that Congress had not claimed a constitutional authority to its right to terminate treaties. This is where the decision to stall Byrd’s resolution was a key move that may have saved Carter from facing a serious constitutional challenge. Powell in fact referenced the resolution and essentially stated that had it not been blocked, that there may have been a constitutional question worth the court’s deliberation. He wrote,

Congress has taken no official action. In the present posture of this case, we do not know whether there ever will be an actual confrontation between the Legislative and Executive Branches. Although the Senate has considered a resolution declaring that Senate approval is necessary for the termination of any mutual defense treaty, no final vote has been taken on the resolution... It cannot be said that either the Senate or the House has rejected the President's claim.<sup>19</sup>

Had Byrd’s resolution received a vote and passed the Senate, it seems that it would have fulfilled Powell’s requirement for judicial ripeness. With Powell’s vote switched, the court would have decided to hear the case, putting the question of the constitutionality of unilateral termination by a president to the test. He ended his statement with an apparent rebuke to the Senate for not taking any action, stating, “If Congress chooses not to confront the President, it is not our task to do so.”<sup>20</sup> Regardless of their reasoning, all of the justices in favor of dismissing the case had put the onus on Congress to contest the president’s decision, something that they had not only failed to do, but had actively prevented their colleagues from pursuing. The Democratic Senate leadership’s aversion to challenging President Carter’s actions had hamstrung the ability of Goldwater and his colleagues to argue for Congress’s constitutional authority.

There appeared to be two reasons for this: public opinion and party unity. The vote on the Byrd Resolution came at a particularly crucial time for the Carter administration, with Carter’s approval ratings sitting at 28% at the time of its introduction to the Senate, the lowest of his presidency.<sup>21</sup> With a struggling foreign policy, stagflation, and energy shortages strangling the U.S. economy, and a presidential election just around the corner, the Democrats were desperate

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<sup>18</sup> *Goldwater v. Carter*, 444 U.S. 996 (1979).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> "Presidential Approval Ratings -- Gallup Historical Statistics and Trends." Gallup.com. September 11, 2017. <https://news.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx>.

for a victory, something they believed they had found in the China agreement. A Pew poll from 1979 found that 54% of Americans held a favorable view of China, with 18% of those holding a “very favorable” view, the highest recorded in the poll’s history.<sup>22</sup> The move had even received bipartisan support from Republicans, with Senator Goldwater stating that he would have supported the termination of the Sino-American Mutual Defense Treaty had it been presented before the Senate.<sup>23</sup> There was also the issue of party unity that faced the Democrats. Carter’s message of a regional southern Democrat had put him at odds with the national Democratic Party from the outset of his presidential campaign.<sup>24</sup> Once in office, Carter was incredibly outspoken and critical of a Congress that he viewed as being controlled by special interests, regardless of the fact that it was led by his own party. Byrd’s resolution, if approved by a Democrat controlled Senate, served as another opportunity for the divisions within the party to be deepened and for the perception of Carter as an ineffective party leader to be reinforced. Senator Church even acknowledged this fear in his oral arguments to the chamber against substituting the Byrd Resolution, saying it might undermine the president’s foreign policy, which he argued was supported by a majority of the American people.<sup>25</sup> It would also steal a key foreign policy victory away from an already unpopular president facing a tough re-election campaign. All things considered, it is clear that political considerations were taken into account by the Democratic Senate leadership, which helps explain why the Congress was so reluctant to insert itself into the debate over whether it had a constitutional authority to consult the president on treaty terminations.

### KUCINICH V. BUSH

With the question of constitutionality left unanswered by *Goldwater v. Carter*, unilateral termination of treaties increasingly became the norm, with Carter’s successor, President Ronald

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<sup>22</sup> Person. "Historical Statistics and Trends: China." Gallup.com. March 27, 2019.  
<https://news.gallup.com/poll/1627/china.aspx>.

<sup>23</sup> Javits, Jacob K. "Congress and Foreign Relations: The Taiwan Relations Act." *Foreign Affairs* 60 (September 22, 1981).

<sup>24</sup> Jones, Charles O. "Keeping Faith and Losing Congress: The Carter Experience in Washington." *Presidential Studies Quarterly* 14, no. 3 (July 1, 1984): 439.

<sup>25</sup> Gwertzman, Bernard. "Senate Rebukes Carter Over Ending of Taiwan Pact." (New York), July 7, 1979.  
<https://www.nytimes.com/1979/06/07/archives/senate-rebukes-carter-over-ending-of-taiwan-pact-vote-on-amendment.html>.

Reagan terminating a forty-year-old Treaty of Friendship with Nicaragua without consulting Congress. In fact, between 1979 and 2002, there were thirty unilateral treaty terminations initiated by the president without any resistance from Congress.<sup>26</sup> It had become apparent that Congress's failure to formally assert itself into discussions over the Sino-American Mutual Defense Treaty had dealt a significant blow to its claim for treaty termination powers. However, in 2002 the issue reared its head again when President George W. Bush terminated the Anti-Ballistic Missile Treaty with Russia.

The Anti-Ballistic Missile Treaty with Russia was an arms control agreement signed under the Nixon Administration in 1972. Despite being signed by a Republican president; by the late 1980s the agreement had drawn the ire of most Republicans. After surviving the Reagan and George HW Bush Administrations, the termination of the ABM Treaty became a primary legislative target of House Republicans during the Clinton Administration. Once George W. Bush took office, the Democrats knew that Republicans, with control of the House and an even deadlock in the Senate, would likely move to terminate the agreement. In pre-emption of the move to withdraw the United States, Democratic Senators such as Dianne Feinstein (D-CA), Russ Feingold (D-WI), Carl Levin (D-MI), and Jon Corzine (D-NJ) introduced legislation protecting the agreement. On May 24, 2001, in a monumental move, Senator Jim Jeffords (R-VT) switched his party affiliation from Republican to Democrat, altering the partisan composition of the Senate and giving the Democrats control of the chamber by a narrow one vote margin. Despite their majority, Democrats were still unable to pass legislation protecting the ABM Treaty. Senator Feinstein introduced her bill but sought no vote, arguing instead that she just wanted to raise awareness on the issue.<sup>27</sup> Senator Levin's bill was introduced, but the Democrat leadership saw it as not worthwhile to refer to committee because of the deadlocked numbers in the chamber.

On December 12, 2001, it was leaked that President Bush planned to announce his intention to withdraw the United States from the Anti-Ballistic Missile Treaty in June of the next year. In response to these leaks, fifty-three House Democrats introduced 107 H.Res. 313, stating

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<sup>26</sup> Bradley, Curtis A. "Treaty Termination and Historical Gloss." *Texas Law Review* 92, no. 4 (March 1, 2014): 814-815.

<sup>27</sup> *Congressional Record* "Proceedings of the 107th Congress, First Session, October 18,"(2001): 32.

their support of the ABM Treaty.<sup>28</sup> However, the resolution never received a vote, nor did it stop President Bush from making his announcement two days later. Finally, a last-ditch effort was made by Senator Russ Feingold, just three days before the United States was set to officially withdraw, when he introduced a resolution expressing disapproval of President Bush's unilateral withdrawal without prior consultation of the legislative branch. In the text of his resolution, 107 S.Res.282, Feingold argued quite plainly that "the approval of the United States Senate is required to terminate any treaty between the United States and another nation...the Senate does not approve the withdrawal of the United States from the 1972 Treaty."<sup>29</sup> When Senator Feingold sought unanimous consent to debate the resolution, he was met with an objection by Senator Orrin Hatch (R-UT), who had previously been a plaintiff in the Goldwater case in 1979.<sup>30</sup> The partisan script had been flipped since Hatch had no issue with obstructing Feingold's resolution posing the same argument that Hatch had made just twenty-two years ago. Feingold's resolution was stalled with Hatch's objection, and with little support from Majority Leader Tom Daschle (D-SD) and the Democratic Leadership, the fight against Bush's actions died in the Senate before it even began.

However, just as Senator Goldwater had continued the fight in the courts twenty years earlier, Representative Dennis Kucinich (D-OH) led the charge of legislators resisting the unilateral actions of the president. Whereas the Carter administration was met with its primary resistance in the Senate, Kucinich and his thirty-one Democratic colleagues in the House were now the ones spearheading the confrontation against the executive branch. The lone senator that attempted to join the suit was Senator Russ Feingold, who had already demonstrated his strong support of the Anti-Ballistic Missile Treaty. However, when Feingold requested a waiver from the Senate Ethics Committee to join the lawsuit with Kucinich, his request was rejected by the chair of the committee, Democrat Senator Harry Reid (D-NV). Many legal observers noted at the time that the suit would likely suffer for not having a Senator's name attached to it. Feingold expressed his own shocked at committee's decision, stating that the case brought up an important

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<sup>28</sup> 107 S. Res. 313. *Expressing the sense of the House of Representatives regarding the continued importance of the Anti-Ballistic Missile Treaty.*

<sup>29</sup> 107 S. Res. 282. *A resolution disapproving the withdrawal of the United States from the 1972 Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems (ABM Treaty), signed in Moscow on May 26, 1972 (Ex. L. 92-2).*

<sup>30</sup> *Congressional Record* "Proceedings of the 107th Congress, Second Session, June 10,"(2002): 19.

constitutional issue.<sup>31</sup> While the committee never issued a detailed response explaining their decision, Feingold stated that he would still help forward Kucinich's case, even if he could not join as a plaintiff.<sup>32</sup> *Kucinich v. Bush* was a weaker case than *Goldwater v. Carter* not only because it lacked a member from each chamber, but also because it lacked the bipartisan support that *Goldwater* had. In fact, members from Kucinich's own party seemed to be actively working to weaken his case. Aside from Senator Harry Reid's rejection of Feingold's appeal to attach his name to the lawsuit, Senate Democratic leadership made no effort to rebuke Bush's actions, nor did they introduce legislation fleshing out a position, despite their majority in the chamber.

Kucinich's case suffered greatly because of the action, or inaction, of the Democratic leadership, and on December 30, 2002, United States District Court Judge John Bates dismissed the case. Just as predicted, the absence of a sitting senator hurt the case's prospects. In his decision, Bates wrote that the case lacked standing because the thirty-one House members involved could not possibly claim to represent all of Congress without a member from the other chamber.<sup>33</sup> Had Feingold been allowed to join the suit, this issue likely would have been remediated. The second point that Bates made harkened back to the opinion of Justice Powell in *Goldwater v. Carter*, where he pointed out that the inaction by the Congress as a whole to put forth any meaningful resolutions contesting Bush's actions made it appear that the courts had no place in the issue either. Bates wrote, "This Court should not rule on the claim of thirty-two congressmen that President Bush ignored the constitutional role of Congress in the treaty termination process, when Congress itself has not even asserted that it has been deprived of any constitutional right."<sup>34</sup> Had Congress taken up a vote on a resolution, this would have been considered an assertion from the body that it had been deprived of a constitutional right, however since Feingold's resolution was shut down, no such formal contention had been made. Despite having the resources and influence in the Senate to put up a fight against Bush, the Senate Democrats chose not to do so, which was clearly a deciding factor in the strength of their legal challenge of executive overreach.

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<sup>31</sup> Nichols, John. "Denied Permission to Sue, Feingold Still Pushes ABM Treaty Fight." *The Nation*. <https://www.thenation.com/article/denied-permission-sue-feingold-still-pushes-abmtreaty-fight/>.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Kucinich v. Bush*, 236 F. Supp. 2d 1 (D.D.C., 2002).

<sup>34</sup> *Ibid.*

While the reaction of the legislative branch in response to President Bush's unilateral termination of the Anti-Ballistic Missile Treaty may not make sense 15 years after the fact, when viewed in the context of what was taking place in the United States at the time, one can reasonably understand why such little action was taken. While the ABM Treaty was something that the Republicans had their sights set on long before the Bush Administration, President Bush and Donald Rumsfeld argued that it was necessary at this point in time to terminate the treaty because it was in the interest of protecting the United States from "rogue states" that may seek to attack the homeland. In the wake of the attacks on September 11, these were particularly convincing arguments given that the country was still in somewhat of a state of crisis, as it sought an answer for how it could fortify its defenses to prevent any future attacks. In his statements delivered on December 13, 2001, announcing the United States' withdrawal, Bush stated,

"I have concluded the ABM treaty hinders our government's ability to develop ways to protect our people from future terrorists or rogue state missile attacks. The 1972 ABM treaty was signed by the United States and the Soviet Union at a much different time, in a vastly different world".<sup>35</sup>

The withdrawal from the ABM Treaty was framed as an urgent move that was necessary for the development of effective defenses against future terrorist attacks against the United States. From the perspective of Congress, while President Bush was transgressing on rights that may have belonged to the legislative branch, given the environment of the country, fighting Bush on the procedure may have not been a worthwhile battle. In an October Gallup poll, nearly 75% of Americans stated that they saw terrorism as the number one threat to the United States. The same poll found that President Bush was enjoying an 87% approval rating and Secretary of Defense Donald Rumsfeld was sitting at 82% approval.<sup>36</sup> While a fight over the ABM Treaty may have been worthwhile in the long run for the protection of the constitutional rights of the legislative branch, in the short run it easily could have damaged the perception of congressmen that stood in the way as not taking the terrorist threat against the country seriously enough. Democrats were understandably wary of their actions being misconstrued as obstructing the agendas of two very

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<sup>35</sup> "President Discusses National Missile Defense." Archive of the U.S. Department of State. <https://2001-2009.state.gov/t/ac/rls/rm/2001/6847.htm>.

<sup>36</sup> "Latest Summary: American Public Opinion and the War on Terrorism." Gallup.com. April 04, 2019. <https://news.gallup.com/poll/5113/latest-summary-american-public-opinion-war-terrorism.aspx>.

popular government officials, while the country yearned for a united government that would work together to solve the country's security problems. Republicans were not shy about using this narrative to their advantage as well. Representative Curt Weldon (R-PA), vice-chair of the House Armed Services Committee, issued a statement claiming that the individuals bringing the Kucinich lawsuit were conducting a "public relations event rather than focusing on the substance of the issue, which is defending our homeland".<sup>37</sup>

The successful framing of opponents of Bush's actions as individuals harming U.S. national security undoubtedly discouraged resistance amongst congressmen and senators who may have otherwise joined Kucinich. It was clear that the Senate Democratic leadership wanted no part of a fight with Bush on this particular issue, nor did much of the House. Even the same Republicans, like Orrin Hatch, who had resisted this executive overreach under Carter were nowhere to be found when Bush undertook the same actions in 2001. It was clear that Congress was putting a greater emphasis on the short-term consequences of their actions like elections and approval ratings, rather than the protection of the institutions that it was supposed to uphold.

## CONCLUSION

Both *Goldwater vs. Carter* and *Kucinich vs. Bush* demonstrated that Congress is much more concerned with preserving its own power for its party in the short term than it is for maintaining institutions and preserving its constitutional rights over the long-term. The court has plainly stated in both cases that the onus is upon Congress to act against the unilateral termination by the president before the legal question can be brought before them. However, Congress has demonstrated that it has little interest in doing any such thing. It has instead shown repeatedly that it is willing to put considerations like approval ratings, partisan disputes, and public opinion before the preservation of the United States' most sacred institutions. Because of this, it has effectively abdicated its claim to shared authority over terminating international treaties. This is especially of concern today as President Trump threatens to unilaterally terminate many agreements that the United States has entered into, like the North Atlantic Free

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<sup>37</sup> "House Democrats' ABM Lawsuit." *Inside Missile Defense* 8, no. 12 (2002): 10.  
<http://www.jstor.org/stable/24783558>.

Trade Agreement, the Intermediate-Range Nuclear Force Treaty with Russia, and the North Atlantic Treaty. Because precedent plays such a large role in these court cases, if President Trump were to follow through with any of his threats of termination, then the Congress will have a difficult time overcoming the damage it has already done to its claims of constitutional authority in the matter.



# **THE IMPACT OF TELEVISED PROCEEDINGS ON THE PRODUCTIVITY OF THE UNITED STATES CONGRESS**

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*Introducing cameras into congressional proceedings was a long process that was viewed as highly controversial due to its potential impacts on the operations of the institution. Those that supported the policy thought that it would increase public confidence in the institution while those who were opposed believed it would cause irreparable harm to the nature of the debate. Trends in the session time utilization and legislative productivity since the introduction of cameras support the assertion that Congress has become less productive since that time and that it has not accomplished goals of increasing public confidence. While political polarization has played a significant role in these trends, polarization and televised proceedings feed off of each other to continue the downward spiral. Despite a public desire for transparency, effective and fair governance should take a priority; the possibility of limiting or fundamentally reforming the use of cameras in Congress is a matter worthy of consideration to achieve this goal.*

## **INTRODUCTION**

In recent years, many have questioned the lack of camera coverage of proceedings in U.S. courts, most notably the Supreme Court. Various arguments have emerged on both sides as to the potential pros and cons of television coverage of Court proceedings. The U.S. House and Senate considered similar factors before implementing live coverage in 1977 and 1986, respectively. This paper will examine how introducing cameras in Congress changed the way it operates and how this decision continues to affect Congress as further electronic communication methods are introduced. Further, it will discuss how these changes have affected decreasing productivity in the institution and evaluate how subsequent changes may or may not contribute to reversing these trends.

To begin, it is important to look at why and how television coverage began in Congress and what the thought processes of the legislators at the time were in considerations of the pros and cons of beginning such a program. The second part of this paper will focus specifically on the productivity trends we have observed since the inception of televised coverage and why it is likely that the existence of coverage has at least partially impacted the results. I will also introduce certain qualitative examples which will also

support the significance of televised coverage on the efficiency of Congress. Finally, the last part of the paper will consider possible solutions to improve Congress's effectiveness relating directly to changes in live coverage of proceedings. While there are many other contributing factors, the introduction of television to congressional floor and committee proceedings has played a significant role in the recent decrease of productivity in Congress.

## HISTORY OF TELEVISION IN CONGRESS

Long before C-SPAN existed and gavel-to-gavel floor coverage of Congress began, the first experiments in covering congressional activity by television occurred at the committee level. In 1948, the Senate Committee on Armed Services became the first committee to televise a hearing by allowing networks to bring their own cameras into the hearing room for their hearing regarding universal military training with the House Un-American Activities Committee following four months later for their hearing about communist infiltration of the United States government.<sup>1</sup> Interestingly, but perhaps unsurprisingly, the first coverage of Congress consisted of heavily controversial topics that were sure to draw attention from the public. A hearing of high priority to members and with subject matter of significant public interest would be a logical first event to televise. However, it also follows that associating television coverage with controversial and high profile events may be where Congress first erred and unintentionally invited inefficiency into debate.

After these trial runs of coverage, the first major push to televise congressional proceedings came with the passage of the Legislative Reorganization Act of 1970. In part, this act enabled House committees to broadcast their proceedings if they desired. Section 116(b) of the act also specified regulations that the committees had to follow due to potential concerns including the use of coverage for political purposes rather than informational purposes.

Additionally, in 1974, the Joint Committee on Congressional Operations, created by the Act to improve the operation of the legislative branch, expressed concern that the public congressional approval level was adversely impacted by the lack of information the

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<sup>1</sup> Ronald Garay, *Congressional Television: A Legislative History* (Westport: Greenwood Press, 1984), 36

public received about how Congress worked.<sup>2</sup> As will be discussed in more detail later, additional resources of information—including both more availability of primary sources (such as live coverage and digital documents) and press coverage—has not shown to significantly increase the public confidence in Congress as an institution.

Following the recommendations of the Joint Committee, the House and Senate both began covering their floor proceedings via television, while committees would decide for themselves whether their hearings and meetings would be televised. The House began regularly recording their floor proceedings in 1977 while the Senate held out until 1986 before they fully implemented a televised system.<sup>3</sup> Proponents of adding cameras argued that the Joint Committee’s concerns were valid and that cameras would help the public understand what was going on and thus improve the American people’s confidence in Congress. In 1981, then-Senate Majority Leader Robert Baker said that it was “unrealistic to expect public support when we won’t let them see us doing what we do in the legislative process” and that cameras would also provide an effective balance with the White House’s frequent and easy access to the media.<sup>4</sup> However, not everyone was as optimistic about the prospects of televised proceedings.

Like the Supreme Court today, many members of Congress had significant concerns about the idea of allowing cameras into sessions on a regular basis. While agreeing with Senator Baker that the quality of congressional debate had deteriorated prior to the introduction of cameras, Sen. Russell Long argued that television not only would not improve the quality, but would create a national forum that members with presidential aspirations could take advantage of. Accordingly, he believed that it would have “a chilling effect on the honest, free exchange of views” in the body.<sup>5</sup> While choosing more transparency usually seems like an easy choice, particularly from outside an organization, additional transparency often has unintended consequences, as Senator Long and others in opposition to the change accurately anticipated.

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<sup>2</sup> Sarah Eckman, *Video Broadcasting of Congressional Proceedings* (Congressional Research Service, 2017),

<sup>3</sup> *Ibid.*, 1.

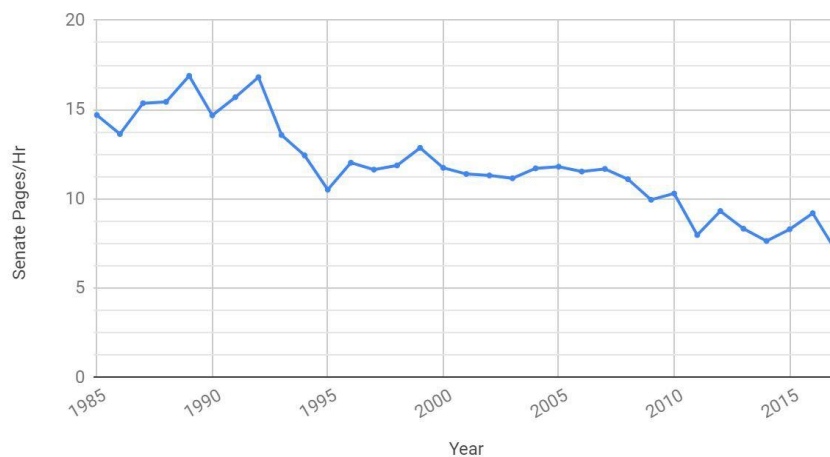
<sup>4</sup> Garay, *Congressional Television*, 120

<sup>5</sup> *Ibid.*

## TRENDS IN PRODUCTIVITY

Members in opposition to televising proceedings anticipated that speeches would get longer and more prevalent as Congress introduced cameras to the chambers. In the Senate, the short term results of the addition of cameras seemed to support this assertion. However, if one observes a day of session of the Senate today, instead of debate they will see most of the session time spent in silence while the presiding officer and clerks wait for a senator to come to the floor to speak or to begin a vote. Clearly, live television did not change habits of senators in the long run. In fact, the silence is even more frequent today. By comparing the pages of the *Congressional Record* during each year with the amount of hours spent in session during that same year, it is easy to see that session time has become increasingly unproductive since the introduction of television. The graph below shows the productivity of session time from 1985 to 2017.<sup>6</sup>

Senate Pages/Hr by Year



For the seven years prior to the beginning of television coverage in 1986, the number of pages of the *Record* per hour of session held fairly steady at 14-15 pages per hour. Those senators that thought television coverage would lead to longer and more prevalent speeches were correct in the short run, but perhaps not to the degree that they anticipated.

There was short term increase from 13.6 pages per hour in 1986 to a high of 16.9

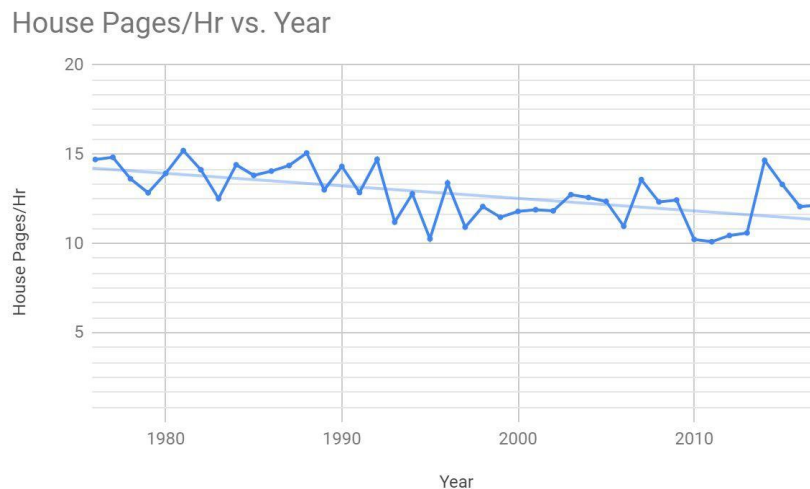
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<sup>6</sup> Data in graph sourced from: United States Senate, “Resume of Congressional Activity”, accessed September 30, 2018, [https://www.senate.gov/pagelayout/reference/two\\_column\\_table/Resumes.htm](https://www.senate.gov/pagelayout/reference/two_column_table/Resumes.htm)

pages per hour in 1989.<sup>7</sup> In the short term, activity increased in the Senate chamber as senators took advantage of being able to be on television whenever they wanted which allowed them to connect more with their constituents both from direct coverage on C-SPAN2 and news network coverage picked up by local and national networks from the Senate feed.

However, following a few years of inconsistency as the Cold War came to an end and Congress focused on improving foreign relations, the effective utilization of session time began to decrease and, on average, has continued to do so. In 2017, the Senate reached its lowest measurement at only 7.1 pages per hour of session time.<sup>8</sup> After the initial inconsistency ended around 1992, senators likely realized that too large a concentration of content is not effective to get the attention of their voters and focused more on occasional speeches with more high profile topics. This strategy was more likely to attract news network coverage and thus receive the attention of constituents. However, these speeches occurred at the expense of regular attention to floor proceedings and prevented actual debate.

In the House of Representatives, the same data shows less extreme results. The House's session time productivity is shown in the graph below from 1976-2017.<sup>9</sup>



While there is a slight downward trend in the session time utilization from 1976 -

<sup>7</sup> Data derived from: United States Senate, "Resume of Congressional Activity"

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

2017, there are sporadic differences between session years that do not follow a noticeable pattern. In addition, there has been much less of a net effect than in the Senate. In 1976, one year before the House introduced cameras, there were 14.7 pages in the *Record* per hour of session time as compared to 12.1 pages in 2017--a net difference of -2.6 pages as opposed to the Senate's net difference of - 6.5.<sup>10</sup> It is important to note that in both the House and Senate, certain factors like the amount of and duration of votes also skew the pages per hour data slightly because a set amount of written material is written in the *Record* for every vote regardless of how many there are or how long they take to complete.

However, there are several traits about the House that cause this data to be less reliable than in the Senate. First, the sheer number of members of the House prevent them from speaking on the floor whenever they wish to do so. For each piece of legislation, rules are adopted to govern debate, including which members are allowed to speak and for how long. In addition, because of the significantly higher level of member turnover in the House, members (particularly new members) are less likely to turn down an opportunity to speak on the floor.

If one looks closer into the usage of floor time, it becomes clear that the demand for floor time did likely increase--at least for the political advantages of being able to be on television.

After introducing cameras to the chamber, the House experienced a significant increase in time that the Speaker allotted for members to make 'one-minute speeches': brief and well-designed speeches on any topic that are often featured on evening newscasts.<sup>11</sup> This is a trend that continues today with large amounts of time at the beginning and end of the legislative days dedicated to members to give brief speeches which they publicize on their social media accounts to prove to their constituents that they are still focused on their campaign promises—regardless of legislative outcomes.

In light of this discussion, it is important to point out that session time utilization is only one of many factors that actually go into the overall efficiency and productivity of Congress.

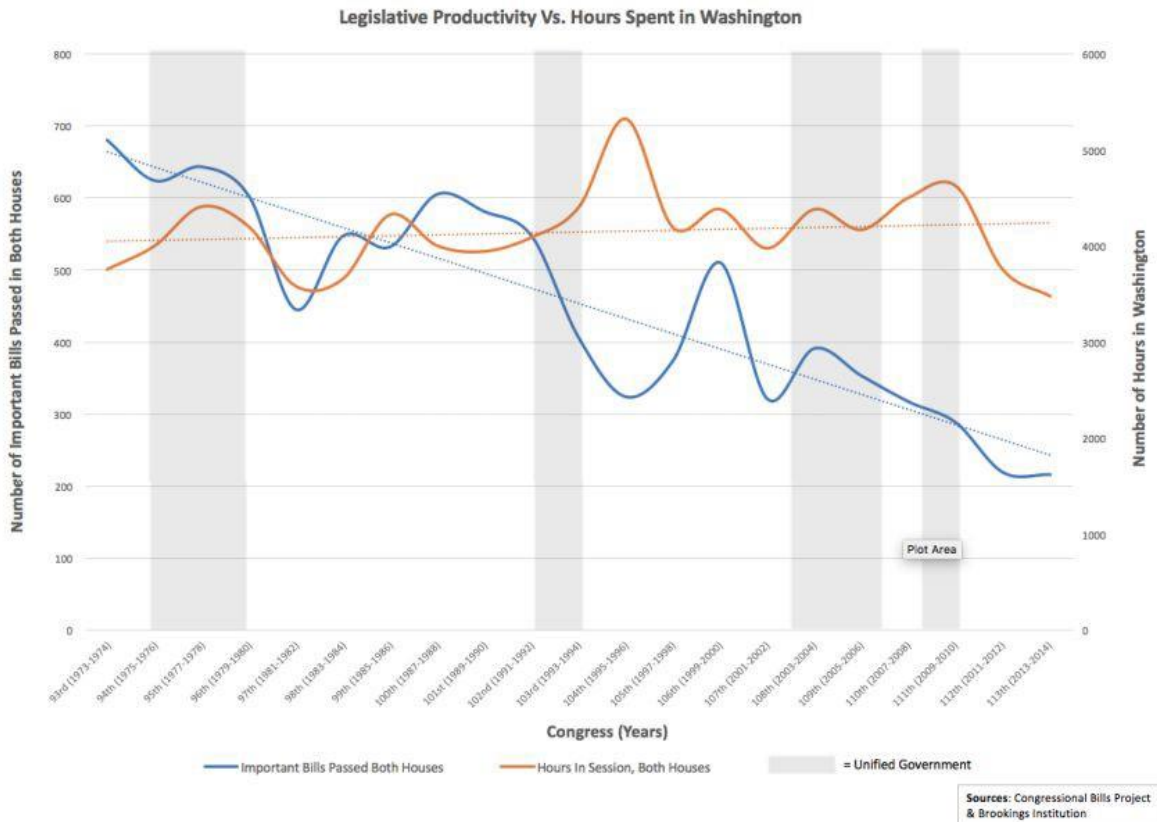
While these measurements give us a general idea of activity on the floor, it is clear

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<sup>10</sup> Data derived from: United States Senate, "Resume of Congressional Activity"

<sup>11</sup> Garay, *Congressional Television*, 121

that even when the floor is being occupied and the material is being placed into the *Record*, it is not necessarily in a fashion that is productive for completing Congress’ lawmaking responsibilities. Another method by which to analyze productivity is in regards to the amount of important legislation that passed both houses of Congress. The following graph displays legislative productivity juxtaposed with the amount of hours spent in session during each Congress from 1973-2014.<sup>12</sup>



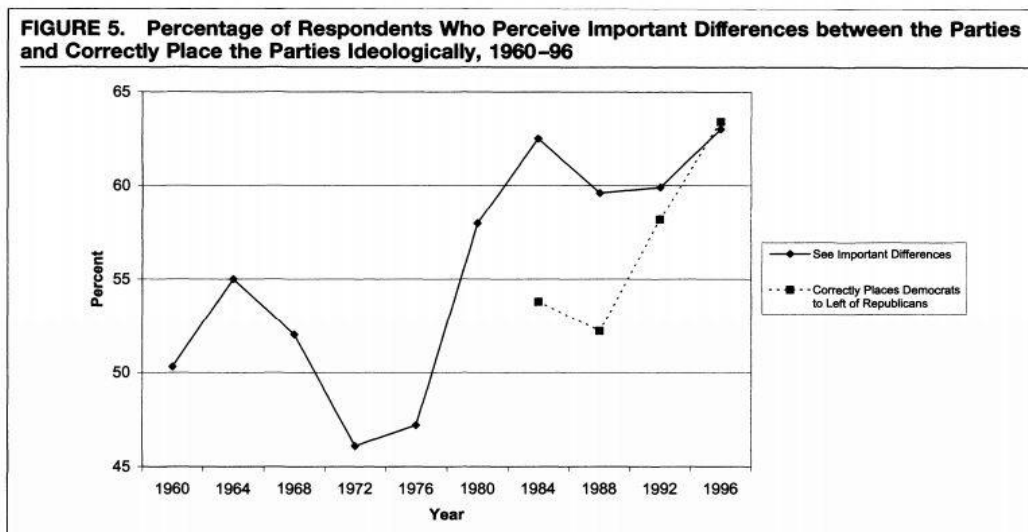
While the time spent in session trends slightly upwards from the 93rd Congress to the 113th Congress, the amount of important legislation passed by both house trends strongly downward. The first significant decrease in important bills passed after the House’s introduction of cameras in 1977 is after the end of the unified Democratic control of the government under President Carter. Lack of unification makes passage of legislation significantly more difficult for the majority party. In observing the downward trends in ‘important bills passing’ consistent among the various transitions from unified

<sup>12</sup> The graph and its data are derived from: Casey Burgat and Charles Hunt, “Are Long Weekends Reducing Congress’ Productivity”, *R Street Shorts*, no. 42 (July 2017): 2. The graph relies on data compiled by the Congressional Bills Project and the Brookings Institution.

to ununified governments, the lack of unified government was the most likely direct cause of lower legislative productivity in the beginning of the 1980s. Productivity slowly did increase again before its peak in 1986 when cameras were introduced in the Senate. However, productivity has never been as high again. The trend continued downward even in periods of unified government. While some variation existed in the late 1990s and directly following the attacks of September 11, 2001, the amount of important bills passed have been fairly consistently decreasing since 1986.

In addition to showing that legislative productivity decreased since the introduction of cameras into Congress, this data also shows that neither the time spent in session nor a unified government were significant factors in decreasing legislative productivity. While it is true that there are numerous other factors that could play a role in decreasing legislative productivity, the change of focus of members from policy debate to a fight for attention from the camera to impress their constituents certainly was a significant factor.

Another factor in play is the increasing perception of ideological distance between the two major political parties. During roughly the same period of the first decline of productivity from 1979-1982, the percentage of the public who perceived differences between the parties also skyrocketed from approximately 47% to approximately 58% between 1976 and 1980 as represented on the graph below.<sup>13</sup>



<sup>13</sup> Marc Hetherington, "Resurgent Mass Partisanship: The Role of Elite Polarization," *American Political Science Review* 95, no. 3 (September 2001): 624



Most of the dramatic increase in the public perception of polarization is likely due to the presidential election of Ronald Reagan in 1980. Still, the timing is not a complete coincidence in relation to the evolution of televised proceedings in Congress. House members had a stronger avenue by which to speak for or against policies that their constituents liked or disliked. There is a circular effect here between the perception of more polarization and increasing coverage of House proceedings. Logically, polarization (via Reagan's presidential campaign) led to an increase in members looking to make televised speeches in order to reassure their voters that they are still on their side. This increase is reflected in the 'House Pages/Hour vs. Year' graph.

Conversely, the increase in televised speeches began to allow the public to notice significant differences between Democrats and Republicans causing more severe polarization. There is no way to quantify the extent to which television proceedings began to influence congressional polarization. However, the existence of this circular effect is logically deduced when examining the following specific examples.

### **DIRECT EFFECTS OF CAMERAS IN CONGRESS**

Before the advent of regularly televised congressional proceedings, several political scientists theorized on the effects that cameras would have on the operations of Congress. Michael J. Robinson, who authored the 1975 article "A Twentieth-Century Medium in a Nineteenth-Century Legislature: The Effects on Television on the American Congress", theorized that there are two laws of "videopolitics." The first law states that "television alters the behavior of institutions in direct proportion to the amount of coverage provided or allowed."<sup>14</sup> The House did not have any basis off which to predict the effects of cameras in Congress other than the previous committee hearings that were televised.

However, these hearings were not regularly covered and the regular broadcasting has proven to inspire behavior changes in accordance with Robinson's first law. In fact, in May 1979, Speaker "Tip" O'Neill referred to the effects television had on the House a "disaster", noting that "more than the usual number of amendments to the budget resolution were being offered by... members eager to get themselves on

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<sup>14</sup> Garay, *Congressional Television*, 136

television” and that members were increasingly “taking to the floor to praise people in their districts by name, compliment trusted staff members and give speeches on purely local issues.”<sup>15</sup> Not even a full two years after the House’s adoption of televised proceedings--a period directly aligned with the previously discussed significant drop in legislative productivity and increase in public perception of party polarization--the Speaker of the House was already having problems with the coverage disrupting enacting national public policy.

While the House lacked the previous evidence to accurately predict the negative changes that would occur consistent with Robinson’s first law, the Senate had the benefit of the House’s first nine years of coverage before actually implementing their own program. Having the benefit of observing the issues the House faced, many senators, such as Senator Long, were not inclined to follow in their footsteps.

However, the Senate was in danger of becoming the forgotten body of Congress if they did not adapt. One of Senator Baker’s primary reasons for supporting the program was to break through the “cocoon-like atmosphere of secrecy” in the Senate because he strongly believed that if the Senate did not add camera coverage, the House would become the dominant partner in the legislative branch.<sup>16</sup> The House program, though unpopular with House leadership because of its constricting effect on policy-making, remained very popular with the general membership of the House. Previously unknown members now had the ability to draw attention to various issues and recognitions that they had no avenue to draw attention to before. For this reason, it was clear that the House program would continue despite concerns by leadership about legislative effectiveness and the Senate would be forced to follow along in order to preserve their role in the legislative process.

In today’s Congress, we can observe numerous examples of Robinson’s first law. One primary example of how lawmakers have taken advantage of the attention that cameras in the chamber provide is Senator Sheldon Whitehouse’s (D-RI) notorious ‘Time to Wake Up’ speeches. According to his congressional website, Whitehouse has taken to the Senate floor every week since 2012 to “deliver in-depth remarks on the science of manmade climate change, its effects felt throughout the country and around the globe, and

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<sup>15</sup> Ibid., 138

<sup>16</sup> Garay, *Congressional Television*, 120, 137

the political forces that impede climate action in Congress.”<sup>17</sup> While this speech is generally completely unrelated to the legislative business on the Senate floor, Senator Whitehouse continues to give this speech despite knowing that few, if any, colleagues actually listen to the content.

Senator Whitehouse makes this speech primarily for the benefit of sharing his advocacy with his constituents regardless of its impact on any specific piece of legislation or congressional productivity as a whole. After the speech is given, his office places each video onto their website and social media accounts where his February 6, 2019 video received over 1,000 views on Facebook--significantly more than the one or two other senators that may be on the floor at any given time or the approximately 150 seats available in the Senate public galleries.<sup>18</sup> These types of speeches do not enhance debate and would not be given if there was not camera coverage of the session because there would be no benefit to speaking to the same people on the same topic week after week when there is not a chance of mass distribution. Instead, this time could be used for actual debate.

While Robinson’s first law specifically deals with the behavior of Congress and its members, his second law supplements the first law with television’s effect on public perception. The second law states that “television alters the popularly perceived importance of institutions and individuals in direct proportion to the amount of coverage provided--the greater the coverage, the more important the institution and members appear to be.”<sup>19</sup> This has been increasingly exemplified in recent congressional hearings--particularly on Trump administration oversight. While administration nominees testifying before congressional oversight committees is nothing new, certain hearings have received full coverage.

For example, cameras recorded a February 8, 2019 oversight hearing before the House Judiciary Committee and major news networks carries the broadcast nearly the entire time, increasing the amount of coverage provided. Thus, the members of these

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<sup>17</sup> Senator Sheldon Whitehouse, “Whitehouse Delivers 200th ‘Time to Wake Up’ Climate Speech,” accessed February 10, 2019, <https://www.whitehouse.senate.gov/news/release/whitehouse-delivers-200th-time-to-wake-up-climate-speech>

<sup>18</sup> Facebook, “Senator Sheldon Whitehouse: Time to Wake Up: Carbon Dividends,” accessed February 10, 2019 <https://www.facebook.com/SenatorWhitehouse/videos/366677660582832/>

<sup>19</sup> Garay, *Congressional Television*, 136

committees and the committee as a whole seem incredibly important even if the hearing is not actually all that unusual. As a result, members change their questioning techniques and are very careful to use only prepared language that has already been vetted so as to get the most benefit out of the news cycle. Though these hearings could, and most likely would, also be covered in written press, the attitude and exact language used by members is less important when the public is reading a summary as opposed to watching a video clip.

While both the Whitehouse ‘time to wake up’ speeches and these well-covered hearings are both impacted by the first law of videopolitics to the same degree in that members will change their behavior to adapt to the new environment, the second law applies to the hearings to a much greater degree. The second law is much more sensitive to the amount of coverage provided. Because the ‘time to wake up speech’ is not usually covered on major news networks, it is not perceived as quite as important as a high-profile hearing.

The second law is the effect that Congress had hoped would result from the addition of cameras--highlighting important debates and hearings so that the public can be well-informed and understand Congress’ role. However, in examining these examples, the positive effects of the second law seem to be dependent on being preceded by the negative behavior changes suggested by the first law. Because changes in behavior to accommodate an increasing presence of television coverage is inevitable, Congress’ introduction of cameras to the legislative process has been mostly counterproductive.

## **CONCLUSION**

Transparency, when applied to the government, is a characteristic that comforts the public. However, transparency for transparency’s sake does not necessarily make for good governing in a republic such as the United States, where we elect representatives based on a sense of trust that they will represent our interests with integrity. The motivations behind the addition of television coverage to congressional proceedings were pure; they aimed to improve efficiency, productivity, and public confidence in the institution and, consequently, the nation.

However, television coverage has not accomplished this goal. While it is

debatable whether there has truly been the negative result that I suggest, it is clear that there has been no substantial positive result in the productivity or the public confidence of the Congress corresponding to the introduction of cameras. The country will be better served by attempting to reinvigorate debate rather than continuing down the path of eliminating it altogether via speeches only geared toward making representatives seem more politically favorable. Perhaps other changes unrelated to cameras are the more appropriate courses of action to achieve the goal of improving congressional operations. Nonetheless, in an effort to improve its ability to effectively govern, proposals which limit or fundamentally reform video coverage, allowing members of Congress to engage in true open debate with each other, is a matter worth further serious consideration.



## **Part 4**

# The Constitution & The Supreme Court

## THE LOST ARTICLE

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*The Constitution of the United States contains seven articles. This research focuses on Article V, which outlines the process to amend the U.S. Constitution. Article V offers two methods to propose amendments: (1) via Congress or (2) via a convention of the states. Historically, only Congress has amended the U.S. Constitution; the latter proposal method has never been utilized. In contrast to the use of the congressional amendment proposal process at the federal level, states commonly utilize constitutional conventions as a means to propose amendments. This research examines support for constitutional conventions at the state level, and considers the role partisan politics play in the amendment proposal process. By analyzing ballot measures calling for state conventions alongside contemporary party preferences, this essay seeks to determine the effects of partisanship on the practicality of an Article V Convention of the States to propose amendments to the U.S. Constitution.*

### INTRODUCTION

Concerning the process of amending the U.S. Constitution, Article V reads as follows,

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress...<sup>1</sup>

In simpler terms, there are two methods to propose amendments, either via the consensus of two-thirds of the House and Senate or through a constitutional convention when two-thirds of state legislatures make the request. Having met the requirements of proposal, an amendment can be ratified using two methods: either three-fourths of state legislatures or conventions within three-fourths of the states can ratify the amendment. Thus far, amendments have only been proposed via Congress and, with the exception of the twenty-first amendment, all amendments have been ratified through state legislatures.<sup>2</sup>

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<sup>1</sup> “The Constitution of the United States,” Article V.

<sup>2</sup> Dinan, John and Jac C. Heckelman. “Support for Repealing Prohibition: An Analysis of State-Wide Referenda on Ratifying the 21<sup>st</sup> Amendment.” *Social Science Quarterly* 95, no. 3 (2014): 636-651.

This research analyzes the proposal aspect of Article V, specifically focusing on the use of a convention to propose amendments. Constitutional scholars have debated the practicality of an Article V Convention to propose amendments since the drafting of the U.S. Constitution, in part due to the ambiguity imposed by vague constitutional language.<sup>3</sup> Federalist 43 provides limited guidance, where Madison explains that Article V “equally enables the general and State governments to originate the amendment of errors.”<sup>4</sup> Further, Federalist 85 briefly discusses the rationale behind imposing a second means of proposing amendments through a convention of the states—to place a check upon the powers of Congress were their intentions to become corrupt.<sup>5</sup> To that end, Congress is *obliged* to call a convention of the states at the request of two-thirds of state legislatures, regardless of congressional discretion. However, all aspects of what would be required to conduct a convention of the states—the application process, the procedures during the convention, and the oversight provided—are absent from within the Constitution and supporting documents.<sup>6</sup>

After 231 years of governance under the Constitution, two-thirds of state legislatures have never united to call for a convention; thus, United States has never had an Article V Convention to propose amendments. Yet, as of April 19, 2014, forty-nine states, in combination, have filed 745 petitions for a constitutional convention.<sup>7</sup> Current calls for an Article V Convention have been associated with conservative ideals: the Balanced Budget Amendment Effort endorsed by the American Legislative Exchange Council, the Convention of States Effort led by Tea Party Patriots to reduce federal powers, and the Wolf PAC Effort to overturn Citizens United v FEC.<sup>8</sup> Still, “Constitutional Conventionphobia” halts Americans actions, and a convention to propose amendments has failed to come to fruition.<sup>9</sup>

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<sup>3</sup> Diamond, Ann Stuart. "A Convention for Proposing Amendments: The Constitution's Other Method." *Publius* 11, no. 3/4 (1981): 113-46.

<sup>4</sup> Madison, James. Federalist No. 43, in *The Federalist Papers* (1788).

<sup>5</sup> Hamilton, Alexander. Federalist No. 85, in *The Federalist Papers* (1788).

<sup>6</sup> “Proposing Amendments to the United States Constitution by Convention.” *Harvard Law Review* 70, no. 6 (1957): 1067-1076; Rappaport, Michael B. "Reforming Article V: The Problems Created by the National Convention Amendment Method and How to Fix Them." *Virginia Law Review* 96, no. 7 (2010): 1509-581.

<sup>7</sup> Vile, John R. "A Survey of Early Commentary on Article V." In *Conventional Wisdom: The Alternate Article V Mechanism for Proposing Amendments to the U.S. Constitution*, 76-100. University of Georgia Press, 2016.

<sup>8</sup> Riestenberg, Jay. “US Constitution Threatened as Article V Convention Movement Nears Success.” Common Cause. March 21, 2018. <https://www.commoncause.org/resource/u-s-constitution-threatened-as-article-v-convention-movement-nears-success/>

<sup>9</sup> Greenberg, Henry M. “Hope vs. Fear: The Debate Over a State Constitutional Convention.” *Pace Law Review* 38, no. 1 (2017): 1-13.



Presently, discussions surrounding an Article V Convention focus on the practicality of such a convention given the procedural ambiguity. The following research, however, presents an alternative method to understanding the practicality of an Article V Convention to propose amendments by considering current partisan politics. Drawing on individual states, this research measures popular support for state constitutional conventions in relation to party affiliations. These data aim to establish the role party affiliations--whether individuals support the Republican or Democratic Party--play in the level of support garnered for state constitutional conventions to propose amendments.

## LITERATURE REVIEW

In his farewell address, George Washington explained, “the basis of our political systems is the right of the people to make and alter their Constitutions of Government.”<sup>10</sup> Heeding to Washington’s wisdom, scholars have concerned themselves with implementation of an Article V Convention since the drafting of the Constitution.

The founders understood the Constitution to be an imperfect document that would require amending; therefore, Article V was critical to the longevity of the document.<sup>11</sup> However, agreeing to the terms of amending the document would prove more difficult. The original debate surrounding methods of amending the Constitution existed between Federalists, who preferred a centralized government and amendment proposal through Congress, and Anti-Federalists, who were advocates of state institutions and supported amendment proposal through state legislatures.<sup>12</sup> The resulting amendment process was a compromise between Federalists and Anti-Federalists, as Article V authorized both means of proposal.

Even after ratification of the Constitution, however, varying opinions towards the amendment proposal process exist amongst scholars of the law. The most prevalent of these opinions takes a liberal approach—in alignment with Federalist opinions—to the implementation

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<sup>10</sup> Spaulding, Matthew and Trent England. “Article V: Congress, Conventions, and Constitutional Amendments.” *The Heritage Foundation* (2011). Accessed Jan. 21, 2019. <https://www.heritage.org/the-constitution/report/article-v-congress-conventions-and-constitutional-amendments>

<sup>11</sup> See e.g. Huq, Aziz Z. (2014)., Vile, John R (2016)., Rappaport, Michael B. (2010).

<sup>12</sup> See e.g. Diamond, Ann Stuart (1981)., Huq, Aziz Z. “The Function of Article V.” *The University of Pennsylvania Law Review* 162, no. 5 (2014): 1165-1236., Lash, Kurt T. “Rejecting Conventional Wisdom: Federalist Ambivalence in the Framing and Implementation of Article V.” *The American Journal of Legal History* 38, no. 2 (1994): 197-231., Rappaport, Michael B (2010).

of Article V, where the preferred method of proposing amendments is via Congress.<sup>13</sup> Despite language allowing for an Article V Convention, the lack of written clarity has left state legislatures unwilling to form a successful coalition for a convention, thus leaving Article V Conventions to be a broken tool.<sup>14</sup> Further, for those weary of the “passions” of the people, an Article V Convention would require congressional oversight, which was not explained in the Constitution, nor supporting documents. If not Congress, who would decide the procedure for application, the process for delegate elections, and the voting rules for the conventions?<sup>15</sup> These political scientists note that amendment proposal via Congress is a faster, more effective, and more familiar process, vital to ensuring a “runaway” convention does not occur, which would dismantle the current Constitution.<sup>16</sup>

In contrast, another group of scholars adopts a more republican view of the American citizenry, in alignment with Anti-Federalist opinions. Foundational to their conclusions is the idea that the Article V provision allowing for a Convention of the States is critical to preserve federalism and to provide a check on Congress’ monopoly over the amendment proposal process.<sup>17</sup> Past literature emphasizes that proponents of the Article V Convention method desire a secure means of proposing amendments through the states in case Congress were to become oppressive and unresponsive.<sup>18</sup> Under this idea, the ambiguity of Article V language surrounding conventions is, in fact, very telling. Leery of congressional interference, these scholars limit congressional oversight to calling a convention at the request of two-thirds of state’s legislatures and setting the subject of the convention.<sup>19</sup> In other words, Congress does not have the authority to impose restrictions on a convention, which may limit discourse. To proponents of conservatism, an Article V Convention would be a celebration of federalism and a victory for democracy.<sup>20</sup>

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<sup>13</sup> See e.g. Lash, Kurt T. (1994)., Vile, John R (2016).

<sup>14</sup> See e.g. Diamond, Ann Stuart (1981)., Rappaport, Michael B. (2010).

<sup>15</sup> See e.g. Diamond, Ann Stuart (1981)., Lash, Kurt T. (1994)., Rappaport, Michael B. (2010).

<sup>16</sup> See e.g. Diamond, Ann Stuart (1981)., Rappaport, Michael B. (2010)., Huq, Aziz Z. (2014).

<sup>17</sup> See e.g. Alstyn, William W. “The Limited Constitutional Convention: The Recurring Answer.” *Duke Law Journal* 1979, no. 4 (1979): 985-998., Lash, Kurt T. (1994)., Natelson, Robert G. “The Article V Convention Process and the Restoration of Federalism.” *Harvard Journal of Law and Public Policy* 36, no. 3 (2013): 955-960.

<sup>18</sup> See e.g. Diamond, Ann Stuart (1981)., Natelson, Robert G. (2013)., Rappaport, Michael B. (2010).

<sup>19</sup> See e.g. Alstyn, William W. (1979)., Black, Charles L. “Amending the Constitution: A Letter to a Congressman.” *Yale Law Journal* 82, no. 189: 1972. Rogers, James Kenneth. “The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process.” *Harvard Journal of Law and Public Policy* 30, no. 3 (2007): 1005-1022.

<sup>20</sup> Natelson, Robert G. (2013).

While scholars disagree on the practicality of convening an Article V Convention for basic amendment proposals, most agree that in extremis, it could be a valid method to counter a usurpation of power by Congress.<sup>21</sup> Similarly, scholars appreciate that the threat of an Article V Convention alone acts to ensure Congress remains responsive to the shifting values of Americans.<sup>22</sup>

Unlike the amendment proposal process set forth by Article V, under which constitutional conventions to propose amendments have failed to come to fruition, state constitutions have embraced varying means of amendment proposal. Amendment proposal methods within states are organized into three overarching categories: legislative referrals, citizen initiatives, and constitutional conventions.<sup>23</sup> While there has never been an Article V Convention, Caplan notes that more than 230 state constitutional conventions have been held since 1787.<sup>24</sup>

Extensive analysis of Article V and its history exposes citizens' reservations towards and support for the use of Article V conventions. However, in an increasingly politicized era in which party preferences are evident and divisive, political scientists have yet to conduct quantitative research as to how modern political party alignment influences opinions surrounding Article V conventions. In other words, a gap exists in quantitative research to explain how political affiliations--whether an individual supports the Democratic or Republican Party agenda--might influence support for a convention.

## THEORY

The drafting of Article V presented two opposing views on the amendment proposal process, with Federalists supporting amendment proposal via Congress and Anti-Federalists vouching for amendment proposal via state legislatures through convention. These differences were rooted in debates over federalism and centralization, as well as varying perceptions, some being faithful and some being fearful, of the citizenry.

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<sup>21</sup> Diamond, Ann Stuart (1981).

<sup>22</sup> See e.g. Diamond, Ann Stuart (1981), Lash, Kurt T. (1994).

<sup>23</sup> "Amending State Constitutions." *Ballotpedia*. Accessed 25 December 2018.

[https://ballotpedia.org/Amending\\_state\\_constitutions](https://ballotpedia.org/Amending_state_constitutions)

<sup>24</sup> Caplan, Russell L. "Constitutional Brinkmanship: Amending the Constitution by National Convention." Oxford University Press: 1988.

These debates continue in contemporary politics. Today, the Democratic Party's platform supports "big government," under which comprehensive, national policies centralize governmental power to the federal level. In contrast, the Republican Party platform values minimal federal government intervention, preferring policies to originate at the state level, where individual citizens maintain power over the federal government. To address whether party preferences influence support for state constitutional conventions, my research examines the state-level amendment process. Given ideological preferences, party alignment would be expected to influence state's opinions on constitutional conventions.

*Hypothesis 1: States that more strongly support Republican presidential candidates will have higher support for state constitutional conventions.*

Certain states routinely place the question of whether to convene a constitutional convention to propose amendments on state ballots for citizens to vote. Thus, how does the timing of elections, where ballots ask citizens whether to convene a convention to propose amendments, influence support for a constitutional convention? During a presidential election year, voter turnout is higher than during non-presidential elections. Non-presidential election years generally only mobilize politically inclined individuals, with strong political preferences and more radical views. In contrast, presidential election years mobilize moderate populations, in addition to radicals, with less regard for politics and political institutions. With varying mobilized populations, we would expect the support for conventions to be higher during non-presidential election years.

*Hypothesis 2: Support for conventions is lower in presidential election years than in midterm or off-year elections.*

## **DATA AND METHODS**

In order to test the hypothesis above, I collected data on the constitutions of all 50 states. The original data included the following information for each state: the methods of amendment proposal, the number of constitutions since establishment, and the year of ratification for the current constitution [Ref. Table 1 in Appendix]. *Ballotpedia* provided the foundational data on each state's constitution.

Of the fifty states, forty-four states authorize constitutional conventions as one method to amend their state constitution. Of the forty-four states authorizing constitutional conventions, sixteen state's constitutions mandate the use of automatic ballot referrals. These automatic ballot referrals require the state legislature to propose a ballot before their state's citizenry, at a designated time interval, to ask whether the citizens would like their state to initiate a convention to amend or revise their states constitution. Of the sixteen states, Alaska, Hawaii, Iowa, New Hampshire, and Rhode Island have automatic referrals every ten years, Michigan every sixteen years, and Connecticut, Illinois, Maryland, Missouri, Montana, New York, Ohio, and Oklahoma every twenty years. This study examines the results of the automatic ballot referrals for all sixteen states since 1950, considering the time of the ballot in relation to presidential elections and the party make-up of the state at that time. *Ballotpedia* provided results for automatic ballot referrals, while the *Federal Election Commission* provided party alignment data [Ref. Table 2 in Appendix].

#### *Dependent Variable*

The dependent variable in this analysis is the percent support for state constitutional conventions. To measure this variable, I collected results from each automatic ballot referral for the sixteen states of study. The value recorded represents the percentage of ballots submitted that voted "yes" to convening a state constitutional convention to propose amendments.

It is important to note that states, including the sixteen states in this study, have also convened state conventions to propose specific amendments. However, this study only examines the routine, automatic ballot referrals. This was an intentional decision to minimize any party bias that may arise from a specific amendment proposal in this analysis.

#### *Independent Variables*

There were many independent variables in this analysis. This research coded for whether the automatic ballot referral for a constitutional convention occurred during a presidential election year or a non-presidential year. This variable was included to account for varying levels of voter participation. Midterm or off-year elections tend to attract smaller and more radical populations that may not be representative of the state's population as a whole. On the other hand, presidential years tend to attract less politically inclined voters that better reflect the

general mood of the state. To measure party preferences near the time of the automatic ballot referral, this project utilized the vote share for each major party candidate in presidential elections, beginning in 1948. I began my data collection in 1948 because data availability from prior automatic ballot referrals was less consistent. If an automatic ballot referral appeared during a non-presidential year, I used the prior presidential election results. For each election, I recorded the percent support for the Republican candidate and the percent support for the Democratic candidate to gauge party alignment within the state.

Table 3: Descriptive statistics for variables; standard errors in parenthesis

	<b>Mean</b>	<b>Minimum</b>	<b>Maximum</b>
<b>Percent Republican</b>	46.44 (1.27)	26.58	63.98
<b>Percent Democratic</b>	46.66 (1.33).58	26.41	71.85
<b>Percent Support for State Cons. Conv.</b>	40.11 (1.57)	16.97	74.26

### *Test*

To test the hypotheses of the effects of electoral partisan preferences and election timing on support for constitutional convention referrals, I estimate ordinary least squares regression models since my primary variables of interest are continuous.

## **RESULTS**

How has party alignment influenced popular support for state constitutional conventions? Model results in Table 4 attempt to answer this question.

I tested three models in this study [Ref. Table 4 below]. Model 1 considered the effects of levels of Republican candidate support on support for a state convention. Model 2 considered the effects of both Democratic and Republican candidate support on support for a state convention. Model 3 considered all variables, including party support and the election type, to test their effects, in totality, on support for a state convention. In all instances, results indicated a slight positive correlation between the Republican vote share and support for state constitutional

conventions, while there was a slight negative correlation between the Democratic vote share and support for state constitutional conventions. As for the timing of automatic ballot referrals, there was a positive correlation between presidential election years and support for constitutional conventions. However, none of the coefficients were statistically or substantively significant. Therefore, to address the original hypotheses, the test could not conclude that support for state constitutional conventions is dependent upon the party make-up of a state; nor is there sufficient evidence to suggest that the timing of the automatic ballot referral influences support for constitutional conventions.

Table 4: Effect of partisan electoral preferences and the timing of convention referrals on support for state constitutional conventions, 1948-2018

	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
<b>% Vote Republican</b>	.26	.11	.10
<b>Candidate</b>	(.16)	(.23)	(.23)
<b>% Vote Democratic</b>		-.21	-.21
<b>Candidate</b>		(.22)	(.22)
<b>Presidential Election</b>			4.42
<b>Year</b>			(3.16)
<b>Intercept</b>	28.00	44.65	43.28
	(7.74)	(19.44)	(19.30)
<b>R<sup>2</sup></b>	.04	.06	.09
<b>N</b>	57	57	57
Estimate are from OLS regression model; standard errors in parentheses.			

### *Alternatives*

Given that party alignment did not have expected effects on support, current policy debates are likely a contributing factor to support for state conventions. If a political initiative were to gain momentum, supporters of that initiative would have more incentive to support a constitutional convention to propose amendments relative to that initiative. However, when citizens are content with the status quo—as they appear to be today—they are less likely to support a convention.

Additionally, further research should consider supplementary variables that may influence opinions towards conventions to propose amendments, such as wealth and the influence of special interest groups, to draw significant conclusions.

*New Hampshire: Live Free or Die*

While model results proved inconclusive, through extensive data collection, New Hampshire arose as an outlier in comparison to the other states utilizing automatic ballot referrals. Specifically, New Hampshire has had state constitutional conventions at a much higher frequency and the overall percentage of support for state constitutional conventions has been much higher [Ref. Table 2 in Appendix]. Of the past six automatic ballot referrals, three have led to a constitutional convention to propose amendments. Of the three ballot referrals that did not achieve a majority support for a convention, two ballots were less than 1 percent from meeting the majority threshold.

The state of New Hampshire has had two constitutions, the latest of which the state ratified in 1783 and has been in effect since.<sup>25</sup> Behind Massachusetts, New Hampshire has the oldest permanent state constitution and, interestingly, is one of two states that submitted their constitution to the public for a popular vote of approval, this initial act perhaps being an indicator of Republican ideals within the state.<sup>26</sup> With 400 Representatives and 24 Senators, New Hampshire has the second largest legislature in the United States, only behind U.S. Congress.<sup>27</sup> The legislative branch—known as the “General Court”—is elected every two years and has been coined the “Citizens Legislature,” as members generally lack political expertise and come from various occupations.<sup>28</sup> To emphasize the informality of the General Court, the state pays members of the General Court a mere \$200 per term.<sup>29</sup>

Concerning amendment proposal, Part II of the New Hampshire Constitution describes the role of the General Court and conventions in proposing amendments.<sup>30</sup> Within New Hampshire, the General Court proposes amendments via three-fifths consensus from each house or through a constitutional convention with three-fourths support from the delegates of the

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<sup>25</sup> Marshall, Susan E. “The New Hampshire State Constitution.” *Oxford University Press* (2011).

<sup>26</sup> *Ibid*

<sup>27</sup> “State Government Overview, New Hampshire Almanac.” NH.gov. <https://www.nh.gov/almanac/government.htm>

<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*

<sup>30</sup> “New Hampshire State Constitution,” Part II.



convention. New Hampshire calls a convention when a majority within each chamber of the General Court votes to propose the following question to the electorate, “Shall there be a convention to amend or revise the Constitution?” If the General Court does not submit this question to the electorate over a ten-year span, the secretary of state places the same question on the ballot as an automatic ballot referral. New Hampshire’s Constitution, thus, ensures ballots ask citizens whether to convene a convention at intervals of, at the most, ten years.<sup>31</sup>

While these institutional structures may seem insignificant, they provide valuable insight in determining the increased support for constitutional conventions to propose amendments within New Hampshire. Of note, a sentiment of populism is highly evident in the state’s institutions. Beginning with the ratification of the New Hampshire Constitution, when the text was open to popular vote, and continuing through the “Citizen’s Legislature,” central to New Hampshire’s institutions is the idea that ordinary people should be empowered in government, rather than a small group of elitists. This mentality, therefore, reaffirms the public’s support for state constitutional conventions in New Hampshire, as voting to convene a convention enables ordinary citizens to practice their power over the state government.

## CONCLUSION

When the drafters of the Constitution came together in 1787 to scribe what would become one of the world’s oldest constitutions, they referenced the institutions and procedures that had been adopted in state constitutions.<sup>32</sup> For that reason, referencing the experiences concerning constitutional conventions at the state level is extremely relevant to understanding Article V Conventions- a tool within our constitution that a majority of Americans appear hesitant to employ.

What breeds this hesitance? The purpose of this research was to determine if party alignment was a contributing factor to varying opinions toward constitutional conventions. Data collected in this study was unable to determine a correlation between these variables. However, as indicated by further examination of the institutional makeup of New Hampshire, populist sentiment, as seen through the state’s institutional organization, provides an interesting variable to be considered in attitudes towards state constitutional conventions.

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<sup>31</sup> “New Hampshire State Constitution,” Part II. Article 100.

<sup>32</sup> Vile, John R. (2016).

In 2016, President Trump ran on a platform that largely appealed to the growing populist movement in the United States. Moving forward, does this mean growing populist sentiment will increase the push for an Article V Convention? Additionally, the recent, and longest, government shut down in American history has led the American people to grow increasingly dissatisfied with Congress. Will an unresponsive Congress, alongside a growing populist sentiment, lead Americans down the untrodden path of an Article V Convention? History suggests not.

Constitutional Conventionphobia has plagued Americans for over 230 years, and it is unlikely that this will change any time soon. In general, Americans are content with the status quo, under which the federal government is trusted to propose amendments at the will of the people. Yet, it is important to ask whether Congress deserves this level of trust, especially considering current congressional approval ratings sit at twenty percent.<sup>33</sup>

As it is unlikely that an Article V Convention will take place in the near future, Americans must not forget its importance in securing democracy. As Lincoln expressed, Americans exist alongside a “government of the people, by the people, for the people.”<sup>34</sup> Ideological preferences aside, understanding one’s civic duty to this nation—to include understanding American institutions and the rights and privileges afforded to every citizen—is critical. Therefore, regardless of one’s feelings towards a present-day Article V Convention, it is in the best interest of Republicans and Democrats alike to garner a better understanding, and respect towards an Article that has largely been forgotten.

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<sup>33</sup> “Congress and the Public.” *Gallup* (2019). Accessed 01 February 2019.  
<https://news.gallup.com/poll/1600/congress-public.aspx>

<sup>34</sup> Lincoln, Abraham. “The Gettysburg Address.” 1863.

## Appendix

Table 1: State constitutional amendment proposal methods

State	Legislative Referrals	Citizens Initiatives	Constitutional Conventions	# of Constitutions	Current Constitution's Year of Ratification
Alabama	1	0	1	6	1901
Alaska	1	0	1	1	1956
Arizona	1	1	1	1	1912
Arkansas	1	1	0	5	1874
California	1	1	1	2	1879
Colorado	1	1	1	1	1876
Connecticut	1	0	1	2	1965
Delaware*	1	0	1	4	1897
Florida**	1	1	1	6	1968
Georgia	1	0	1	9	1983
Hawaii	1	0	1	1	1959
Idaho	1	0	1	1	1890
Illinois	1	1	1	4	1970
Indiana	1	0	0	2	1851
Iowa	1	0	1	3	1857
Kansas	1	0	1	1	1861
Kentucky	1	0	1	4	1891
Louisiana	1	0	1	9	1975
Maine	1	0	1	1	1820
Maryland	1	0	1	4	1867
Massachusetts	1	1	1	1	1780
Michigan	1	1	1	3	1963
Minnesota	1	0	1	1	1857
Mississippi	1	1	0	4	1890
Missouri	1	1	1	4	1945
Montana	1	1	1	2	1973
Nebraska	1	1	1	2	1875
Nevada	1	1	1	1	1864
New Hampshire	1	0	1	3	1783
New Jersey	1	0	0	3	1948
New Mexico	1	0	1	1	1912
New York	1	0	1	4	1895
North Carolina	1	0	1	4	1971
North Dakota	1	1	1	1	1889
Ohio	1	1	1	2	1851
Oklahoma	1	1	1	1	1907
Oregon	1	1	1	1	1859
Pennsylvania	1	0	1	5	1968
Rhode Island	1	0	1	6	1986
South Carolina	1	0	1	6	1896
South Dakota	1	1	1	1	1889
Texas	1	0	0	4	1876
Tennessee	1	0	1	3	1870
Utah	1	0	1	1	1896
Vermont	1	0	0	1	1793
Virginia	1	0	1	6	1971
Washington	1	0	1	2	1889
West Virginia	1	0	1	2	1872
Wisconsin	1	0	1	2	1848
Wyoming	1	0	1	1	1889

\*Legislative referrals do not require peoples vote

\*\*Amendments may also be proposed via commission referrals

Table 2: Automatic ballot referral results, 1948-2018

State	Automatic Ballot Referral Interval (Years)	Year	Presidential Year (1=yes, 0=no)	% Republican	% Democrat	% Support for State Const. Conv.
Alaska*	10	1970	0	45.28	42.65	50.32
Alaska	10	1972	1	58.13	34.62	34.51
Alaska	10	1982	0	54.35	26.41	37.07
Alaska	10	1992	1	39.46	30.29	37.3
Alaska	10	2002	0	58.62	27.67	28.36
Alaska	10	2012	1	54.8	40.81	33.41
Connecticut	20	1986	0	48.16	38.52	35.35
Connecticut	20	2008	1	38.22	60.59	40.6
Hawaii	10	1976	1	62.48	37.52	74.26
Hawaii	10	1986	0	42.9	44.8	44.1
Hawaii**	10	1996	1	31.64	56.93	50.5
Hawaii	10	1998	0	31.64	56.93	34.1
Hawaii	10	2008	1	26.58	71.85	35
Hawaii	10	2018	0	30.04	62.22	30.32
Illinois	20	1968	1	47.08	44.15	72.41
Illinois	20	1988	1	50.69	48.6	24.82
Illinois	20	2008	1	36.73	61.83	32.77
Iowa	10	1960	1	56.71	43.22	40.89
Iowa	10	1970	0	53.01	40.82	46.8
Iowa	10	1980	1	51.31	38.6	48.79
Iowa	10	1990	0	47.58	50.31	38.71
Iowa	10	1999	0	44.5	54.71	26.79
Iowa	10	2000	1	48.22	48.54	32.42
Iowa	10	2010	0	44.39	53.93	32.84
Maryland	20	1950	0	49.4	48.01	48
Maryland	20	1990	0	51.11	48.2	43.61
Maryland	20	1970	0	41.94	43.59	40.59
Maryland	20	2010	0	36.47	61.92	48.1
Michigan	16	1978	0	56.2	41.81	23.26
Michigan	16	1994	0	36.38	43.77	27.9
Michigan	16	2010	0	40.89	57.33	33.39
Missouri	20	1982	0	51.16	44.35	36.29
Missouri	20	2002	0	50.42	47.08	30.48
Missouri	20	1962	0	49.74	50.26	34.55
Montana	20	1970	0	50.6	41.59	64.76
Montana	20	1990	0	52.07	46.2	17.96
Montana	20	2010	0	49.49	47.11	41.49
New Hampshire***	10	1954	0	60.92	39.08	63.35
New Hampshire	10	1972	1	63.98	34.85	56.88
New Hampshire	10	1982	0	57.74	28.35	52.3
New Hampshire	10	2002	0	48.07	46.8	49.16
New Hampshire	10	1992	1	37.64	38.86	49.13
New Hampshire	10	2012	1	46.4	51.98	35.96
New York	20	1957	0	61.19	38.78	47.6
New York	20	1977	0	58.54	41.21	40.32
New York	20	1997	0	30.61	59.47	37.05
New York	20	2017	0	36.51	59	16.97
Ohio	20	1952	1	56.76	43.24	34.04
Ohio	20	1972	1	59.63	38.07	37.6
Ohio	20	1992	1	38.35	40.18	38.6
Ohio	20	2012	1	47.6	50.58	31.92
Oklahoma	20	1970	0	47.68	31.99	31.54
Oklahoma****	20	1950	0	37.25	62.75	23.65
Rhode Island	10	1984	1	37.2	47.67	53.82
Rhode Island	10	1994	0	29.02	47.04	40.5
Rhode Island	10	2004	1	38.67	59.42	48
Rhode Island	10	2014	0	35.24	62.7	44.9

\*Measure approved, convention not held. Votes recast in 1972 due to misleading language on the 1970 ballot.

\*\*Measure approved, convention not held. Votes recast in 1998.

\*\*\*Automatic ballot referrals appear every 10 years, unless the legislature puts a referral on the ballot, then the next automatic referral would be ten years from that date.

## CONFIRMED: SCALIA'S MISPLACED HOPE IN CONFIRMATION HEARINGS

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*The late justice Antonin Scalia argued that the politicization of the judicial appointment process is the appropriate democratic response to the modern Supreme Court's foray into deciding what the constitution ought to say instead of adjudicating what it says. This paper analyzes what, specifically, Scalia views as a proper vindication of the political check on the Court regarding which types of questions should be asked and answered during these proceedings. In order to ascertain whether Scalia is correct in his assumption that the judicial confirmation process presents a forum for meaningful democratic regulation of the Supreme Court, the analysis includes a qualitative comparison of two case studies—the Bork and Kennedy confirmation hearings. Finally, this paper aims to evaluate the practical and theoretical implications of the case study findings through the lens of Scalia's confirmation hearing philosophy and consider whether there is a better method of fulfilling the legislature's political check on the Court.*

### SCALIA'S VISION FOR CONFIRMATION HEARINGS

In the decades before his death, Justice Antonin Scalia was a strong critic of what he viewed as the transformation of the Supreme Court from an arbiter of legal disputes into an expositor of personal value judgments and policy preferences. Though he regretted this politicization of the Court, he viewed the justices' confirmation hearings as opportunities to implement a democratic counterbalance to the growing authority of the largely-insulated judiciary. Scalia characterized the current state of judicial confirmation hearings as “the consequence of [ . . . ] twin jurisprudential developments—departure from the original meaning of the guarantees contained in the text of the Constitution, and departure from even the *text* itself insofar as the creation of new rights is concerned.”<sup>1</sup> In other words, if there now exists a “nomination process that politicizes the judiciary,” it is because the Court regularly invokes substantive due process and has adopted the theory of living constitutionalism, which states that

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<sup>1</sup> Scalia, Antonin, Scalia, Christopher J., Whelan, Edward, and Ginsburg, Ruth Bader. *Scalia Speaks : Reflections on Law, Faith, and Life Well Lived / Antonin Scalia, Christopher J. Scalia, Edward Whelan ; Foreword by Ruth Bader Ginsburg*. New York: Crown Forum, 2017, 230.

the meaning of the Constitution changes over time to reflect modern values.<sup>2</sup> In light of the changing role of the Supreme Court, Scalia posits:

The method of selecting this Supreme Court *ought* to be much different from what it has been in the past. We should look not for learning and lawyerly skills, but for attunement to what the “evolving standards of decency” are, to what the current society’s vision of a good constitution happens to be—we should look, in other words, for people who agree with the majority.<sup>3</sup>

Scalia identifies the 1960s as the turning point in the doctrinal direction of the Court, and he considers the politicization of the confirmation process to be “the inevitable consequence of judicial overreaching—and that it is preferable to the alternative of rule by a judicial aristocracy.”<sup>4</sup> In this way, the late jurist considers confirmation hearings to be an “application of the political check upon the courts.”<sup>5</sup>

In support of Scalia’s theory that doctrinal evolution in the Court affected a corresponding development in confirmation hearings, scholars Farganis and Wedeking also identify the 1960s as the tipping point for stricter senatorial scrutiny of judicial nominees.<sup>6</sup> Scalia presents a schema for this increased scrutiny of nominees in two separate Supreme Court cases: *Planned Parenthood of Southeastern Pennsylvania v. Casey* and *Republican Party of Minnesota v. White*.<sup>7</sup> In the former, the late Justice argued:

[I]f [the Court’s] pronouncement of constitutional law rests primarily on value judgments, then a free and intelligent people’s attitude toward [it] can be expected to be (*ought to be*) quite different. If, indeed, the “liberties” protected by the Constitution are, as the court says, undefined and unbounded, then [ . . . ] confirmation hearings for new Justices *should* deteriorate into question and answer sessions in which Senators go through a list of their constituents’ most favored and most disfavored alleged constitutional rights, and seek the nominee’s commitment to support or oppose them.<sup>8</sup>

In encouraging senators to ask nominees to confirm their own (or their constituents’) opinions about what the Constitution should mean, Scalia differs from many of his originalist followers, who would disapprove of attributing such an appearance of malleability to the Constitution.

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<sup>2</sup> Scalia, *Scalia Speaks*, 178.

<sup>3</sup> *Ibid.*, 166.

<sup>4</sup> *Ibid.*, 228.; *Ibid.*, 232

<sup>5</sup> *Ibid.*

<sup>6</sup> Farganis, Dion, and Wedeking, Justin. “‘No Hints, No Forecasts, No Previews’: An Empirical Analysis of Supreme Court Nominee Candor from Harlan to Kagan.” *Law & Society Review* 45, no. 3 (September 2011): 528.

<sup>7</sup> 505 U.S. 833 (1992); 536 U.S. 765 (2002).

<sup>8</sup> *Planned Parenthood v. Casey*, (Scalia, J., dissenting).

Nevertheless, Scalia's opinion in *White* reveals his support of nominee candor when confronted with controversial legal and constitutional questions. In this case, the Court found unconstitutional Minnesota's application of the "announce clause" when they understood it to disallow judicial candidates from criticizing past decisions of the state supreme court during an election campaign. Scalia argued that such a limitation "burdens a category of speech that is at 'the core of our First Amendment freedoms'—speech about the qualifications of candidates for public office."<sup>9</sup> Although this case "involved judicial elections rather than appointments," one could argue that "the underlying rationale for Scalia's opinion—that prospective judges should explain their views so the people choosing them know what they're getting—applies both to a popular vote and a vote in the Senate."<sup>10</sup> Thus, it appears that Scalia finds no ethical violation amongst judges who wish to speak freely about controversial legal and political issues.

Scalia's position in *White* and elsewhere that judges are free to—and, indeed, should—be forthcoming about their judicial philosophy is closely related to his conviction that the Senate (as proxy for the American people) has a duty to place a check on the judiciary via confirmation hearing inquiries. Scalia further articulates:

The qualities that used to be most important in judicial candidates—legal scholarship, judicial demeanor, capacity for impartial deliberation—all become of secondary importance. The primary inquiry is whether this candidate will "evolve" the Constitution in the direction that the constituents of the president (or the constituents of the particular senator) favor.<sup>11</sup>

Scalia's own confirmation hearing supports his observation about the decline of legal qualifications as important factors in confirming a nominee. In fact, the coding system devised by scholars Guliuzza III, Reagan, and Barrett reveal that none of the questions posed to Scalia during his confirmation hearing qualified as those of general competency, even though Scalia was confirmed by a unanimous 98-0 vote.<sup>12</sup> Coincidentally, it is another unanimous confirmation vote—that of Anthony Kennedy—which presents potential problems for his theory of confirmation hearings as forums for ensuring that nominees commit to espousing the

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<sup>9</sup> *Republican Party v. White*, (Scalia, J.).

<sup>10</sup> Bazelon, Emily. "Answer the Question, Judge!" *Slate* (blog), July 26, 2005. <https://slate.com/news-and-politics/2005/07/scalia-s-confirmation-advice-for-roberts.html>.

<sup>11</sup> Scalia, *Scalia Speaks: Reflections on Law, Faith, and Life Well Lived*, 231.

<sup>12</sup> Guliuzza, Frank, Reagan, Daniel J., and Barrett, David M. "The Senate Judiciary Committee and Supreme Court Nominees: Measuring the Dynamics of Confirmation Criteria." *The Journal of Politics* 56, no. 3 (August 1, 1994): Table 1.

constitutional values of the American public. The confirmation experiences of Robert Bork and Anthony Kennedy—who arguably endorse similar judicial philosophies—reveal that perhaps senatorial scrutiny of nominees does not function as an effective or consistent check on a politicized Supreme Court.

### CASE STUDIES: THE BORK AND KENNEDY HEARINGS

The Senate confirmation hearings of Robert Bork and Anthony Kennedy were chosen for analysis because their hearings occurred just three months apart and then-President Ronald Reagan put forth both nominees, but the Senate rejected Bork’s nomination while unanimously confirming Kennedy. With both men facing confirmation hearings under similar circumstances, a comparison of their experiences is somewhat controlled, presenting an opportunity to draw conclusions about whether the outcomes of these hearings indicate that the Senate, in fact, fulfills the role Scalia envisions for them in these proceedings.<sup>13</sup> Scholars Paul M. Collins, Jr. and Lori A. Ringhand identify the compared confirmation experiences of Bork and Kennedy as illustrative of the Senate’s utilization of these hearings as a democratic counterbalance to the largely insulated Court. They urge that “the confirmation process” is “a key point at which the public exerts control over constitutional development.”<sup>14</sup> In their book *Supreme Court Confirmation Hearings and Constitutional Change*, Collins and Ringhand posit that contrary to popular opinion, “Bork’s nomination did not fail because he answered too many questions; it failed because he gave the wrong answers.”<sup>15</sup> Thus, according to Collins and Ringhand, Bork’s ultimate rejection and Kennedy’s subsequent confirmation is a direct consequence of how their respective judicial philosophies compared with the public’s “constitutional consensus.” They define this consensus as “the long-term constitutional commitments embraced by the public.”<sup>16</sup> Collins and Ringhand assert that since the Bork nomination, it is clear that

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<sup>13</sup> Nominees Bork and Kennedy appeared before a largely-similar Senate Judiciary Committee a mere three months apart and were both questioned by members of the 100th Congress to fill the seat of retiring Justice Lewis F. Powell.

<sup>14</sup> Collins, Paul M., and Ringhand, Lori A. *Supreme Court Confirmation Hearings and Constitutional Change* Paul M. Collins, Jr., Lori A. Ringhand. [electronic Resource] /. New York: Cambridge University Press, 2013.

<sup>15</sup> *Ibid.*, Location 5565.

<sup>16</sup> Collins, Paul M., and Ringhand, Lori A. *Supreme Court Confirmation Hearings and Constitutional Change* Paul M. Collins, Jr., Lori A. Ringhand. [electronic Resource] /. New York: Cambridge University Press, 2013, Location 232.



our Constitution now protects a fundamental right to privacy, subjects gender discrimination to heightened scrutiny review, guarantees political equality through a one-person, one-vote rule, extends First Amendment protections beyond speech that enriches political discourse, allows Congress and the courts to protect voting rights and prevent even private racial discrimination, and rejects a view of liberty restricted to those liberties explicitly listed in the Constitution or recognized by very early judicial decisions.<sup>17</sup>

They posit that until the Constitutional consensus shifts again, which it is sure to do, “our Constitution protects these things, not because no other answers to these constitutional questions are legally available, but because these are the answers the American people have chosen.”<sup>18</sup> The scholars conclude that “Bork’s constitutional choices, articulated by him in his own words at his confirmation hearing, were simply not within the constitutional consensus that the American people in 1987 agreed to be governed by.”<sup>19</sup>

Collins and Ringhand’s belief in a democratically-enforceable constitutional consensus appears to vindicate Scalia’s hope that the elected representatives in the Senate are now attempting to hold Supreme Court justices accountable through the confirmation process. Scalia, however, does not speak of this development with so much enthusiasm, perhaps because he recognizes the ironic and unsavory implications of a politicized nomination process. Whereas Collins and Ringhand appear to be claiming that judicial activism—what they call judicial “choosing”—is nothing more or less than the inevitable result of the limitation of legal reasoning, Scalia seems to lament judicial activism as a perversion of the Founders’ intent for constitutional interpretation and views the accompanying changes in Senate confirmation hearings to be a reflection of that distortion. Regardless of their differing opinions about the current condition of confirmation hearings, the aforementioned scholars and the late jurist all recognize these hearings as a potential forum for meaningful political regulation of the Court, and this paper seeks to test Scalia’s theory by utilizing Collins and Ringhand’s analysis.

## **COMPARATIVE ANALYSIS OF THE BORK AND KENNEDY HEARINGS**

As previously mentioned, Collins and Ringhand consider Senate confirmation hearings of judicial nominees as forums for enforcing the public’s beliefs about the Constitution and

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<sup>17</sup> Ibid., Location 6280.

<sup>18</sup> Ibid., Location 6290.

<sup>19</sup> Ibid., Location 5666.

insisting—by the threat of rejecting the nominee—that judges reflect those beliefs on the Court. However, there are two major issues inherent in their analysis. Firstly, Collins and Ringhand err in conflating the people with their representatives in the Senate. Founding-era political discussion suggests that one of the chief purposes of the Senate was to act as a counterbalance to the often impetuous democratic will.<sup>20</sup> Though the passage of the Seventeenth Amendment has changed the method in which senators are chosen—arguably rendering senators more accountable to the people—there is ample evidence to suggest that the U.S. Senate of today is not adequately representative of its constituent population in several respects.<sup>21</sup> Secondly, Collins and Ringhand herald Kennedy’s confirmation as a signal that the Senate uses confirmation hearings as a “formal mechanism through which the Court’s constitutional choices are ratified as a part of our constitutional consensus,” but in view of the similarities between Kennedy and Bork, whose nomination the Senate rejected, their analysis begins to unravel.<sup>22</sup> Other scholars have correctly pointed out the similarities between the judicial philosophies of Robert Bork and Anthony Kennedy at the time of their respective nominations.<sup>23</sup> Collins and Ringhand appear unwilling to admit the existence or importance of these similarities. Collins and Ringhand quote segments from Kennedy’s hearing transcript, but fail to include some of the context and qualifiers which expose the similarities between Bork and Kennedy even on issues which the scholars identify as problem areas for nominee Bork (i.e., “basic privacy rights, gender discrimination, some types of racial discrimination, certain voting rights, and issues involving the scope of the First Amendment”).<sup>24</sup>

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<sup>20</sup> See *The Federalist*, No. 62 for a more complete argument. “The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. [ . . . ] [A] body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.”

<sup>21</sup> See Malhotra, Neil, and Raso, Connor. “Racial Representation and U.S. Senate Apportionment \*.” *Social Science Quarterly* 88, no. 4 (December 2007): 1038–1048., which demonstrates that the apportionment scheme of the U.S. Senate underrepresents racial minorities who tend to share common political viewpoints and interests. See also Hayes, Thomas J. “Responsiveness in an Era of Inequality: The Case of the U.S. Senate.” *Political Research Quarterly* 66, no. 3 (September 2013): 585–599., for an account of the tendency among Senators to address the concerns of their wealthier constituents and neglect those of individuals belonging to a lower socioeconomic class.

<sup>22</sup> Collins and Ringhand, *Supreme Court Confirmation Hearings and Constitutional Change* Paul M. Collins, Jr., Lori A. Ringhand, Location 231.

<sup>23</sup> These similarities are more concisely catalogued in the attached Appendix (Table 1).

<sup>24</sup> Collins and Ringhand, *Supreme Court Confirmation Hearings and Constitutional Change* Paul M. Collins, Jr., Lori A. Ringhand, Location 5677.

On the issue of privacy, Collins and Ringhand approvingly quote Kennedy's observation that "most Americans believe that liberty includes protection of a value that we call privacy."<sup>25</sup> But Kennedy continued: "Now, as we well know, that is hardly a self-defining term."<sup>26</sup> Similarly, Collins and Ringhand report that when "asked flatly if marital privacy was protected by the Constitution," Kennedy simply said, "Yes."<sup>27</sup> Importantly, however,

[o]nly a few minutes after Kennedy said there was a marital right of privacy, he was asked whether courts should recognize 'the right to marry, to establish a home [and to] bring up children.' Kennedy replied: 'Again, I think that most Americans think that they have those rights, and I *hope* that they do. Whether or not they are fully enforceable by the courts . . . is a matter that remains open.'<sup>28</sup>

As Norman Vieira and Leonard Gross astutely note in their book *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmation*,

Judge Kennedy distinguished sharply between the existence of a right to marry, for example, and the question whether any such "right" could be enforced by a court of law. Since the legal debate over privacy has focused precisely on the issue of judicial enforceability, Kennedy's testimony disclosed relatively little about the nominee's position on the critical issues in that debate.<sup>29</sup>

Furthermore, on the issue of gender discrimination and equal protection standards, Collins and Ringhand depict Kennedy as much more representative than Bork of society's preference for heightened-scrutiny protection for women. A deeper analysis, however, reveals that the two jurists have similar views regarding the Court's tiered analysis versus the proposed "reasonableness" test for discrimination. Bork clarified that "what he objected to was the tiered system of review generally rather than the extension of the Equal Protection Clause to gender discrimination specifically."<sup>30</sup> Kennedy, when asked about whether he would be faithful to the tests employed by the Court in equal protection cases, signified that "it may be that in resolving

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<sup>25</sup> Ibid., Location 6089.

<sup>26</sup> U.S. Congress, Senate, Committee on the Judiciary, Nomination of Anthony M. Kennedy to be Associate Justice of the Supreme Court of the United States, 100th Cong., 1st sess., 1987, 88. (Hereafter, "Kennedy Confirmation Hearings")

<sup>27</sup> Kennedy Confirmation Hearings, 165. ; Collins, Paul M., and Ringhand, Lori A. *Supreme Court Confirmation Hearings and Constitutional Change Paul M. Collins, Jr., Lori A. Ringhand. [electronic Resource]* /. New York: Cambridge University Press, 2013, Location 6106.

<sup>28</sup> Vieira, Norman., and Gross, Leonard. *Supreme Court Appointments Judge Bork and the Politicization of Senate Confirmations / Norman Vieira and Leonard Gross. [electronic Resource]* : Carbondale: Southern Illinois University Press, 1998, 187.

<sup>29</sup> Ibid.

<sup>30</sup> Collins and Ringhand, *Supreme Court Confirmation Hearings and Constitutional Change Paul M. Collins, Jr., Lori A. Ringhand*, Location 5822, referencing Bork's confirmation hearing transcript at 133.

one of those cases, [he] would give attention to Justice Marshall’s standard and make a determination whether or not that is a better expression than the three-tier standard that the Court seems to use.”<sup>31</sup> Though he admitted that the two standards of review appeared to him very similar, Kennedy still expressed a potential preference for Marshall’s “reasonableness” test, but his remarks on this subject were not met with the same reaction as Bork’s similar comments.

Finally, Collins and Ringhand assert that “Kennedy further distinguished himself from Bork in his treatment of civil rights issues and voting rights.”<sup>32</sup> Vieira and Gross also considered Kennedy’s civil rights record to be revealing, but for a very different reason. This was the area of questioning which the latter scholars identified as “most seriously flawed [ . . . ] if one assumes the propriety of ideological inquiry,” as Scalia demonstrably does.<sup>33</sup> Vieira and Gross identify four cases on which Judge Kennedy—while sitting on the Ninth Circuit Court—took positions which “sharply restrict[ed] the application of federal civil rights laws” and were ultimately “reject[ed] [ . . . ] by lopsided majorities on the Supreme Court.”<sup>34</sup> These cases dealt with important issues such as tuition reimbursement related to disability, protected communications and job retention, racially discriminatory housing practices, and the duties of plaintiffs within class action suits.<sup>35</sup> When asked about the Supreme Court’s direct disagreement with him on these issues, Kennedy answered that he had no quarrel with the High Court’s decisions, but this line of questioning revealed that “[r]esponses that had produced great skepticism when delivered by Robert Bork could be offered by Kennedy without causing a ripple.”<sup>36</sup> Joseph R. Tybor at *The Chicago Tribune* echoed Vieira and Gross’s skepticism about the differences between Bork and Kennedy at the time of the latter’s confirmation hearing, noting:

analyzed by itself, the philosophy Kennedy sketched out was hazy, blurred and ambiguous, containing only uncertain clues and no assurances as to how he would vote on such issues as abortion, affirmative action and church-state relations. Coupled with several of his judicial opinions that ruled against women, minorities and homosexuals, and his membership until recently in males-only clubs,

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<sup>31</sup> Kennedy Confirmation Hearings, 118.

<sup>32</sup> Collins and Ringhand, *Supreme Court Confirmation Hearings and Constitutional Change* Paul M. Collins, Jr., Lori A. Ringhand, Location 6124.

<sup>33</sup> Vieira and Gross, *Supreme Court Appointments Judge Bork and the Politicization of Senate Confirmations*, 188.

<sup>34</sup> *Ibid*; *Ibid*, 190.

<sup>35</sup> See *Mt. View-Los Altos Union Sch. Dist. V. Sharon*, 709 F.2d 28 (9<sup>th</sup> Cir. 1983); *Kaiser Engineers v. NLRB*, 538 F.2d 1379, 1386 (9<sup>th</sup> Cir. 1976) (Kennedy, J., dissenting); *Topic v. Circle Realty*, 532 F.2d 1273 (9<sup>th</sup> Cir. 1976); and *Pavlac v. Church*, 681 F.2d 617 (9<sup>th</sup> Cir. 1982), vacated 463 U.S. 1201 (1983), respectively.

<sup>36</sup> Vieira and Gross, *Supreme Court Appointments Judge Bork and the Politicization of Senate Confirmations*, 190.

Kennedy's testimony was insufficient to allay the concerns of many representatives of those groups, though only a handful formally opposed him.<sup>37</sup>

The foregoing evidence culminates to suggest that perhaps Collins and Ringhand are incorrect in their assessment of Kennedy's confirmation as a sign of the Senate's insistence that judicial nominees reflect the public's constitutional consensus (or that senators even know what that consensus is).

### THE 104<sup>TH</sup> JUSTICE: LESSONS LEARNED

In addition to the foregoing analysis, other inferences made from the Bork and Kennedy hearings create problems for Scalia's vision for these proceedings as forums for meaningful democratic regulation of the Court. Perhaps most important among these problems is the observation that senators do not consistently apply the same degree of scrutiny for Supreme Court nominees, allowing presidents to secure the confirmation of someone whose judicial philosophy does not align with that of the people (if, in fact, there is a constitutional consensus at all). In some instances, a single senator may change his or her understanding of the Senate's role during hearings based on the nominee sitting before him. Take, for example, Senator Strom Thurmond, the ranking Republican on the Judiciary Committee at the time of Bork's nomination. During the Fortas hearings years earlier, Thurmond appeared to share Scalia's convictions about the need for democratic regulation of the Court. Thurmond expressed his opinion that

the Supreme Court has assumed such a powerful role as a policymaker in the government that the Senate must necessarily be concerned with the views of the prospective Justices or Chief Justices as they relate to broad issues confronting the American people, and the role of the court in dealing with these issues.<sup>38</sup>

However, "Thurmond argued for a narrower role for the Senate during O'Connor and Rehnquist's nominations," recommending that the Senate limit its line of questioning to those "learning and lawyerly skills" which Scalia identified as insufficient to counteract a politicized

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<sup>37</sup> Tybor, Joseph R. "In the Shadow of Bork, Kennedy Thrives Despite Sketchy Testimony." *The Chicago Tribune* (Chicago), December 12, 1987. <https://www.chicagotribune.com/news/ct-xpm-1987-12-20-8704040542-story.html>.

<sup>38</sup> Vieira and Gross, *Supreme Court Appointments Judge Bork and the Politicization of Senate Confirmations*, 56. (quoting *Nomination of Abe Fortas to Be Chief Justice of the United States and Nomination of Homer Thornberry to Be Associate Justice of the Supreme Court of the United States: Hearings Before the Senator Comm. on the Judiciary, 90<sup>th</sup> Cong., 2d Sess. 180 (1968)*).

Court.<sup>39</sup> Senator Thurmond’s inconsistency is endemic to the Senate as a whole. The Kennedy hearing “showed that the Judiciary Committee would not follow a consistent practice of vigorously questioning judicial nominees.”<sup>40</sup> The evidence culminates to suggest the Senate’s dereliction of duty as far as Scalia’s idealized confirmation hearing scheme is concerned.

More than anything, the easy confirmation of Kennedy—a jurist whose judicial philosophy mirrors Bork’s on key issues—evinces that “[t]he Senate, like the rest of the country, had grown tired of the months of debate over approval of a new justice. It [the Senate] was ready to confirm someone who might vote largely like Judge Bork, if only the new nominee was somewhat smoother around the edges and did not talk like Bork.”<sup>41</sup> Furthermore, the Bork hearing may have been tainted by the personal ambitions of individual senators. Much of the questioning therein concerned civil rights, and everyone understood that chairman Joe Biden, who was seeking the Democratic nomination for president at the time, needed to “appeal to the civil rights community” to secure it.<sup>42</sup> Whatever the reason, “the relatively high proportion of constitutional commentary” in Bork’s hearing, though “not unknown in the pre-Bork period,” does not “appear to have been repeated in a consistent way in the hearings of those who followed him.”<sup>43</sup> Senator John McCain offered an explanation for Kennedy’s “smooth sailing in the Senate” following the Bork confirmation debacle: “Nobody [in the Senate] wants to go through that again. There’s just too much blood on the floor.”<sup>44</sup> The Senate cannot be relied upon to determine whether justices share the values of the American people, whatever they may be, because they have failed to demonstrate a consistent commitment to fulfilling such a role.

A possible explanation for the erratic level of scrutiny employed by the Senate—and the specifically high level of scrutiny shown towards nominee Bork—is that the Senate is more rigorous in their questioning of nominees who have a more extensive/controversial paper trail and who are set to replace a “swing justice” on the High Court. In an exchange between Biden and Kennedy at the latter’s confirmation hearing, Biden respected Kennedy’s refusal to answer

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<sup>39</sup> *Ibid.*, 57.; Scalia, *Scalia Speaks: Reflections on Law, Faith, and Life Well Lived*, 166.

<sup>40</sup> Vieira and Gross, *Supreme Court Appointments Judge Bork and the Politicization of Senate Confirmations*, 190.

<sup>41</sup> *Ibid.*

<sup>42</sup> Vieira and Gross, *Supreme Court Appointments Judge Bork and the Politicization of Senate Confirmations*, 55.

<sup>43</sup> Guliuzza, Reagan and Barrett, “The Senate Judiciary Committee and Supreme Court Nominees: Measuring the Dynamics of Confirmation Criteria.” 782-783.

<sup>44</sup> *Ibid.*, 253.; See Monaghan, Henry Paul. “The Confirmation Process: Law or Politics? (Essays on the Supreme Court Appointment Process).” *Harvard Law Review* 101, no. 6 (April 1, 1988): 1209., citing Wash. Post, Nov. 13, 1987, at A3, col. 4.

questions about affirmative action because he did not want to “commit [himself] on the issue” should it come before him during his time on the Court.<sup>45</sup> As Vieira and Gross observe, “[i]f this meant that a nominee could be asked only about positions he had previously taken and not about positions he might later take, it suggested that nominees who had taken no position on serious constitutional questions need not have much to say to the committee.”<sup>46</sup> In this respect, “[t]he politicization of the confirmation process has [ . . . ] created an incentive for the president to select nominees whose paper record will not excite serious opposition or who have no paper record at all,” recommending that “a bland and undistinguished nominee may be more difficult to defeat than Judge Bork.”<sup>47</sup> This trend undermines Scalia’s hope for the function of confirmation hearings. If senators are less likely to confirm nominees who have been more candid about their positions on constitutional issues—the very candidness which Scalia encourages in *White*<sup>48</sup>—then reticent nominees who have not written much about their views can secure a nomination, even if their views run counter to those espoused by the people themselves.

Moreover, senators are less likely to fulfill the duty Scalia envisions for them if the nominee before them is not filling the seat of a swing voter or an ideological leader on the Court. While this is largely speculation, the controversy surrounding the Bork hearing and the recent Kavanaugh hearing may have been related to the identity of the men they were to replace (Justices Powell and Kennedy, respectively).<sup>49</sup> Whatever the reason, it is clear that the Senate does not consistently or predictably vindicate their constitutional check on the Supreme Court.

## THE SHORTCOMINGS OF CONFIRMATION HEARINGS

In addition to the overarching lesson learned from the Bork and Kennedy comparison that senators have failed to consistently act as a democratic check on the Courts, further research demonstrates the virtual uselessness of confirmation hearings to that end, specifically due to nominee reticence and because a candidate’s testimony therein provides an inadequate account of how that justice will actually fulfill their functions once on the court. Czarnecki, Ford, and

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<sup>45</sup> Kennedy Confirmation Hearings, 182.

<sup>46</sup> Vieira and Gross, *Supreme Court Appointments Judge Bork and the Politicization of Senate Confirmations*, 188.

<sup>47</sup> *Ibid.*, 251.

<sup>48</sup> *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), (Scalia, J.).

<sup>49</sup> Collins and Ringhand identify Powell as “the critical ‘swing justice’ on an ideologically divided Court,” Location 5599.

Ringhand confirm this in their analysis of the confirmation hearings of the justices of the Rehnquist Court. They note that because certain senators have identified “the inquiry into a nominee’s judicial philosophy as the most important issue of the hearings, one would therefore hope the hearings generate accurate information about the nominees that could actually inform a Senator’s vote.”<sup>50</sup> Unfortunately for them—and for Justice Scalia—their results showed that confirmation hearing reveal “very little substantive information as to future judicial behavior.”<sup>51</sup> The scholars concluded that they were “not surprised by the relatively weak correlations between statements made at the hearings and subsequent judicial behavior” and did “expect that even more nuanced research methodologies would yield similar results.”<sup>52</sup> They observed that “[c]onfirmation hearings are, after all, a strategic environment where Senators ask certain questions to please constituents and nominees answer questions to land a job.”<sup>53</sup> In light of the theatrical emphasis of these proceedings, it is likely that judicial nominees will “have a strong incentive to be less than candid in answering” the questions posed to them—especially following the Bork hearings—“to avoid embroiling themselves in controversy and jeopardizing their confirmation. In this respect, ideological inquiries may be self-defeating and could further undermine public confidence in the courts.”<sup>54</sup> Stephen L. Carter of *The Chicago Tribune*, citing the analysis of nominee candor conducted by Farganis and Wedeking, agrees that reticence among nominees is often rewarded: “There are zero votes to be gained by answering questions about judicial philosophy. According to the Farganis-Wedeking study, Ruth Bader Ginsburg represents the modern high in finding ways not to answer the committee’s questions. She was confirmed by a vote of 96-3.”<sup>55</sup>

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<sup>50</sup> Czarnezki, Ford, and Ringhand are specifically referencing Senator Leahy here. ; Jason J. Czarnezki, William K. Ford, Lori A. Ringhand, “An Empirical Analysis of the Confirmation Hearings of the Justices of the Rehnquist Natural Court,” *University of Minnesota Law Review*, Vol. 24, No. 127 (2007), 158.

<sup>51</sup> *Ibid.* Czarnezki, Ford, and Ringhand gave the Justices’ a ranking in different categories based on the testimony they gave at their confirmation hearings and then a separate score in those areas based on cases they decided once on the Supreme Court. They found very little correlation between the hearing score and actual score in the area of commitment to stare decisis, found no correlation on commitment to originalism, and the correlation for protecting the rights of criminal defendants—the area with the highest correlation—was still relatively weak.

<sup>52</sup> Czarnezki, et al., “An Empirical Analysis of the Confirmation Hearings of the Justices of the Rehnquist Natural Court,” 159.

<sup>53</sup> *Ibid.*

<sup>54</sup> Vieira and Gross, *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations*, 251.

<sup>55</sup> Carter, Stephen L. “Commentary: What We Think about Supreme Court Hearings Is Wrong.” *The Chicago Tribune*, July 20, 2018. <https://www.chicagotribune.com/news/opinion/commentary/ct-perspec-supreme-court-hearings-wrong-brett-kavanaugh-0723-story.html>.



The scholarship of Maya Sen and William Spaniel goes a step further and suggests that the low-information environment of confirmation hearings is likely to continue because ideologically similar presidents and senators can benefit from judicial reticence and obfuscation of a nominee's views, especially if they wish to confirm an ideologically extreme justice without political backlash. They argue that the "primary justification for why nontransparent institutions remain in place [is] they allow Presidents and like-minded Senators the possibility of appointing ideological allies." They continue: "In light of these considerations, *few reasons exist for Democrats and Republicans to come together to engage in meaningful institutional reform.*"<sup>56</sup> Sen and Spaniel consider this discovery to be problematic because they, like Scalia, would like to see confirmation hearings as forums where senators can make informed decisions about justices who will go on to shape the legal landscape for years to come. To this end, they remark that "uncertainty is perhaps most salient for judicial nominees, owing to the high degree of protection they have in refusing to answer questions. As the judiciary is a coequal branch of government and as judges have lifetime tenure, the uncertainty for judicial nominations is perhaps the most important and also the most problematic."<sup>57</sup> The surmounting evidence indicates that those, like Scalia, who would wish to circumscribe the Court's authority should not look to Senate confirmation hearings to do so.

### **LEGISLATIVE OVERRIDE: THE FULFILLMENT OF SCALIA'S VISION**

This analysis would be incomplete if it only exposed the pitfalls of Scalia's hope for confirmation hearings as a democratic check on the Court and failed to explore an alternative for fulfilling his vision. Scalia assumes that the Court is politicized, wielding substantive due process and living constitutionalism to justify decisions based in personal opinion and not the Constitution's text or the democratic will. Assuming this point, it is important that the Court be regulated in some manner; the most apparent ways to do this are by passing constitutional amendments, promoting executive nonenforcement of unpopular Court decisions, or legislatively overriding such decisions. Of these, legislative override seems to be the most defensible because an amendment to the Constitution is unlikely and executive nonenforcement can erode reverence

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<sup>56</sup> Sen, Maya, and Spaniel, William. "How Uncertainty About Judicial Nominees Can Distort the Confirmation Process." *Journal of Theoretical Politics* 29, no. 1 (January 2017): 36.

<sup>57</sup> Sen and Spaniel, "How Uncertainty About Judicial Nominees Can Distort the Confirmation Process" 41.

for the rule of law. Furthermore, the use of legislative override to fulfill Scalia's call for a democratic check on the Court addresses some of the pitfalls endemic to using confirmation hearings to that end. For example, one of the reasons confirmation hearings do not act as forums for enforcing the "constitutional consensus" of the public is that senators, by design, are unlikely to wholly agree with the often fickle and ill-informed democratic "consensus." Legislative override would involve House members as well as the Senate, allowing the men and women of the more democratic chamber to express their notions of what the constitutional consensus, in fact, is, and when the Supreme Court strays too far from it.<sup>58</sup>

Two of the other issues with confirmation hearings are the lack of nexus between a nominee's confirmation testimony and their actions while on the court and the Senate's arbitrary and inconsistent understanding of their role throughout these proceedings. A shift toward legislative override obviously addresses the first of these issues insofar as decisions issuing from the Court demonstrate judicial philosophy and its implications for the American people much better than empty words spoken before the body which has the power to deny nominees a seat on the Court. As to the second issue, Congress has a much more unified and predictable understanding of their role when it comes to legislatively overriding Court decisions than they do in questioning potential Supreme Court justices during their confirmation hearings. In their article on this subject, Uribe, Spriggs II, and Hansford conclude that "Congress overrides Court decisions with which it ideologically disagrees, is not less likely to override when it anticipates that the Court will reject override legislation, and acts on preferences regardless of the legal basis of a decision."<sup>59</sup> In other words, the likelihood of the legislature pursuing override legislation is constant, regardless of whether the case involves a statutory question or a constitutional question and regardless of whether Congress believes the Court is likely to overturn the override in a subsequent case. This appears a more stable option to regulating the Court than confirmation hearings.

The counterargument to promoting the use of legislative override whenever the Court announces an unpopular decision is that frequent override can weaken the legitimacy and judicial

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<sup>58</sup> See *The Federalist*, No. 52 for a more complete argument.

<sup>59</sup> Uribe, Alicia, Spriggs, James F., and Hansford, Thomas G. "The Influence of Congressional Preferences on Legislative Overrides of Supreme Court Decisions." *Law & Society Review* 48, no. 4 (December 1, 2014): 921. Findings are based on data from congressional overrides of Court decisions between 1946 and 1990. Findings are based on data from congressional overrides of Court decisions between 1946 and 1990.

independence of the Court. Indeed, the Framers intended to insulate the judiciary from the throes of politics and ensure that administering justice, not appeasing the public or seeking political favors, would be their chief objective.<sup>60</sup> However, following Scalia's logic, since the Court has gone beyond their judicial role and has begun making political determinations not rooted in the text of the Constitution, judicial independence *should* be eroded, and it *is* eroded by the politicization of confirmation hearings which Scalia references. As Vieira and Gross note, the dialogue between members of the Judiciary Committee and judicial nominees is supposed to uncover the judicial philosophy of the nominee so that senators can predict how he or she will preside over certain cases if confirmed. Even if judges are merely "ask[ed] for present opinions rather than for commitments, this is likely to be a distinction without a difference [as far as judicial independence is concerned], especially if the issue in question reaches the Supreme Court soon after the nominee is confirmed."<sup>61</sup> If the political branches wait until after the Court has rendered its decisions to intervene, judicial independence will still be eroded, but judges will not feel pressured to rule a certain way based on their confirmation hearing testimony. Though this distinction may appear insignificant, it can be compared to the difference between a prior-restraint on speech and post-publication censure of speech, which has always been deemed significant in U.S. jurisprudence. Scalia is begrudgingly advocating the dismantlement of judicial independence based on what he views as the unconstitutional evolution of the Court; the only question that remains is which method of doing so is most effective.

## CONCLUSION

Scalia's solution to the violation of the Constitution by the judiciary is to depart from its principles even further by encouraging the legislature to threaten judicial independence. This point of view is surprising coming from someone who has such a reverence for the Constitution as it was originally theorized and written. Regardless, Scalia's formulation is incorrect insofar as he proposes a legislative check on the Court at the wrong stage. Confirmation hearings are an insufficient democratic counterbalance to a politicized Court because nominees are not as forthcoming as Scalia idealizes and senators are unwilling or inconsistently willing to expend

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<sup>60</sup> See *The Federalist*, No. 78 for a more complete argument.

<sup>61</sup> Vieira and Gross, *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations*, 249.

political capital to oppose nominees unless those nominees are filling a swing justice's seat on the bench or have a controversial paper record at the time of their hearings. Senate confirmation hearings for judicial nominees, as they are currently conducted, often succeed in scrutinizing the private lives of potential judges, but they ultimately fail to reveal their respective judicial philosophies or qualifications.<sup>62</sup> With this in mind, perhaps a shift towards viewing legislative override of Supreme Court decisions as fulfilling that legislative check on the judiciary would result in the gradual depoliticization of the confirmation hearings while simultaneously holding judges accountable for the judicial philosophies they espouse.

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<sup>62</sup> This is evidenced by the recent confirmation hearing of Justice Brett Kavanaugh, in which much of the questions and commentary revolved around accusations of sexual misconduct instead of Kavanaugh's judicial qualifications.

**APPENDIX**

Table 1. A comparison of the respective judicial philosophies of nominees Bork and Kennedy.<sup>63</sup>

<b>Position</b>	<b>Bork</b>	<b>Kennedy</b>
There is a Constitutional right to privacy	No	Yes
The right to privacy is judicially enforceable	No	No
The Court should employ heightened scrutiny review for cases of gender discrimination	No	No
The principle of one person, one vote is constitutionally correct	No	Yes
First Amendment protection extends beyond political speech	Yes <sup>64</sup>	Yes
Private racial discrimination is always constitutionally impermissible	No <sup>65</sup>	No <sup>66</sup>
Affirmative action is constitutionally permissible	Yes <sup>67</sup>	X <sup>68</sup>

<sup>63</sup> The items in this table are not exhaustive and a “yes” or “no” categorization of the nominees’ respective positions on these issues is, of course, imperfect considering the inherent nuances of judicial philosophy. The purpose of the table is primarily to elucidate the apparent and outward similarities between the two nominees at the time of their respective confirmation hearings, especially as to their views concerning topics which commentators have identified as decisive in the Senate’s confirmation of Justice Kennedy following their rejection of nominee Bork.

<sup>64</sup> See U.S. Congress, Senate, Committee on the Judiciary, Nomination of Robert H. Bork to be Associate Justice of the Supreme Court of the United States, 100th Cong., 1st sess., 1987, 131 (hereafter “Bork confirmation hearings”), where then-nominee Bork explains away the common misunderstanding about his First Amendment philosophy.

<sup>65</sup> See Bork confirmation hearings, 157 for a detailed explanation of his position.

<sup>66</sup> See Bork’s opinion in *Topic v. Circle Realty*, 532 F.2d 1273 (9<sup>th</sup> Cir. 1976).

<sup>67</sup> See Bork confirmation hearings, 132 for the nominee’s qualified answer regarding constitutional protections for affirmative action.

<sup>68</sup> See Kennedy confirmation hearings, 182. Nominee Kennedy declined to comment on the constitutionality of affirmative action, refusing to “commit [himself] on the issue.”



## **Part 5**

## Domestic Policy

## **BIOETHICS IN PUBLIC POLICY: EXAMINING THE FACTORS CONTRIBUTING TO THE SUCCESS OF U.S. PRESIDENTIAL BIOETHICS COMMISSIONS**

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*Over the past 45 years, the United States federal government has convened seven national bioethics commissions to address emerging ethical dilemmas, with Presidents Clinton, Bush, and Obama each establishing a standing commission of their own. Nonetheless, little research exists to compare these commissions, their relative impact, and explanations for their success. I examine the impact of the past three presidential bioethics commissions using (1) citations to their work among legal scholars, ethicists, and public newspapers to measure their indirect impact and (2) citations to their work in case law and federal agency rule-making processes to measure their direct impact. Based on this research, I argue that each of the past three commissions has played a declining role in influencing public policy and the broader American view of bioethics. A confluence of factors has caused this decline, including lowered institutional support, lessening public interest in bioethical issues, and apathy among scientists and professional organizations as a result of perceived polarization of bioethics.*

### **I. INTRODUCTION: HISTORICAL BACKGROUND AND PURPOSE**

In 1972, the American public learned that for the previous 40 years, the federal government had knowingly withheld treatment from several hundred African-American men in Tuskegee, Alabama suffering from syphilis while pretending to offer them free medical care. The public outcry sparked by revelations of the Tuskegee Experiment prompted Congress to form the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The National Commission, which convened from 1974 to 1978, marked the first creation of a federal bioethics commission intended to guide public policy. Over its four-year tenure, the commission published ten major reports which directly led to changes in federal standards for research, including the creation of institutional review boards to oversee research involving human test subjects and the implementation of strict requirements of informed consent. The most important report of the commission, the Belmont Report, continues to have a lasting impact: since 1995, its authority has been cited as a guiding influence for 12 rule changes and an

additional 12 proposed rule changes made by executive agencies ranging from the EPA to the Department of Homeland Security.<sup>1</sup>

In 1978, Congress mandated that a similar commission be convened by the president. This commission—the President's Commission for the Study of Ethical Problems in Medicine and in Biomedical and Behavioral Research—operated under Presidents Carter and Reagan until its dissolution in 1983. This committee was formed to continue the work of the National Commission, and over the course of its tenure it examined issues including the availability of healthcare based on income and residence, genetic engineering and testing, and the ethics of patient consent practices. After the President's Commission dissolved in 1983, the use of bioethics commissions declined for a time until President Clinton established a standing commission—the National Bioethics Advisory Commission—in 1995 to address a broader range of bioethical concerns. This commission established a precedent later followed by Presidents Bush and Obama, in which the president convenes a bioethics commission for the duration of their presidency to address ethical issues raised by scientific research and discovery. A full timeline of the history of U.S. Bioethics Commissions is given in Table 1.<sup>2</sup>

Each of these commissions was convened with the goal of providing the best possible ethical advice to policymakers and practitioners in light of the available scientific knowledge. Yet it is often difficult to determine how effective these commissions have been in achieving this goal. Few attempts have been made to compare the impact of these different commissions. Even the commissioners themselves do not appear to have been in agreement on the metrics by which success might be measured. This presents a potential problem, since it is likely that bioethical issues will continue to be important as new biotechnologies become increasingly sophisticated and readily available. It would stand to reason that future bioethics commissions, and the presidents who may convene them, would be well served by having an understanding of the best practices that can contribute to commission impact. Unfortunately, due to a failure to systematically compare the impact of these different commissions, this is the sort of knowledge that has been underdeveloped to date.

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<sup>1</sup> These figures are taken from a search of the Federal Register's online database for references to the "Belmont Report," accessed February 10, 2018. Search results are accessible at <https://www.federalregister.gov/documents/search?conditions%5Bterm%5D=%22Belmont+Report%22>.

<sup>2</sup> All information in Table 1 comes from Bioethics Research Library, "U.S. Bioethics Commissions," *Kennedy Institute of Ethics*, last updated July 11, 2016, <https://bioethics.georgetown.edu/library-materials/digital-collections/us-bioethics-commissions/>.



Commission Name	Tenure	Convening Body	Associated President	Reports Issued
National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (National Commission)	1974-1978	Congress	Ford, Carter	10
President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (President's Commission)	1978-1983	President (under congressional mandate)	Carter, Reagan	12
Biomedical Ethical Advisory Committee (BEAC)	1988-1990	Congress	Reagan	0
Advisory Committee on Human Radiation Experiments (ACHRE)	1994-1995	President	Clinton	2
National Bioethics Advisory Commission (NBAC)	1996-2001	President	Clinton	6
President's Council on Bioethics (PCB)	2001-2009	President	Bush	8
Presidential Commission for the Study of Bioethical Issues (PCSB)	2009-2017	President	Obama	10

**Table 1. A List of U.S. Bioethics Commissions.** This table lists all major U.S. Bioethics Commissions with their shorthand names. The BEAC failed to produce any reports before its parent congressional committee became deadlocked on abortion politics, while President Clinton convened the ACHRE to address only one specific issue and did not give it a broad mandate.

This project seeks to begin the process of filling in this gap by examining the past three presidential bioethics commissions. Although a number of studies have been published on the success of individual commissions, very few researchers have compared multiple commissions to examine comparative factors that can contribute to a commission's impact. The last significant attempt to systematically compare two or more commissions came in 1995, when Bradford Gray compared the impact of the National Commission (1974-1978) with that of the Presidential Commission (1978-1983).<sup>3</sup> Using much of Gray's methodology, I seek to compare the relative impact of the three most recent commissions, making occasional comparisons to the Presidential Commission when appropriate.<sup>4</sup> After discussing how impact and success can be measured and

<sup>3</sup> Bradford H. Gray, "Bioethics Commissions: What Can We Learn from Past Successes and Failures?" in *Society's Choices: Social and Ethical Decision Making in Biomedicine*, eds. Ruth Ellen Bulger, Elizabeth Meyer Bobby, and Harvey V. Fineberg, 261-306 (Washington: National Academies Press, 1995).

<sup>4</sup> These four commissions have been the most similar in terms of duration, structure, and composition; attempting to compare these commissions to commissions convened by Congress or convened only to address one specific question would introduce multiple extraneous variables. The last three commissions are also significant because established precedent since the 1990s appears to indicate that Congress is increasingly willing to defer to the president the task of creating and overseeing bioethics commissions. Though President Trump has not as yet

comparing these three commissions, I examine the question of why some commissions have made a greater impact than others. This discussion will be broken into two parts. First, I examine factors related to the internal structure, composition, and support of the commissions. Second, I discuss external factors including public interest in bioethics and presidential prioritization of bioethical issues.

I restrict my analysis primarily to the commissions of Presidents Clinton, Bush, and Obama for several reasons. The primary rationale is that these commissions have been drastically understudied; Gray's analysis, although it is one of very few resources on this topic, provides some level of insight into the other two major presidential commissions. Moreover, the commissions of Presidents Clinton, Bush, and Obama were the most similar in terms of the conditions of their creation, their structure, and the expectations set for them. Prior to President Clinton's creation of the NBAC, there was no precedent for the existence of a standing bioethics commission within the executive branch; by the time of President Obama, however, such a precedent did exist and the commissions of Presidents Bush and Obama were both clearly created to in large ways continue the work of their predecessor organization.<sup>5</sup> Examining these three commissions therefore is a useful way to focus attention on three relatively similar institutions, thereby reducing the number of extraneous factors that could affect their level of impact.

## II. ASSESSING AND EVALUATING COMMISSION SUCCESS

Any bioethics commission is convened in order to provide advice and guidance to policymakers and practitioners. Though a critical component of a commission's success is the

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sustained the norm set by his three immediate predecessors, future bioethics commissions will most likely continue to be convened by the president with some general structure and mandate resembling those of the NBAC, PCB, and PCSBI.

<sup>5</sup> Some of the differences between the executive orders establishing these commissions will be discussed later, but they all share much of the same language. The mission of the PCB begins, "the Council shall advise the President on bioethical principles that may emerge as a consequence of advances in biomedical science and technology," while the mission of the PCSBI begins, "the Commission shall advise the President on bioethical issues that may emerge as a consequence of advances in biomedicine and related areas of science and technology." See President George Bush, "Executive Order 13237," November 28, 2001, <https://bioethicsarchive.georgetown.edu/pcbe/about/executive.html>; as well as President Barack Obama, "Executive Order 13521," November 24, 2009, <https://bioethicsarchive.georgetown.edu/pcsbi/sites/default/files/2009-11-24%20Establishing%20the%20Presidential%20Commission%20for%20the%20Study%20of%20Bioethical%20Issues-2.pdf>.

quality of the actual reports it produces, these commissions exist to influence policy. The clearest and most direct type of impact a commission can have consists of direct policy changes made by the federal government as a result of a commission's conclusions. A second form of impact can arise if a commission makes a substantial indirect impact by influencing public opinion or bringing an issue to the attention of a broader array of legal scholars or ethicists. These two types of impact will be the focus of my assessment, for the simple reason that there are reasonable methods to track the rough degree of influence a commission exerts on these areas. Other forms of impact—such as policy changes on the state level or in individual non-governmental entities like hospitals—are incredibly significant but impossible to comprehensively examine in a relatively short study.

In assessing the National Commission and the President's Commission, researcher Bradford Gray used citations as a method to track the impact of commission reports in various sectors of society. Gray used database searches to track the frequency with which the individual reports of each commission were referenced in court decisions, rule-making processes for federal agencies, law journals, bioethics journals, medical journals, and media publications.<sup>6</sup> This method certainly has some weaknesses; the authority of a bioethics commission may, for instance, be cited in an agency rule for primarily political (and not substantive) reasons. Additionally, using this method may bias the analysis in favor of older commissions, whose publications have had more time to accumulate citations. Nonetheless, tracking the number of citations to a commission's work is probably the best method available to measure the indirect impact of a commission upon bioethical issues in the media at large or within specific professions. The bias towards past commissions can be alleviated by examining only citations to a commission's work made within a specified amount of time after publication; as long as all publications have been available for that duration of time, there should be no bias in favor of older reports. Ideally, comparisons could be made not only between the number of times a commission's work was cited in policy changes, but also between the degree of influence which a report had on a policy change and the significance of the changes themselves. Barring this knowledge, however, a simple comparison between the raw number of citations can serve as an effective proxy for overall impact.

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<sup>6</sup> Gray also surveyed former members to evaluate their own reported experiences of working on their respective commissions; this type of analysis, however, would extend beyond the scope of this research project.

To assess the success of each commission, I adopted a methodology more or less in line with that used by Dr. Gray. First, I tracked the number of references to the commissions themselves in law journals, bioethics journals, national media publications, case law documents, and the Federal Register.<sup>7</sup> For each search, I examined only citations made either during the tenure of the commission or within two years of its dissolution. The results of this first search are provided in Table 2.

Commission	Law Article Citations	Bioethics Papers Citations	Newspaper Citations	Case Law Citations	Federal Register Citations
NBAC (1995-2001)	434	67	126	3	81
PCB (2001-2009)	557	70	95	4	50
PCSBI (2009-2017)	138	12	3	3	1

**Table 2. Citations to the Past Three Bioethics Commissions.** The data in this table refer to citations to the commission itself, not to any particular action or report taken by the commissions. Date ranges were restricted to dates during which the commission was active, or within two years of its dissolution.

Although this research method is imprecise, a clear trend emerges. In every category except for citations within case law, President Obama's PCSBI has received far less attention as an organization than either of the commissions that preceded it. Moreover, while two of the citations to the NBAC from the Federal Register were made in final rule changes and another three came from proposed rule changes, neither the PCB nor the PCSBI has yet to be cited in any proposed or final rule changes.<sup>8</sup> When one considers that the NBAC was active for only six

<sup>7</sup> Using the HeinOnline Law Journal Library database, search performed January 7, 2019, accessible at [https://heinonline.org/HOL/Index?collection=journals&set\\_as\\_cursor=clear](https://heinonline.org/HOL/Index?collection=journals&set_as_cursor=clear); Using the EthxWeb database at Georgetown University, search performed January 7, 2019, accessible at <https://bioethics.georgetown.edu/library-materials/bioethics-research-library-databases/ethxweb/>; Using the ProQuest Historical Newspapers database, search performed January 7, 2019, accessible at <https://search.proquest.com/advanced?accountid=11091&selectids=1006744,1006442,1005670,1006151,1006091,1007155,1007154,1006359>; Using the case law search function on Google Scholar, search performed January 20, 2019, accessible at <https://scholar.google.com/>; Using the Federal Register online database, search performed January 20, 2019, accessible at <https://www.federalregister.gov/>. It is important to note that the online Federal Register service only includes federal documents dating back to 1994; however, since the first of the three commissions I am primarily interested in was convened in 1995, this only poses a problem when comparing the impact of the past three commissions to earlier ones.

<sup>8</sup> It should be noted, however, that while newspapers have very quickly stopped citing a commission after it dissolves, there does not appear to be any clear die-off trend in citations within agency rule changes. As noted on page 2, the Belmont Report, published in 1978, has been cited in fully 12 rule changes and 12 proposed rule changes since 1995. Of the five citations to the NBAC made in proposed or final rule changes, only one was made during the tenure of the commission itself. Nonetheless, the complete lack of any citations to either of its successor

years, while both of its successors were active for a full eight years, it appears that the general trend is that each commission received less overall attention, whether in government proceedings or public commentary, than its predecessor.

Nonetheless, this general trend may not translate to the actual work performed by the commissions. To take the analysis further, I examined each individual report authored by the commissions and performed the same set of database searches for each title, this time restricting the date range to only those citations made within five years of the report's publication. The average number of citations for the reports of each commission are provided in Table 3, while the full list of results (including the results of similar searches for the reports of the President's Commission of 1978-1983 for comparison) are provided in Appendix A.

Commission	Law Article Citations	Bioethics Papers Citations	Newspaper Citations	Case Law Citations	Federal Register Citations
NBAC (1995-2001)	61.5	6.7	3.5	0.5	3.7
PCB (2001-2009)	34.4	3.25	0.75	0.25	13.3
PCSBI (2009-2017)	11	0	0	0	0.5

**Table 3. Citations to Reports Authored by the Past Three Bioethics Commissions.** The data in this table represent the average number of citations made to each of the reports authored by the past three bioethics commissions. Date ranges were restricted to the five years immediately following publication of each report.

The general trends displayed here, with respect to the impact of each commission's actual output, mirror the overall trends with regard to the name recognition of the commissions themselves. Almost across the board (with the exception of citations in the Federal Register), the publications of each commission appears to have made a smaller impact than those of the commission before.

This conclusion is further supported by a few other considerations. While the NBAC and previous commissions were monitored by various research institutions quite closely, for instance, the PCB and the PCSBI were not deemed significant enough to merit similar attention. Upon creation of the NBAC, an arrangement was brokered between the NBAC and the Science and Technology Policy Institute, itself a subsidiary of the RAND Corporation, in which the RAND Corporation would devote resources to carefully monitor the work of the NBAC and its

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commissions does appear to be consistent with the overall trend in citations among the last three commissions, in which each successive commission has received less attention overall than its predecessor.

reception. The result of this agreement, a 200-page monograph, extensively details the responses to each of the NBAC's reports from governmental agencies, the public, professional societies, and the international community.<sup>9</sup> No similar analysis was performed for the PCB and no similar analysis appears to be underway for the PCSBI.

If the metric for the success of a bioethics commission is the impact that it makes, then it seems that each of the past three presidential bioethics commissions has been progressively less successful than the last. Whether one examines the direct effects of the commissions' work on public policy, the indirect effects of their work on shaping public or professional discourse, or even the amount of attention paid to their proceedings by prominent research institutions, the same trend appears to emerge. (It is important to note that, as shown in the data provided in Appendix A, the reception of the NBAC's reports was roughly comparable with the reception of the reports of the President's Commission convened a decade and a half earlier.) Although the research method adopted here is imprecise, the recurrence of the same trend across nearly all types of database searches can reinforce the core conclusion that since at least the 1990s, the impact of the presidential bioethics commissions has been on the decline.

## II. POSSIBLE EXPLANATIONS

Many factors can decrease the impact of a commission's work. These factors can, however, be broadly divided into two categories: factors internal to the structure of the commission itself, including its composition, funding, and time commitment, and larger systemic factors external to the commission, including the level of public interest in bioethical issues or the importance of bioethics to political campaigning. In this section I will examine significant internal factors as well as some of the broad factors affecting the role of bioethics over the past two decades. Ultimately, the overall takeaway is that a confluence of interrelated factors appears to be driving the trend of declining commission impact over the past two decades.

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<sup>9</sup> See Elisa Eiseman, *The National Bioethics Advisory Commission: Contributing to Public Policy*, (Santa Monica: RAND Science and Technology Policy Institute, 2003).

## II.A. Internal Factors

In many respects, each of the past three presidential commissions have been remarkably similar. Each has consisted of between 13 and 18 experts, including a mix of scientists, philosophers, ethicists, and medical practitioners. Each was housed under the Department of Health and Human Services and received similar levels of support staff. Nonetheless, four differences are worth highlighting, all of which could help explain the receding influence of the commissions since the 1990s: the degree of funding, the frequency of meetings, the prominence of commission members, and the scope of the subjects discussed by the commissions.

The language creating these three commission in Executive Orders 12975, 13237, and 13521, respectively, is similar in many places. They nonetheless differ in how they outline the funding procedures for members of the commissions. The PBAC was created with the understanding that "members . . . shall be compensated in accordance with Federal law," while the PCB instead stated, "Members of the Council *may* be compensated to the extent permitted by Federal law for their work on the Council [my emphasis]," and the PCSBI stated, "Members of the Commission shall serve without compensation."<sup>10</sup> Though travel expenses and the like were covered by the Department of Health and Human Services for members of each commission, members of the PCB and the PCSBI faced far fewer financial incentives to perform their work. These differences in funding may serve to explain another difference among the commissions, for while the NBAC met a total of 48 times over the course of its six-year tenure, the PCB met only 36 times over the course of its eight-year tenure, and the PCSBI met even less, finishing its eight-year term with only 26 meetings.<sup>11</sup>

Both the funding arrangements and the meeting frequency trends appear to correlate well with the observed overall trend of bioethics commissions' declining influence. Less clear-cut are the effects of the scope of topics addressed by the commissions and the prestige of their members. In terms of the commissions' original charters, the NBAC was created with a specific

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<sup>10</sup> President Bill Clinton, "Executive Order 12975," October 3, 1995, <https://bioethicsarchive.georgetown.edu/nbac/about/eo12975.htm>; Bush, "Executive Order 13237."; Obama, "Executive Order 13521."

<sup>11</sup> "Meetings," *National Bioethics Advisory Commission*, accessed February 9th, <https://bioethicsarchive.georgetown.edu/nbac/meetings.html>; "Meetings," *The President's Council on Bioethics*, accessed February 9th, <https://bioethicsarchive.georgetown.edu/pcbe/meetings/index.html>; "Meeting Twenty-Six: August 31, 2016, Philadelphia, PA," *Presidential Commission for the Study of Bioethical Issues*, <https://bioethicsarchive.georgetown.edu/pcsbi/meetings.html>.

mandate—to examine standards for research involving human subjects and the use of gene information (especially in patenting)—but with the possibility of expanding its own mandate, while the other two commissions were created with a highly vague mandate from the beginning that was meant to allow them considerable freedom in choosing the topics they wanted to address.<sup>12</sup> The commissions also approached these initial mandates quite differently: the NBAC choose largely to remain within its stated charter to examine the ethics of research involving human subjects, departing only once on the specific request of President Clinton to examine the ethics of cloning, a request that was prompted by the widely reported cloning of Dolly the sheep. By contrast, the PCB addressed itself to a wide ranging of issues, including cloning, biotherapy, care for the aging, reproductive technologies, and the determination of death in medical settings. The PCSBI took advantage of its wide mandate to address a number of disparate issues, and though—like the PCB—some of its reports addressed themselves to broad emerging issues, such as the protection of human subjects, others were remarkably narrow in scope. One report, for example, focused exclusively on STD research in Guatemala between the years 1946 and 1948.<sup>13</sup>

One senses that the commissions had markedly different conceptions of their own role. The tone of their reports is often strikingly different. While many of the PCSBI's reports take a markedly academic tone, carefully and rigorously examining the philosophical nature of a problem, the NBAC's reports move more quickly to address specific policy implications. The PCB's reports, by contrast, are more willing to address large-scale issues in comparatively broader strokes that do not necessarily have immediate policy implications. The PCB appears to have thought of itself as a public body striving to shape public opinion, not simply working to solve academic or legislative problems. This characterization is consistent with the make-up of the different commissions, for at one time or another the PCB's members included a number of individuals who were well-known spokespeople for a host of ideological positions within the conservative movement: Charles Krauthammer, Michal Sandel, Francis Fukuyama, and Robert

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<sup>12</sup> See "Executive Order 12975," "Executive Order 13237," and "Executive Order 13521."

<sup>13</sup> Presidential Commission for the Study of Bioethical Issues, "Ethically Impossible': STD Research in Guatemala from 1946 to 1948, September 2011, [https://bioethicsarchive.georgetown.edu/pcsbi/sites/default/files/Ethically%20Impossible%20\(with%20linked%20historical%20documents\)%202.7.13.pdf](https://bioethicsarchive.georgetown.edu/pcsbi/sites/default/files/Ethically%20Impossible%20(with%20linked%20historical%20documents)%202.7.13.pdf). The report sought to draw lessons from the purposeful infection of Guatemalan citizens with STDs and made frequent comparisons to the Tuskegee Experiment, but though its lessons are immensely valuable, the sharp historical focus likely limited the impact the report could make in mainstream reporting.



P. George all served at some time or another on the commission. Neither the NBAC nor the PCSBI enjoyed similar "star power" from among prominent liberal or progressive intellectuals.

Taken together, these factors appear to generate some plausible explanations for the waning influence of bioethics commissions. As the security of commissions' funding has decreased, so has the frequency of their meetings, though each of these commissions has also produced a larger number of reports than their immediate predecessor. And while there is no clear trend in the scope of projects tackled by the commissions or the prestige of their members, it appears plausible to suggest that the PCB enjoyed the attention it did—at least relative to the near-total anonymity of the PCSBI—due in part to its relatively influential members and its willingness to tackle large issues. Future presidents looking to craft effective bioethics commissions would likely be well served by establishing secure funding and seeking to include at least a few reasonably well-known intellectuals on their commission rosters.

Even so, these internal factors do not seem able to fully explain the reduced success of more recent bioethics commissions. A fuller picture must include trends occurring in the broader United States which affect the place of bioethics in society.

### *II.B. External Factors*

When discussing the influence of bioethics commissions, it would be helpful to know how seriously bioethics is taken in broader society and how much media attention is given to bioethical issues. Unfortunately, little information exists as to the importance of bioethics in broader American society. Although public polling research firms such as Pew regularly survey Americans about their views on specific bioethical issues, they do not reliably ask Americans how strongly they feel about bioethics as a whole or the importance they attach to bioethical issues in making decisions about voting or party affiliation. Nonetheless, a rough approximation of the significance that bioethics plays in national discourse can be gained by using another database search.

Using the ProQuest Historical Newspapers database, I searched for several key bioethical terms over different time ranges to see if any general trends emerged. Out of nine terms I examined, although two increased and two decreased more or less continuously between 1980 and the present, five terms peaked in usage during the period 2000-2009, including some traditionally associated as core bioethical concerns (e.g. "cloning," "stem cell") and the term

"bioethics." The results of these searches are shown in Appendix B. While merely suggestive, there may be something of significance to these results if we look at the way in which recent political campaigns have approached bioethics as an issue. During the 2016 presidential election, bioethics was virtually absent from the campaign.<sup>14</sup> President Trump has yet to convene a bioethics commission of his own, yet has faced virtually no political repercussions for this omission. Virtually no news organizations or media outlets—excluding those explicitly focused on bioethics reporting and commentary—urged the creation of a new bioethics commission, apart from the (now-defunct) *Weekly Standard*.<sup>15</sup> By comparison, both Barack Obama and John McCain had stated positions on a number of major bioethics issues during the 2008 campaign, far more than either candidate in the 2016 election had.<sup>16</sup> Many commentators broadly identify the early 2000s as the period of peak public interest in bioethics.<sup>17</sup>

What is driving the declining interest in bioethics? There are several explanations, but one major factor seems to be the politicization of the issue, beginning early in the Bush presidency. Where bioethics was once regarded as a bipartisan issue largely removed from divisive political topics, some scholars have noted that many advisors to George W. Bush came to see the topic as one which could be used to shore up Evangelical support and create a new national issue which would likely enjoy broad support.<sup>18</sup> In 2005, for instance, advisor Leon R. Kass, the president of the PCB, circulated a memo calling for "a bold and plausible 'offensive' bioethics agenda."<sup>19</sup> By 2005, over half a dozen well-funded conservative organizations, many with religious ties, had sprung up to promote conservative positions on bioethics. Though a few progressive bioethics organizations existed at the time, none enjoyed funding or support anywhere near comparable that afforded to their conservative counterparts.<sup>20</sup>

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<sup>14</sup> See "Bioethics & the 2016 Election," *Bioethics Research Library*, accessible at <https://bioethics.georgetown.edu/2016/02/bioethics-the-2016-election/>.

<sup>15</sup> For the *Weekly Standard* op-ed, see Wesley J. Smith, "Bioethics in the Age of Trump," *The Weekly Standard*, December 16, 2016, <https://www.weeklystandard.com/wesley-j-smith/bioethics-in-the-age-of-trump>.

<sup>16</sup> See "Obama and McCain on Bioethics," *The Hastings Center*, accessible at <https://www.thehastingscenter.org/obama-and-mccain-on-bioethics/>.

<sup>17</sup> See, for instance, Jonathan D. Moreno, "How Bioethics Has Pushed America Left," *Huffington Post*, July 29, 2015. Accessible at [https://www.huffingtonpost.com/jonathan-d-moreno/how-bioethics-has-pushed\\_b\\_7897472.html](https://www.huffingtonpost.com/jonathan-d-moreno/how-bioethics-has-pushed_b_7897472.html). This claim is consistent with the results of database searches for bioethics-related terms.

<sup>18</sup> See Kathryn Hinsch, "Bioethics and Public Policy: Conservative Dominance in the Current Landscape," *Women's Bioethics Project*, November 2005, pp. 5-6, <http://www.generations-ahead.org/files-for-download/articles/bioethicsandpublicpolicy.pdf>.

<sup>19</sup> Rick Weiss, "Conservatives Draft a 'Bioethics Agenda' for President," *Washington Post*, March 8, 2005, <http://www.washingtonpost.com/wp-dyn/articles/A15569-2005Mar7.html?noredirect=on>.

<sup>20</sup> Hinsch, "Bioethics and Public Policy," p. 4.

The "star power" which lent the PCB at least some of its influence also opened it up for trenchant criticism. Many critics viewed the council as stacked towards conservative positions and therefore perceived its positions as suspect, though it is not clear that the council wilfully excluded voices that would have dissented from conservative views.<sup>21</sup> A significant turning point came in 2004, when Elizabeth Blackburn, a Nobel laureate in physiology, was removed from the PCB. Blackburn publicly accused the administration of having fired her for disagreeing with the views of Leon Kass and the other prominent conservatives on the PCB.<sup>22</sup> Whether or not the firing was motivated by a desire to punish dissent, it did a great deal to alienate the scientific community from the work of bioethics commissions.

If President Bush began to intentionally polarize bioethics, President Obama did not do much to reverse the trend. Upon assuming the presidency, Obama disbanded the PCB without warning and before it was able to hold its final meeting; some speculated that the move was prompted by a criticism authored by 10 PCB members of President Obama's stance on embryonic stem cell research.<sup>23</sup> This sudden move was made despite the fact that the PCB had substantially altered its composition in the second term of the Bush administration to be less polarizing, even replacing chairman Leon Kass with Edmund Pellegrino, who was widely seen as being less ideological. Reid Cherlin, a White House press officer, defended the sudden disbanding by criticizing the PCB as "a philosophically leaning advocacy group" and stating that the Obama administration sought instead a commission that "offers practical policy options."<sup>24</sup>

Mere polarization alone does not explain the trends in bioethics commissions and their impact. If it did, President Bush's attempt to capture bioethics as a conservative issue could plausibly have caused a decline in the attention paid to bioethics under the Obama administration, but this should have been succeeded by a return to bioethics under President

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<sup>21</sup> See Adam Briggie, "The Kass Council and the Politicization of Ethics Advice," *Social Studies of Science* 39, no. 2 (April 2009), pp. 314-316 for the criticisms of the Council and pp. 316-322 for Briggie's assessment of the validity of these criticisms.

<sup>22</sup> Elizabeth Blackburn, "Bioethics and the Political Distortion of Biomedical Science," *New England Journal of Medicine* 350, no. 14 (April 2004), pp. 1379-1380.

<sup>23</sup> See Ryan M. Antiel, "Obama and the President's Council on Bioethics: An Insider's View," *The Hastings Center*, July 13, 2009, <https://www.thehastingscenter.org/obama-and-the-presidents-council-on-bioethics-an-insiders-view/>.

<sup>24</sup> Nicholas Wade, "Obama Plans to Replace Bush's Bioethics Panel," *New York Times*, June 17, 2009, <https://www.nytimes.com/2009/06/18/us/politics/18ethics.html?scp=1&sq=President%27s%20Council%20on%20Bioethics&st=cse>.

Trump. The absence of a current bioethics commission indicates that this is not the case. Politicization of bioethics may, however, have had the unintended consequence of causing bioethics to be perceived less seriously by scientists and professional organizations. If politicization results in apathy, it is not surprising that bioethics commissions have played an increasingly smaller role in public policy since the early 2000s.

#### **IV. CONCLUSION**

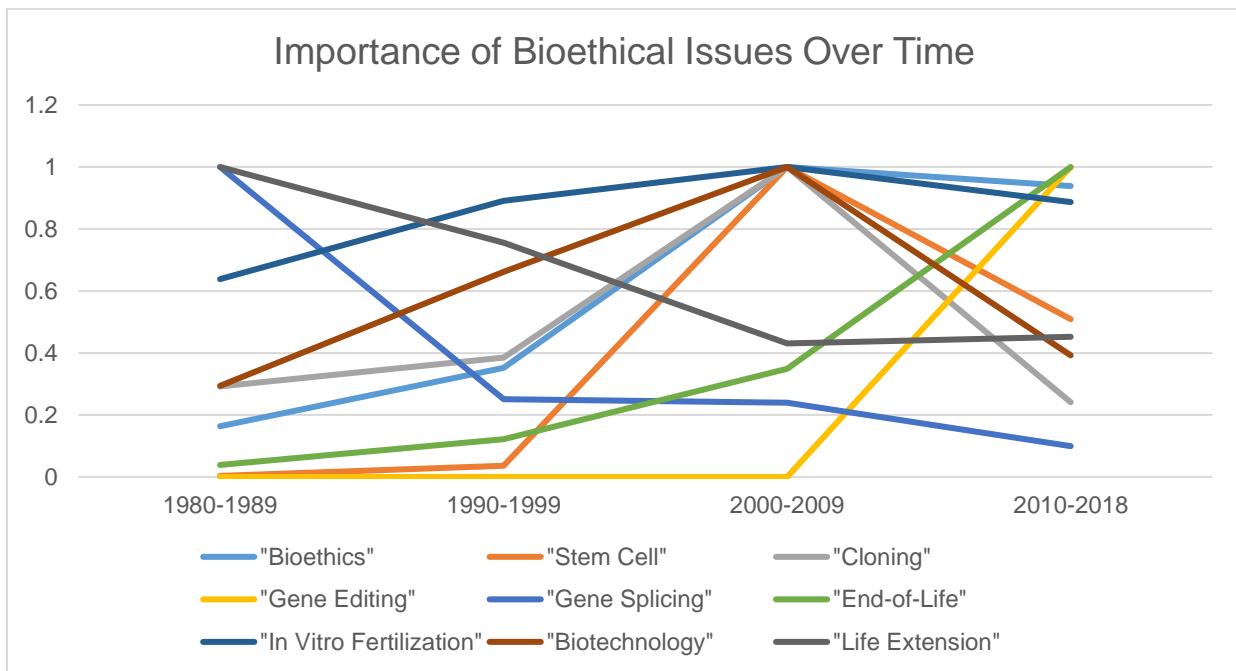
Based on data regarding the influence of the past three presidential bioethics commissions among legal academia, ethicists, national media publications, court decisions, and federal agency rule-making procedures, it seems that bioethics commissions have been becoming less successful in making an impact since at least the 1990s. To a significant extent, this may simply be the result of flagging national interest in bioethics; if this is the case, it is hard to imagine how a future president could generate a more impactful commission. Nonetheless, several internal factors seem to influence the operations of bioethics commissions, and as a result, their overall impact. Future presidents looking to establish successful bioethics commissions would be advised to provide secure funding for members, encourage members to meet frequently and to address issues with broad implications, and include at least a few members with significant name recognition. This last suggestion, however, may be risky, for if a president stacks a commission with well-respected but generally partisan intellectuals, as President Bush appears to have done, the effect may be to increasingly present bioethics as a partisan issue, contributing to a further decline in national interest.

**Appendix A. Impact of the last three bioethics commissions.** Citations to law articles are taken from HeinOnline Law Journal Library; citations to case law from Google Scholar case law search; citations to bioethics papers from EthxWeb at Georgetown University; newspaper citations from ProQuest Historical Newspapers; and citations to the federal register taken directly from the Federal Register database. The first number indicates the total number of citations to a report since publication; the second indicates citations in the first five years following publication. The reports of the President's Commission (1978-1983) are included for comparison.

<b>Report Title</b>	<b>Law Article Citations</b>	<b>Case Law Citations</b>	<b>Bioethic s Papers Citations</b>	<b>Newspaper Citations</b>	<b>Federal Register Citations</b>
<i>Cloning Human Beings (1997)</i>	254   181	0	0	15   15	1   1
<i>Research Involving Persons with Mental Disorders That May Affect Decisionmaking Capacity (1998)</i>	43   20	1   1	9   9	1   1	6   5
<i>Research Involving Human Biological Materials (1999)</i>	88   27	0	4   4	1   1	6   5
<i>Ethical Issues in Human Stem Cell Research (1999)</i>	130   63	1   1	11   11	1   1	1   1
<i>Ethical and Policy Issues in International Research: Clinical Trials in Developing Countries (2001)</i>	34   16	0	1   1	1   1	5   4
<i>Ethical and Policy Issues in Research Involving Human Participants (2001)</i>	128   62	1   1	15   15	2   2	5   3
<b>NBAC Averages</b>	143   61.5	0.5   0.5	6.7   6.7	3.5   3.5	4   3.7
<i>Human Cloning and Human Dignity: An Ethical Inquiry (2002)</i>	102   73	1   1	0	2   1	22   14
<i>Beyond Therapy: Biotechnology and the Pursuit of Happiness (2003)</i>	69   39	0	3   3	4   4	21   19
<i>Monitoring Stem Cell Research (2004)</i>	76   60	0	0	0	22   22
<i>Reproduction and Responsibility: The Regulation of New Biotechnologies (2004)</i>	81   56	1   1	1   1	1   1	20   20
<i>Taking Care: Ethical Caregiving in Our Aging Society (2005)</i>	24   17	0	1   1	0	16   16
<i>Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics (2008)</i>	31   17	0	17   17	0	6   6
<i>The Changing Moral Focus of Newborn Screening: An Ethical Analysis by the President's Council on Bioethics (2008)</i>	7   5	0	1   1	0	2   2
<i>Controversies in the Determination of Death: A White Paper by the President's Council on Bioethics (2008)</i>	11   8	0	3   3	0	7   7
<b>PCB Averages</b>	50.1   34.4	0.25   0.25	3.25   3.25	0.88   0.75	14.5   13.3

<i>New Directions: The Ethics of Synthetic Biology and Emerging Technologies (2010)</i>	28   20	0	0	0	0
<i>"Ethically Impossible" STD Research in Guatemala from 1946 to 1948 (2011)</i>	12   10	0	0	0	0
<i>Moral Science: Protecting Participants in Human Subjects Research (2011)</i>	24   21	0	0	0	2   2
<i>Privacy and Progress in Whole Genome Sequencing (2012)</i>	35   34	0	0	0	0
<i>Safeguarding Children: Pediatric Medical Countermeasure Research (2013)</i>	0	0	0	0	0
<i>Anticipate and Communicate: Ethical Management of Incidental and Secondary Findings in the Clinical, Research, and Direct-to-Consumer Contexts (2013)</i>	21	0	0	0	1
<i>Gray Matters: Integrative Approaches for Neuroscience, Ethics, and Society (2014)</i>	1	0	0	0	0
<i>Ethics and Ebola: Public Health Planning and Response (2015)</i>	2	0	0	0	1
<i>Gray Matters: Topics at the Intersection of Neuroscience, Ethics, and Society (2015)</i>	1	0	0	0	1
<i>Bioethics for Every Generation (2016)</i>	0	0	0	0	0
<b>PCSB I Averages</b>	12.4   11	0	0	0	0.5
<i>Defining Death (1981)</i>	74   22	0	1   1	48   23	0
<i>Protecting Human Subjects (1981)</i>	171   24	2   0	6   3	1   1	1   0
<i>Whistleblowing in Biomedical Research (1981)</i>	16   7	2   0	4   4	0	0
<i>Compensating for Research Injuries (1982)</i>	39   13	0	7   7	0	0
<i>Splicing Life: The Social and Ethical Issues of Genetic Engineering with Human Beings (1982)</i>	50   14	0	0	5   5	10   0
<i>Making Health Care Decisions (1982)</i>	400   96	7   0	8   6	0	1   1
<i>Deciding to Forego Life-Sustaining Treatment (1983)</i>	507   189	44   24	10   8	1   1	0
<i>Implementing Human Research Regulations (1983)</i>	25   10	0	0	2   2	2   2
<i>Screening and Counseling for Genetic Conditions: The Ethical, Social, and Legal Implications of Genetic Screening, Counseling, and Education Programs (1983)</i>	79   27	1   1	0	1   1	0
<i>Securing Access to Health Care (1983)</i>	189   61	0	6   6	0	0
<b>President's Commission Averages</b>	155   46.3	5.6   2.3	4.2   3.5	5.8   3.3	1.4   0.2

**Appendix B. Importance of bioethical issues over time.** This graph was created by searching for a number of bioethics-related terms in the ProQuest Historical Newspapers dataset. Because the dataset appears to be more robust in the 1980s and 1990s than the 2000s and 2010s, I standardized the use of each term relatively to a term ("Congress") whose usage was theoretically more or less constant as a percentage of all articles. I then charted the usage of each term within each decade as a percentage of its highest use (so that all terms peaked at 1). The result graph is shown below.



## NO AMERICAN LEFT BEHIND: PATHWAYS TO UNIVERSAL HEALTHCARE IN THE 116<sup>TH</sup> CONGRESS

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*Universal healthcare re-emerged as a hot-button issue in the midst of the 2018 midterm election season in the United States, reigniting the question of federal authority in legislating healthcare reform. This debate has implications for states' rights, private healthcare providers and insurers, and the millions of Americans who remain uninsured. Recent healthcare models have centred on market-based initiatives, such as the Affordable Care Act, and despite reductions in the rate of uninsured Americans, roughly 8 million people remain without coverage. Emerging Democratic proposals to transform the federal Medicare/Medicaid programs into a single-payer healthcare plan will receive particular attention in the 116<sup>th</sup> Congress but will face political opposition in the U.S. Senate. In such a political context, a contemporary examination of alternative universal healthcare (UHC) models is necessary to navigate a way forward for complete healthcare coverage in the United States. Thus, the central question to be answered is: to what extent are various universal healthcare models viable within American governance structures, and furthermore, politically achievable in the 116<sup>th</sup> Congress? After a brief summary of recent healthcare reform, a thorough outlining of potential legislative mechanisms for implementing the UHC proposals and an analysis of their feasibility is conducted, followed by a contextualization of proposals under the 116<sup>th</sup> session of Congress.*

### INTRODUCTION

Today in America, inequities define the state of its health: according to CDC data, within the nation's capital, residents of Friendship Heights, Maryland enjoy an average life expectancy of 96.1 years, while in Anacostia's Barry Farm neighborhood—just nine miles away—the average lifespan is just 63.2 years of age.<sup>1</sup> This is no surprise: scenes of such disparity are repeated across the country, which, despite being a top consumer of sophisticated medical technologies and pharmaceuticals, features the worst health outcomes among high-income countries, including the lowest life expectancy and highest infant mortality.<sup>2</sup> Despite these poor

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<sup>1</sup> Alexandre Tanzi, "Stark Differences in U.S. Life Expectancy: Demographic Trends," Bloomberg, October 6, 2018, <https://www.bloomberg.com/news/articles/2018-10-06/stark-differences-in-u-s-life-expectancy-demographic-trends>.

<sup>2</sup> David Squires and Chloe Anderson, "U.S. Health Care from a Global Perspective: Spending, Use of Services, Prices, and Health in 13 Countries," *Issues in International Health Policy* (The Commonwealth Fund, October 2015), 8, <https://www.commonwealthfund.org/publications/issue-briefs/2015/oct/us-health-care-global-perspective>.



indicators, U.S. health expenditures are the highest among comparable nations, spending “nearly twice as much” as other OECD states—more per capita “than any other nation” in the world.<sup>3</sup>

Amid these challenges, and the burden of such disparities falling primarily upon uninsured Americans, the Affordable Care Act (ACA), passed in 2010, aimed to comprehensively reform access to health insurance in every state, by ensuring an individual mandate for health insurance coverage, as well as government subsidies of private insurance plans.<sup>4</sup> Over the past decade, this contributed to considerable gains in health insurance coverage: the rate of uninsured Americans has fallen to around 9%.<sup>5</sup> However, critical challenges to quality health coverage for all remains. Over 28.1 million Americans are still without any coverage whatsoever, and vulnerable to bankrupting out-of-pocket payments.<sup>6</sup> A Harvard study completed in 2009—the most recent of its kind in exploring mortality related to insurance coverage—found that nearly 45,000 deaths in the United States were linked to a complete lack of health insurance.<sup>7</sup> Uninsured rates among non-elderly Americans continue to reflect racially-disproportionate socioeconomic disparities: as of 2017, 7% of white Americans remain uninsured, while upwards of 11% and 19% of black and Hispanic Americans have no coverage, respectively.<sup>8</sup> For those who remain privately insured, many are considered “under-insured,” with plans that carry high deductibles and co-payments required at the point of treatment or service.<sup>9</sup> The ACA itself remains an issue: while government programs like Medicare and Medicaid aim to support seniors and the poor qualifying for federal assistance, a persistent concern are the unsustainable spiralling costs associated with their inefficient funding and operational structures.<sup>10</sup> As well, in 2012, the Supreme Court, in *National Federation of*

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<sup>3</sup> Irene Papanicolas, Liana R. Woskie, and Ashish K. Jha, “Health Care Spending in the United States and Other High-Income Countries,” *JAMA* 319, no. 10 (March 13, 2018): 1025, <https://doi.org/10.1001/jama.2018.1150>.

<sup>4</sup> Rachel Garfield and Kendal Orgera, “The Uninsured and the ACA: A Primer - Key Facts about Health Insurance and the Uninsured amidst Changes to the Affordable Care Act” (Kaiser Family Foundation, January 2019), <https://www.kff.org/uninsured/report/the-uninsured-and-the-aca-a-primer-key-facts-about-health-insurance-and-the-uninsured-amidst-changes-to-the-affordable-care-act/>.

<sup>5</sup> Robert Pollin et al., “Economic Analysis of Medicare for All,” Research Report (Amherst, MA: Political Economic Research Institute, November 30, 2018), 1.

<sup>6</sup> *Ibid.*, 5.

<sup>7</sup> Andrew P. Wilper et al., “Health Insurance and Mortality in US Adults,” *American Journal of Public Health* 99, no. 12 (December 2009): 2292, <https://doi.org/10.2105/AJPH.2008.157685>.

<sup>8</sup> “Uninsured Rates for the Nonelderly by Race/Ethnicity,” The Henry J. Kaiser Family Foundation, November 29, 2018, <https://www.kff.org/uninsured/state-indicator/rate-by-raceethnicity/>.

<sup>9</sup> Pollin et al., “Economic Analysis of Medicare for All,” 1.

<sup>10</sup> Papanicolas, Woskie, and Jha, “Health Care Spending in the United States and Other High-Income Countries,” 509.

*Independent Business v. Sebelius*, ruled the ACA mandate of state Medicaid expansion was an unconstitutional overreach of congressional spending powers; under such a ruling, states were no longer compelled to expand their funding for Medicaid expansion, leading to a fragmentation of Medicaid coverage across state lines.<sup>11</sup> Furthermore, the ACA's reinforcement of bureaucratic administrative structures continue to raise costs: a 2014 study found that billing and insurance-related (BIR) costs in the current private, multi-payer system in place are approximately \$471 billion higher than a single-payer system like Canada's would require—approximately 18% of national health expenditures in the United States.<sup>12</sup> Overall, the limitations of the ACA and its current legal frameworks complicate and hamper efforts to extend healthcare coverage to the last of the uninsured; America's health system remains splintered amid differing insurance schemes, healthcare provider networks, and state funding.

As a response, Senator Bernie Sanders and other congressional Democrats have proposed “Medicare-for-All”: an expansion of Medicare-like benefits to cover all U.S. residents and eliminate premiums, deductibles, and co-pays—a full replacement of provisions of the Affordable Care Act, including the Medicaid program.<sup>13</sup> While Representative John Conyers has regularly introduced his Medicare-for-All Act (H.R. 676) in the House since 2003, the Sanders bill (S. 1804) introduced in the Senate during the penultimate 115<sup>th</sup> Congress appears to be gaining momentum among progressives, with 16 Senate co-sponsors in that session.<sup>14</sup> Following the 2018 midterm elections, and control of the House shifting to Democrats, *universal healthcare*, or UHC, emerged as a hot-button issue heading into the 116<sup>th</sup> Congress. However, to facilitate a measured public debate on semantics, “Medicare-for-All” requires clarification and an elucidation of the bill's components in the public discourse—a misnomer, the bill actually establishes a new single-payer “Universal Medicare Program” under HHS administration, rather than mandating a simple expansion of Medicare eligibility requirements as the name suggests.<sup>15</sup> The discursive challenge with a single-payer implementation of this sort is the substantial

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<sup>11</sup> Valerie Blake, “The Constitutionality of the Affordable Care Act: An Update,” *AMA Journal of Ethics*, Health Law, 14, no. 11 (November 1, 2012): 873–76, <https://doi.org/10.1001/virtualmentor.2012.14.11.hlaw1-1211>.

<sup>12</sup> Aliya Jiwani et al., “Billing and Insurance-Related Administrative Costs in United States' Health Care: Synthesis of Micro-Costing Evidence,” *BMC Health Services Research* 14 (November 13, 2014): 6, <https://doi.org/10.1186/s12913-014-0556-7>.

<sup>13</sup> Bernard Sanders, “Medicare for All Act of 2017,” § 1804 (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1804>.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

expansion of federal spending and administration involved with the plan, as Medicare's current cost issues make the political optics of federal healthcare expansion more difficult to accept among critics, such as congressional Republicans who continue to hold control of the Senate. In such a climate, it is a valuable exercise to evaluate novel and alternative mechanisms for implementing UHC. This paper, in an examination of global models, as well as "state innovations" on single-payer proposals, will aim to do just that—determine best-practices among UHC proposals, and explore their affinity to the federal healthcare contexts in the United States. To fully understand the journey of America's health system toward UHC, however, requires an exercise in retrospection on healthcare reform proposals of the past—a history which will inform the future potential for an effective and equitable healthcare system.

### **THE JOURNEY TO HERE: A BRIEF HISTORY OF HEALTHCARE REFORM**

The passage of the original Medicare legislation by President Johnson in 1965 marks an important historiographical milestone on the journey toward federal social protections in healthcare: for the first time, this legislation, along with the subsequent passage of Medicaid legislation, aimed to provide basic medical coverage to the most vulnerable, including those over 65 years of age and the poor.<sup>16</sup> While employer-based private coverage had remained the precedent through the labour movements and Progressive era of the 1920s in the United States, this move amid the Civil Rights movement came to demonstrate the potential for government to insure those without employment.<sup>17</sup> While other western European states and Canada pursued further expansions of universal healthcare systems following WWII, the inertia of the American private insurance industry saw social assistance expand within the limitations of these programs: the relatively recent additions of Medicare Parts C and D enabled the ability to pay additional premiums for Medicare Advantage private coverage (including items such as vision and dental care) and prescription drug coverage, respectively.<sup>18</sup> As particular needs arose, so did coverage

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<sup>16</sup> Edward Berkowitz, "Medicare and Medicaid: The Past as Prologue," *Health Care Financing Review* 27, no. 2 (2005): 11–23.

<sup>17</sup> Jesse Bump, "The Long Road to Universal Health Coverage: Historical Analysis of Early Decisions in Germany, the United Kingdom, and the United States," *Health Systems & Reform* 1, no. 1 (January 2, 2015): 36, <https://doi.org/10.4161/23288604.2014.991211>.

<sup>18</sup> "Overview of Medicare Parts A-D," *Journal of Oncology Practice* 5, no. 2 (March 2009): 88, <https://doi.org/10.1200/JOP.0922502>.

extensions: patients requiring dialysis in the event of End-Stage Renal Disease (or ESRD), or those with physical disabilities (such as patients diagnosed with ALS) were made eligible to enrol in Medicare programs in 1972, while the collapse of the Clinton health legislation in 1993 spurred the enactment of the Children’s Health Insurance Plan (CHIP) in 1997.<sup>19</sup> While these moves initially provided much-needed coverage, the institution of Medicare as an unrestricted federal program led to massive increases in federal spending; a series of acts in the latter half of the 20<sup>th</sup> century passed by Congress to restrict rapid spending increases achieved mixed success.<sup>20</sup> Among many fiscal conservatives, the runaway nature of Medicare costs came to see the development of opposition to government-financed social welfare and entitlement programs. The result was the continued political preference for market-oriented solutions to rising healthcare expenditures, based on the perception of private systems as more “efficient” with resource allocation.

However, the growth of the private system led to particular developments unique to the United States. Up until the passage of the ACA, pre-existing conditions were valid cause for the denial of coverage by private insurers, and no standard for basic coverage requirements was required of private plans.<sup>21</sup> As a landmark piece of healthcare legislation, the ACA changed this, by implementing “guaranteed issue,” where all Americans, regardless of any pre-existing conditions, were made eligible to enroll in private coverage, as well as “essential health benefits,” where a basic set of procedures were mandated within private healthcare plans. Additionally, to improve insurance coverage rates across the country, the ACA enacted state-based market exchanges for health insurance plans alongside the “individual mandate” requiring most Americans to prove insurance coverage. These measures encouraged both demand-side and supply-side cost reductions; by mandating health coverage, the growth of adequate risk pools in each state allowed private insurers to hedge risk across a greater number of people, and the development of exchanges forced private insurers to publicly compete in areas where competition was rare.<sup>22</sup> For those reliant on Medicaid, the final pillar of the ACA standardized

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<sup>19</sup> *Ibid.*, 87.

<sup>20</sup> David M. Cutler, “Rising Medical Costs Mean More Rough Times Ahead,” *JAMA* 318, no. 6 (August 8, 2017): 508–9, <https://doi.org/10.1001/jama.2017.8931>.

<sup>21</sup> Jonathan Skinner and Amitabh Chandra, “The Past and Future of the Affordable Care Act,” *JAMA* 316, no. 5 (August 2, 2016): 497, <https://doi.org/10.1001/jama.2016.10158>.

<sup>22</sup> Toni Johnson, “Lessons in Universal Health Insurance Models,” Council on Foreign Relations, July 16, 2009, <https://www.cfr.org/backgrounder/lessons-universal-health-insurance-models>.

varying qualifying income eligibilities across states; through federal subsidies, the minimum Medicaid income eligibility was set at those with incomes under 133% of the federal poverty line across the country. The outcomes of the ACA have varied due to political and legal developments: the 2012 Supreme Court decision in *National Federation of Independent Business v. Sibelius* upheld most parts of the ACA, including the individual mandate as valid under Congress' taxation powers, but struck down the federal government's coercion of states to extend state Medicaid funds to facilitate Medicaid coverage expansion. As a result, in many states with ACA opposition, Medicaid reverted to lower state contributions, effectively limiting Medicaid to families alone, with eligibility from 18%-105% of the federal poverty line as of January 2018.<sup>23</sup> Unsurprisingly, in states implementing Medicaid expansion under the ACA, health insurance coverage rates significantly improved, while in states which did not, coverage did not significantly improve. Public sentiment did not initially improve, as the continued presence of high co-pays and deductibles on ACA private plans, as well as the poor rollout of the *Healthcare.gov* online insurance marketplace, led to negative sentiments among those with existing private coverage.<sup>24</sup>

With the election of President Trump and Republican control of both houses, Congress passed the Tax Cuts and Jobs Act of 2017 containing a provision to repeal the individual mandate—thereby reducing the ability of market exchanges to distribute risk. While this provision is currently being challenged in federal court, its potential reinstatement would leave the ACA functional, albeit with compromises which do not address continued challenges with plan costs and poor insurer availability in some states.<sup>25</sup> The continued reinforcement of certain features of the private system under the ACA, including *health management organizations* (HMOs) which provide private healthcare providers substantial discretion in choosing to provide treatment to *out-of-network* patients, also hinders the ability of the program to enhance patient

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<sup>23</sup> "Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults," Fact Sheet, Kaiser Family Foundation, March 28, 2018, <https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/>.

<sup>24</sup> Amy Goldstein, "HHS Failed to Heed Many Warnings That HealthCare.Gov Was in Trouble," *The Washington Post*, February 23, 2016, sec. Health & Science, [https://www.washingtonpost.com/national/health-science/hhs-failed-to-heed-many-warnings-that-healthcaregov-was-in-trouble/2016/02/22/dd344e7c-d67e-11e5-9823-02b905009f99\\_story.html](https://www.washingtonpost.com/national/health-science/hhs-failed-to-heed-many-warnings-that-healthcaregov-was-in-trouble/2016/02/22/dd344e7c-d67e-11e5-9823-02b905009f99_story.html).

<sup>25</sup> Papanicolas, Woskie, and Jha, "Health Care Spending in the United States and Other High-Income Countries," 1037.

agency and access.<sup>26</sup> *Accountable care organizations* (ACOs)—the more-efficient ACA successor to HMOs performing similar healthcare provider network functions for physicians accepting Medicare—remain voluntary, and in 2018, were rolled back significantly by the Trump administration despite having saved nearly \$2.7 billion since the ACA’s implementation.<sup>27</sup>

## NAVIGATING THE WAY FORWARD: OUTLINING UHC PROPOSALS

In response to issues and dissatisfaction with the ACA and the persistent rate of the uninsured, some Democrats co-signed Bernie Sanders’ bill for “Medicare-for-All.” In establishing a new federal insurance plan, replacing both of the federal healthcare programs, private plans, and employer-based plans, healthcare would effectively be “federalized,” with healthcare providers and their institutions remaining private. Through such a plan, every U.S. resident would be covered, without any cost-sharing (through co-pays) or deductibles required—a no-bill plan for patients, in concept. But with the political concerns noted above by critics of federal healthcare programs, the idea of single-payer as the only model—in which government is the single and only purchaser of healthcare services from healthcare providers—remains unpalatable. Public health literature consistently points to single-payer healthcare systems as the most cost-efficient and outcome-effective model for the United States: the latest study by PERI at the University of Massachusetts-Amherst showed the U.S. economy would save \$5.1 trillion cumulatively over 10 years if this federalization of healthcare were to occur.<sup>28</sup>

With that in mind, single-payer is but one of many models for implementing universal coverage of this sort, and it is beneficial to explore other forms of state-insured healthcare present among industrialized countries to understand opportunities for application in the United

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<sup>26</sup> Cara Orfield et al., “The Affordable Care Act and Access to Care for People Changing Coverage Sources,” *American Journal of Public Health* 105, no. Suppl 5 (November 2015): S651–57, <https://doi.org/10.2105/AJPH.2015.302867>.

<sup>27</sup> Bruce Japsen, “As ACOs Face Change, Group Touts \$2.7B Medicare Savings,” *Forbes*, December 12, 2018, <https://www.forbes.com/sites/brucejapsen/2018/12/12/as-acos-face-change-group-touts-2-7-billion-medicare-savings/>.

<sup>28</sup> Pollin et al., “Economic Analysis of Medicare for All,” 3.

States. T.R. Reid, a reporter at the Washington Post, and author of *The Healing of America*, summarized most health system models into four broad categories.<sup>29</sup>

First, the “Beveridge Model,” named after economist William Beveridge and his namesake 1942 report establishing the United Kingdom’s National Health Service (NHS), sees the collection of general tax revenues for the provision of public healthcare entirely by the state. This can be seen through the vein of other major public services, such as how police services or libraries are similarly delivered in the United States.<sup>30</sup> This model entails a substantial hike in general taxes (in contrast to the 2.9% payroll taxes specifically levied for Medicare in the U.S.), and necessitates the transfer of most healthcare providers (such as physicians and nurses) and institutions (like hospitals) as employees and assets of the state itself. Funding and costs would be controlled by the demands of the health system and would be managed by the state. This model is most common in unitary states such as the United Kingdom, where economies of scale are reached through national centralization; the federal structure of the United States (with the participation of subnational state governments) makes it particularly difficult for the federal government to own and operate healthcare uniformly. As a result, this would be the model least likely to be implemented nationally, but in the American context, exactly mirrors the Veterans Health Administration (VHA) system, where hospitals and clinics are operated by the Department of Veterans Affairs. This system, despite numerous scandals related to funding and quality of care, has demonstrated “generally better or equal performance” in “safety and effectiveness” in systematic reviews compared to non-VHA systems.<sup>31</sup>

Secondly, the “Bismarck Model,” named after the Prussian leader under which the German multi-payer system was first established, uses “payroll deduction” to enable employees and employers to each contribute to private insurance plans, known as “sickness funds.”<sup>32</sup> These plans, however, mandatorily cover everyone—public healthcare insurance is paid for by equal deductions from private employers and employees, while private insurance requires premiums to be paid by those who are self-employed or otherwise uninsured. Insurance through one of these

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<sup>29</sup> PBS, “Sick Around the World | Health Care Systems -- The Four Basic Models,” FRONTLINE, April 15, 2008, <https://www.pbs.org/wgbh/pages/frontline/sickaroundtheworld/countries/models.html>.

<sup>30</sup> Johnson, “Lessons in Universal Health Insurance Models.”

<sup>31</sup> Claire O’Hanlon et al., “Comparing VA and Non-VA Quality of Care: A Systematic Review,” *Journal of General Internal Medicine* 32, no. 1 (January 2017): 105, <https://doi.org/10.1007/s11606-016-3775-2>.

<sup>32</sup> PBS, “Sick Around the World.”

hundreds of “sickness funds” ensures some level of competition is possible, as insurers consistently attempt to lower costs despite significant restrictions on maintaining standard levels of coverage. In the German system, healthcare providers and institutions remain private, but insurance plans are non-profit, meaning public subsidies of funds remains wholly within the healthcare system. A potential hybrid of public and private insurance applicable to the United States is the development of a “public option,” in which publicly-run insurance plans with essential benefits are set at a particular rate; these incentivize the lowering of premiums and improvement of benefits among competing private plans. As a whole, the German system’s employer-oriented plans are most akin to the employer-based system in the United States which comprise a majority of the insured across the country.

Thirdly, the “National Health Insurance Model,” describing single-payer models such as Canada’s, involves private healthcare providers with the sole insurance plan government-run and paid for by citizens.<sup>33</sup> In this case, citizens retain the right to choose their healthcare provider, while additionally enabling the integration of operational efficiencies and synergies between healthcare providers. As well, the uniformity provided by a single insurance plan enables substantial market power on the part of government to negotiate lower drug and treatment prices for bulk supply across the health system. The Canadian system is operated by individual provinces—while funding is centralized and disbursed by the federal government to the provinces, some innovation between provinces is possible to facilitate specific provincial needs beyond the basic health benefits and drug formularies.<sup>34</sup> A far cheaper model in terms of administration and bureaucracy within both government and among private providers, the use of a uniform fee-for-service schedule ensures efficient service provision, cost transparency, and accountability through measurement and surveillance. In the United States, a heuristic for such a model could be a Medicare expansion without the presence of deductibles and co-pays—no payment would be made at the point of care, nor afterward, except for extra charges such as private rooms or small ambulance fees. The added benefit of this model to current Medicare is the enabling of insurance schemes run at the state level, to cater to particular population needs.

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<sup>33</sup> Ibid.

<sup>34</sup> Danielle Martin et al., “Canada’s Universal Health-Care System: Achieving Its Potential,” *The Lancet* 391, no. 10131 (April 2018): 1719, [https://doi.org/10.1016/S0140-6736\(18\)30181-8](https://doi.org/10.1016/S0140-6736(18)30181-8).



Lastly, the “Out of Pocket” model is the laissez-faire approach present in most non-industrialized countries, where the lack of governance and financial capital prevent public administration of health assets.<sup>35</sup> In these cases, most citizens are uninsured, and thus pay for each service rendered without any form of cost-reducing risk sharing provided by insurance pooling. This is the opposite of universal healthcare, but is reminiscent of the population of uninsured Americans, who do not qualify for any other insurance program, such as Medicaid, or are unemployed without employer-based healthcare benefits.

At a broad level, while the ideal political environment would suggest the single-payer model as optimal in providing the highest benefit for value, the “Bismarck Model” of a multi-payer system most closely relates to the current ACA model of subsidized private insurance, assuming a continued individual mandate. In observing the present federal insurance infrastructure, however, there are means of modifying other existing insurance schemes to more effectively reach the last of the uninsured. Some UHC proposals in the United States have outlined the expansion of Medicaid to “Medicaid-for-All,” which would effectively entail the creation of a “public option” for insurance run by each state competitive with private insurers.<sup>36</sup> This proposal improves on the ACA in two key ways. By reducing or eliminating some eligibility requirements, Medicaid-for-All could be managed by each state government using federal funding, thereby providing market signals as an additional competitive insurer within ACA market exchanges where a dearth of private insurers is currently present. As well, this option also avoids the ramifications of the loss of individual mandate from the Tax Cuts and Jobs Act of 2017, by making it available for public purchase: other plans involving risk pooling necessitate the inclusion of such a provision.

Among states that have already attempted to enable UHC, single-payer systems have come under such challenges—New York’s single-payer bill, for example, requires a waiver to use federal healthcare dollars as it sees fit, which is less likely to occur under the Trump administration. In Vermont, this lack of federal funds led to challenges with raising nearly \$2 billion at the state level for its “Green Mountain Care” plan, causing its abandonment in 2014.<sup>37</sup>

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<sup>35</sup> PBS, “Sick Around the World.”

<sup>36</sup> Paul Waldman, “Medicaid Is the Future of American Health Insurance -- If It Can Survive the Next Two Weeks,” *The American Prospect*, June 19, 2017, <http://prospect.org/article/medicaid-future-american-health-insurance-if-it-can-survive-next-two-weeks>.

<sup>37</sup> “Vermont’s Single-Payer Dream Is Taxpayer Nightmare,” April 13, 2014, <https://www.bloomberg.com/opinion/articles/2014-04-11/vermont-s-single-payer-dream-is-taxpayer-nightmare>.

California, through its “Healthy California Trust Fund,” seeks to eventually facilitate its own single-payer system through a similar waiver process, along with the pooling of additional tax revenues as a dedicated stream of insurance financing. Each of these attempts have yet to succeed, but momentum at the state level appears to be motivating federal lawmakers to pursue UHC proposals with renewed energy as the 116<sup>th</sup> session of Congress begins.

## ON THE ROAD TO UHC: IMPLEMENTATION IN THE 116<sup>TH</sup> CONGRESS

Following the 2018 midterm election of a split Congress, in which Democrats have taken the House majority while Republicans retain the Senate and the presidency, the passage of a single-payer bill appears unlikely. Parallel legislation for a Medicare for All Act by House and Senate Democrats have already been introduced: Representative Pramila Jayapal, co-chair of the Medicare for All Congressional Caucus, and Senator Bernie Sanders, have introduced H.R. 1384 and S.1129, respectively.<sup>38</sup> Amid this increased attention recently placed on healthcare in the political discourse, concerns over government control of healthcare remain a substantial barrier to a single-payer proposition. With presidential elections in 2020, the attempt by Democrats to take the Senate and presidency will likely see the development of a single-payer plan prepared during this session of Congress. However, consideration of a phase-in through one of the alternative UHC models presented above may prove fruitful in generating clear policy goals and positive public discourse on the potential for such a system.

One means of doing so is separating discussions on healthcare of government control of health goods, such as institutional assets and employed healthcare providers, from the provision of insurance coverage. Several other congressional Democrats have introduced bills to focus on the latter. Senator Ben Cardin (S. 3), Senators Michael Bennet and Tim Kaine (S. 981, or *Medicare-X*), and Representative Jan Schakowsky and Senator Sheldon Whitehouse (H.R. 2085/S. 1033, or *The CHOICE Act*) developed legislation which would introduce a federal “public plan option” with standardized premiums to compete with private plans on ACA exchanges.<sup>39</sup> Another minor proposal by Senator Debbie Stabenow (S. 470) and Representative Brian Higgins (H.R. 1346) involve a partial extension of Medicare to a buy-in option for older

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<sup>38</sup> “Compare Medicare-for-All and Public Plan Proposals,” The Henry J. Kaiser Family Foundation, April 11, 2019, <https://www.kff.org/interactive/compare-medicare-for-all-public-plan-proposals/>.

<sup>39</sup> *Ibid.*

Americans not yet of the qualifying age for the program.<sup>40</sup> The challenge with these two alternative proposals remains the continued persistence of premiums and out-of-pocket cost-sharing payments present in the ACA: the signature appeal of single-payer proposals funded by taxes is the total elimination of payment at or following the point-of-care, thus imagining a seamless experience for patients.<sup>41</sup>

One final set of legislation already introduced in the current session may hold the answer to this remaining issue. Senator Brian Schatz and Representative Ben Ray Luján (S. 489/H.R. 1277, or the *State Public Option Act*) have proposed the opening of Medicaid to all Americans through a buy-in option in ACA market exchanges of states which have already elected to expand Medicaid.<sup>42</sup> Existing low-income enrolments in Medicaid would remain, but all Americans would retain the option in such states to pay a standard amount for equivalent coverage.<sup>43</sup> This proposal, like the previous two sets, also relies on premiums, but the model of using Medicaid's structural and financing architecture holds merit, leveraging a more efficient system than the Medicare-based proposals of Cardin, Bennet and Kaine, and Schakowsky/Whitehouse. To achieve coverage that truly serves the last of the uninsured, as well as to attract those who are underinsured by their employer-based plans, the Schatz/Luján must go one step further: embrace the vision of a no-premium/no out-of-pocket system presented by Medicare-for-All legislation, while reinforcing the positive contributions of the ACA in providing consumer choice for extra coverage when patients desire.

An example of potential legislation by Congress in this character would be the equivalent expansion of Medicaid as a competing public option without cost-sharing (through both premiums nor out-of-pocket payments)—such that every American would have the choice to enroll in a free Medicaid plan in their state with the willing participation of state governments. In the provision of a choice without additional premiums (instead funded using the tax-based model Medicare-for-All single-payer proposals promote), consumers would have greater flexibility in choosing to select a standard Medicaid public plan providing ACA-level benefits, pay additional premiums for a private plan offered in ACA market exchanges, or if employed, continue with

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<sup>40</sup> “Compare Medicare-for-All and Public Plan Proposals.”

<sup>41</sup> Jen Mishory, “Comparison of Health Reform Legislation Creating Public Plans,” The Century Foundation, April 10, 2019, <https://tcf.org/content/commentary/comparison-health-reform-legislation-creating-public-plans/>.

<sup>42</sup> “Compare Medicare-for-All and Public Plan Proposals.”

<sup>43</sup> Mishory, “Comparison of Health Reform Legislation Creating Public Plans.”

their employer-based plan. This, of course, would only be possible in states which have expanded Medicaid since the onset of the ACA, and Senate Republicans in this session may object to such a proposal on the basis of federal overreach in expanding the Medicaid program beyond its initial prerogative. However, by operating as a pilot or trial with appropriate monitoring and evaluation regimes in place in the states who choose to implement, the performance of such a public option—in both cost and health outcomes—may ultimately provide clear evidence to critics of public insurance of the benefits accrued from expanded insurance competition. By making ACA-level minimum health insurance benefits the market standard for every American, private insurers (in both the employer-based and ACA-based sectors) will be incentivized to control prices and raise healthcare benefits to justify their *raison d'être*. Keeping in mind the continued private nature of health goods (including healthcare providers and institutions), the implementation of a Medicaid-based public option therefore ensures America's health system retains its innovative character, while supporting the access of every last American to adequate health services.

### **CONCLUSION: THE ROAD AHEAD**

The idea of universal health coverage across America is not a new one, but the political momentum rising across the country is reinvigorating public discourse on the topic. Although the current political dynamic appears to oppose such a development, progress in American social policy has tended to favour the slow but measured path toward improved outcomes. Whether the 2014 Supreme Court ruling on same-sex marriage, or the current state-by-state legalization of marijuana, pathways toward monumental change have started with attempts at every level of government. Healthcare is no different: it will take political force to yield the legislative reforms necessary for universal health coverage. In this context, and as each of the UHC models have demonstrated, the ends, not the means, define America's trajectory toward an equitable healthcare system. At the alignment of moral values and economic efficiency lies the future of progressive social welfare interventions, and universal healthcare serves as one promise towards a more just and wealthier society. The PERI report found that savings of 19.2 percent on U.S. health consumption expenditures would come from such a system, and ensuring that no

American dies because they lacked access to health coverage is just the right thing to do.<sup>44</sup> With such common sense, the road ahead appears navigable, and with innovative initiatives, points to a future where every American—from Friendship Heights to Anacostia, and beyond—has a chance at life.

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<sup>44</sup> Pollin et al., “Economic Analysis of Medicare for All,” 2.



## **Part 6**

# Foreign Policy & National Security

## **IS TRUMP TORPEDOING U.S.-IRAN DIPLOMACY? - PLACING TRUMP'S FOREIGN POLICY WITHIN THE CONTEXT OF PREVIOUS FAILED RECONCILIATION ATTEMPTS**

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*Plagued by a long history of deceit and distrust, U.S.-Iran animosity recently escalated to a point in which the future of our relationship remains uncertain. The continued deterioration of diplomacy under the Trump administration, especially in light of the U.S. unilateral withdraw from the nuclear deal, warrants the question: what impact will the reinvention of U.S. foreign policy under President Trump have on reconciliation efforts now and in the future? This paper seeks to analyze the impact of President Trump's foreign policy changes on U.S.-Iran diplomacy, framing these changes within the historical context of failed U.S.-Iran reconciliation attempts since 1979. Are President Trump's policies simply a continuation of a historical trend of fraught relations, or do they pose unique dangers? Analysis will explore the consequences of the U.S. unilateral withdrawal, the re-imposition of sanctions, U.S. support for Iranian regime change, etc. in efforts to explain how the current U.S. posture exacerbates the root of Iranian grievances and has the potential to jeopardize our national security.*

### **INTRODUCTION**

Over the course of the last 40 years, foreign relations between Iran and the United States have been characterized by mutual hostility. In Iran's 1979 Islamic Revolution, longstanding dissatisfaction with the corrupt government and resentment over U.S. interference in Iran's domestic politics manifested in the form of a popular uprising that ousted the U.S.-backed monarch, Shah Mohammad Reza Pahlavi.<sup>1</sup> What President Carter had just months before, described as "an island of stability in one of the more troubled areas of the world," was no longer.<sup>2</sup> Revolutionary fervor and intense anti-American sentiment festered as angry demonstrators condemned U.S. support for the Shah, chanting "death to America" in street

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<sup>1</sup> Ervand Abrahamian, "Mass Protests in the Islamic Revolution, 1977-79", in Adam Roberts and Timothy Garton Ash (eds.), *Civil Resistance and Power Politics: The Experience of Non-violent Action from Gandhi to the Present*. (Oxford & New York: Oxford University Press, 2009), 162-78.

<sup>2</sup> Lee H. Hamilton and Daniel K. Inouye, "Report of the Congressional Committees Investigating the Iran-Contra Affair, with Supplemental Minority, and Additional Views." The SHAFR Guide Online: 157.

protests that erupted across the country.<sup>3</sup> On November 4, 1979, these sentiments exploded when the Shah was granted asylum in the United States, prompting a group of radical Iranian university students to storm and occupy the U.S. embassy in Tehran, taking 52 American diplomats hostage. The resulting standoff continued for 444 days and became the longest recorded hostage crisis in history.<sup>4</sup> The incident would catalyze the severing of diplomatic ties and marked the transformation of key allies into key adversaries.

Since 1979, relations have remained strained, as a plethora of grievances from both parties have led to heightened tensions and have continued to hinder the development of constructive dialogue. Following Iraq's invasion of Iran in 1980, U.S. support for Saddam Hussein, and the U.S. refusal to condemn Iraq's use of chemical weapons further escalated anti-American sentiments.<sup>5</sup> Iran's sponsorship of terrorist attacks against the U.S. Marine barracks in Beirut in 1983, which resulted in the deaths of 241 American personnel stationed in Lebanon on a peacekeeping mission, perpetuated the existing animosity.<sup>6</sup> In 1988, the U.S. military shot down an Iranian civilian airliner over the Persian Gulf, claiming they mistook the airbus for an attacking fighter jet and killing all 290 passengers on board.<sup>7</sup> While the parties reached a settlement and the United States paid compensation to the victims' families, the U.S. government never issued a formal apology. Today, relations remain tense and enmity appears deeply entrenched. In November 2017, Iran's Supreme Leader Ayatollah Khamenei described the United States as Iran's "number one enemy."<sup>8</sup> Meanwhile, within the United States, Iran is repeatedly denounced by Democrats and Republicans alike, with President Donald Trump tweeting that Iran is the "Number One State of Sponsored Terror."<sup>9</sup>

However, the passage of the Joint Comprehensive Plan of Action (JCPOA) nuclear deal in 2015 seemed to mark a new chapter in U.S.-Iran relations at the time and expressed hope that moderation between the two countries was possible. The deal represented the culmination of

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<sup>3</sup> Gary Sick, *All Fall Down: America's Tragic Encounter with Iran*. (New York, NY: Penguin Books, 1986), 77.

<sup>4</sup> David Patrick Houghton, *US Foreign Policy and the Iran Hostage Crisis*. (Cambridge: Cambridge University Press, 2001), 50-52.

<sup>5</sup> Kenneth R. Timmerman, *The Death Lobby: How the West Armed Iraq*. (New York, 1991).

<sup>6</sup> John Bulloch, *Death of a country: The civil war in Lebanon*. (London, 1977).

<sup>7</sup> James G. Blight, Hussein Banai, Malcolm Byrne, and John Tirman. *Becoming enemies: US-Iran relations and the Iran-Iraq war, 1979-1988*. (Rowman & Littlefield Publishers, 2012), p.153.

<sup>8</sup> Parisa Hafezi, "Supreme Leader Khamenei Says U.S. Is Iran's 'number One Enemy'." Reuters. November 02, 2017. Accessed February 11, 2019.

<sup>9</sup> The Associated Press, "The Latest: Trump Tweets New Support for Iranian Protesters." National Post. December 31, 2017. Accessed February 11, 2019.



U.S. efforts to contain the Iran nuclear threat. Since 2006, the United States succeeded in rallying international pressure against Iran's nuclear program via the United Nations Security Council, resulting in the imposition of international sanctions.<sup>10</sup> In 2015, the JCPOA nuclear negotiations successfully created a deal that hindered Iran's ability to develop nuclear weapons, while also establishing monitoring and verification mechanisms via the International Atomic Energy Agency (IAEA) to ensure Iranian compliance. Despite affirmation from the IAEA that Iran had passed inspections and was abiding by its commitments, the deal would later deteriorate following Donald Trump's election to office.<sup>11</sup> In May 2018, the President announced that the United States would unilaterally withdraw from the deal, citing concerns that the agreement was flawed and one-sided.<sup>12</sup> The withdrawal drew criticism from Iran's President Hassan Rouhani regarding President Trump's failure to honor international commitments.

Current relations between the United States and Iran remain as precarious and unpredictable as ever. The election of Donald Trump in 2016 catalyzed change in many areas, particularly concerning foreign policy and U.S.-Iran diplomacy. The continued deterioration of diplomacy under President Trump's administration, especially in light of the U.S. unilateral withdrawal from the nuclear deal, warrants the question: what impact will the reinvention of U.S. foreign policy under Trump have on reconciliation efforts? This paper will analyze the impact of President Trump's foreign policy changes on U.S.-Iran diplomacy, framing these changes within the historical context of failed U.S.-Iran reconciliation attempts since 1979. Are President Trump's policies simply a continuation of a historical trend of fraught relations, or do they pose unique dangers? It will begin with a historical overview of failed U.S.-Iran reconciliation attempts since the severing of diplomatic ties, and will proceed to explore changes in U.S. posture towards Iran under the Trump administration. Following this discussion, the paper will compare how the most recent failed attempt at reconciliation deviates from its historical predecessors and exacerbates the root of Iranian grievances. Finally, it will draw conclusions regarding the future of U.S.-Iran diplomacy.

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<sup>10</sup> Nikolay A. Kozhanov, "US economic sanctions against Iran: Undermined by external factors." *Middle East Policy* 18, no. 3 (2011): 144.

<sup>11</sup> Director General, "Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)." International Atomic Energy Agency. February 22, 2018.

<sup>12</sup> Mark Landler, "Trump Abandons Iran Nuclear Deal He Long Scorned." *The New York Times*. May 08, 2018. Accessed February 11, 2019.

## HISTORICAL OVERVIEW OF FAILED U.S.-IRAN RECONCILIATION

Despite five major opportunities for improved relations, none have come to fruition and instead have perpetuated the enduring estrangement. The first period of brief reprieve within the United States and Iran's tumultuous relationship stemmed from the formation of an interim government in the wake of Iran's Islamic Revolution. Efforts to forge a working relationship with Iran's new government, rooted in clandestine meetings and shared intelligence briefs, ultimately failed as these discussions threatened the legitimacy of the new government.<sup>13</sup> Revolutionary fervor expelled moderates and necessitated Islamists to capitalize on growing anti-American sentiments in order to consolidate power. Thus, the United States and Iran became foes and reconciliation was abandoned.

Hostile relations continued until a mutual desire to contain Saddam Hussein's actions during the Iran-Iraq War led to the Iran-Contra affair, a scandal in which the U.S. government secretly sold arms to Iran in violation of an arms embargo.<sup>14</sup> Cooperation would again cease due to opposing hegemonic aspirations and disdain for U.S.-Iran diplomacy in the public discourse of both countries.

Following the Iran-Iraq War, economic devastation in Iran bore a desire for recovery and prompted the country to moderate and promote relations with many former adversaries, including various western countries. Efforts included an overture to the United States in the form of an energy agreement with American oil company Conoco, the first deal of its kind since the severing of diplomatic ties.<sup>15</sup> Likewise, Iran's policy of constructive neutrality during the U.S.-led liberation of Kuwait in Operation Desert Storm presented a unique opportunity for both countries to counter Saddam Hussein's regional antagonism.<sup>16</sup> This combination of moderation and mutual interests gave rise to hopes that U.S.-Iran reconciliation was once again possible.

However, the aftermath of the Gulf War saw a very different reality in which Iran's commitment to acquisition of nuclear technology, as well as their aggression towards U.S. ally Israel yet again prevented dialogue. The result was the passage of the Iran-Libya Sanctions Act in

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<sup>13</sup> David Crist, *The Twilight War: The Secret History of Americas Thirty-year Conflict with Iran*. (New York: Penguin Books, 2013), p. 29.

<sup>14</sup> Theodore Draper, *A very thin line: The Iran-Contra affairs*. (New York: Hill and Wang, 1991).

<sup>15</sup> Fawaz A. Gerges, "Washington's Misguided Iran Policy." *Survival* 38, no. 4 (1996): 5-15.

<sup>16</sup> John Andreas Olsen, "The Politicomilitary Context of Operation Desert Storm." In *Strategic Air Power in Desert Storm*, pp. 25-81. (Routledge, 2013).

1996 and an American commitment to prevent both the expansion of Iran's nuclear program and Iran's continued support for designated terrorist organizations such as Hezbollah and Hamas.<sup>17</sup>

The election of Mohammad Khatami to Iran's presidency in 1997 once more suggested that a thaw in relations could produce reconciliation.<sup>18</sup> The success of the reformist party in Iran's parliamentary elections brought about a clear and demonstrated shift in Iran's posture, with President Khatami himself directly calling for increased relations in what he coined "a dialogue of civilizations."<sup>19</sup> Iran moderated and improved economic and diplomatic relations with many U.S. allies, thus leaving the United States more and more isolated with a policy of unilateral sanctions. However, conflict over Iran's nuclear developments yet again impeded diplomacy. Despite deepening mutual interests in Afghanistan post 9/11, concerns over Iran's acquisition of nuclear weapons led President Bush to label Iran as part of an "axis of evil" in his infamous State of the Union address.<sup>20</sup> Meanwhile, Khatami's inability to produce sustained reconciliation incited backlash from Iranian radicals who opposed interaction with the United States, thus helping to facilitate the election of conservative Ahmadinejad at the conclusion of Khatami's term.<sup>21</sup>

The United States continued to reiterate its hardline containment policy towards Iran and in December 2006 succeeded in rallying international pressure against Iran's nuclear program. Multilateral sanctions eventually pressured Iran into entering nuclear talks during the Obama Presidency, and in 2013 negotiations led to an interim agreement that would become the framework for the nuclear deal.<sup>22</sup> The passage of the nuclear deal in 2015 once more led to hopes that moderation and reconciliation were on the horizon, yet as President Donald Trump took office in 2016, he instituted a series of policy pivots which would again call into question the future of U.S.-Iran diplomacy.<sup>23</sup>

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<sup>17</sup> Meghan McCurdy, "Unilateral Sanctions With a Twist: The Iran and Libya Sanctions Act of 1996." *Am. U. Int'l L. Rev.* 13 (1997): 397.

<sup>18</sup> Shaul Bakhash, "Iran's remarkable election." *Journal of Democracy* 9, no. 1 (1998): 80-94.

<sup>19</sup> Fabio Petito, "Dialogue of civilizations as an alternative model for world order." In *Civilizational Dialogue and World Order*, pp. 47-67. (Palgrave Macmillan, New York, 2009).

<sup>20</sup> Daniel Heradstveit and Matthew G. Bonham. "What the axis of evil metaphor did to Iran." *The Middle East Journal* 61, no. 3 (2007): 421-440.

<sup>21</sup> Ali M. Ansari, *Iran under Ahmadinejad: the politics of confrontation*. (Routledge, 2017).

<sup>22</sup> Gary S. Samore, Matthew G. Bunn, Graham T. Allison, Aaron Arnold, R. Nicholas Burns, Shai Feldman, Chuck Freilich et al. "The Iran nuclear deal: A definitive guide." (2015).

<sup>23</sup> Mohammed Cherkaoui, "Trump's Withdrawal from the Iran Nuclear Deal: Security or Economics." *Al Jazeera*

## FOREIGN POLICY TOWARDS IRAN UNDER THE TRUMP ADMINISTRATION

In January 2017, President Trump signed Executive Order number 13769 with the stated aim of protecting the nation from foreign terrorist entry. The order suspended refugee resettlement programs and temporarily banned non-citizens from seven Muslim-majority nations from entering the United States.<sup>24</sup> While the number of individuals affected by the travel ban exceeded 135 million, Iran was the most affected country with a population of 80 million.<sup>25</sup> This legislation therefore incited much scrutiny from the Iranian population, with Iranian foreign minister, Javad Zarif, writing on Twitter: “U.S. now bans Iranian grandmothers from seeing their grandchildren, in a truly shameful exhibition of blind hostility to all Iranians.”<sup>26</sup>

Tensions continued to rise between the United States and Iran following Trump’s election to office as when he made a series of inflammatory statements regarding the nuclear deal and threatened to make good on campaign promises to overturn the Obama-era agreement. In May 2018, President Trump stuck true to his word and announced a U.S. unilateral withdrawal from the JCPOA. “The Iran deal is defective at its core. If we do nothing, we know exactly what will happen. In just a short period of time, the world’s leading state sponsor of terror will be on the cusp of acquiring the world’s most dangerous weapons,” said President Trump.<sup>27</sup> The U.S. withdrawal occurred despite affirmations from the IAEA that Iran had passed inspections and was abiding by their commitments, thus further eroding trust and feeding into the narrative that the United States does not abide by its international commitments. While Iran was initially motivated to enter nuclear negotiations in exchange for international relief on their crippling sanctions, Washington has since reactivated sanctions that were previously suspended. In the absence of U.S. sanctions relief, incentive for the Iranian state to not renew their nuclear weapons program has been removed. President Trump stressed that the United States is open to developing a new, more comprehensive deal, yet skeptics say it is unlikely that Iran will trust the United States to abide by the terms of any future agreement.

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Centre for Studies 10 (2018).

<sup>24</sup> "Executive order protecting the nation from foreign terrorist entry into the United States." (2017).

<sup>25</sup> Rick Gladstone, and Satoshi Sugiyama. "Trump's Travel Ban: How It Works and Who Is Affected." *The New York Times*. July 01, 2018. Accessed February 11, 2019.

<sup>26</sup> "The Latest: Iran Says US Travel Ban 'truly Shameful'." *AP News*. June 30, 2017. Accessed February 11, 2019.

<sup>27</sup> "President Trump Says the Iran Deal Is Defective at Its Core. A New One Will Require Real Commitments." *The White House*. May 12, 2018. Accessed February 11, 2019.

In anticipation of U.S. sanctions, the Iranian capital of Tehran saw street protests erupt over the falling value of its currency.<sup>28</sup> Conservative factions in the government benefitted from the demonstrations as they served to undermine the more moderate Iranian President Rouhani. Conversely, Iranian moderates who advocated and pushed for the nuclear deal have now been marginalized by the deal's failure and feel betrayed by Washington. While Iranian foreign minister, Javad Zarif stated that President Trump's "bully" tactics will prompt backlash from the regime, hardliners still believe that they can ride public dissent into more consolidated power for themselves.<sup>29</sup> Internal pressure within Iran combined with increased anti-Americanism showed how the U.S. withdrawal from the nuclear deal led to adverse effects by aiding radical factions.

The adverse effects have not been limited to Iranian resentment, but also include alienating the United States' European allies who remain in the deal. Instead of presenting a united front against Iran's nuclear program, the other members of the JCPOA are now placed in the awkward position of disagreeing with the United States publicly. In a joint statement after the U.S. withdrawal, French President Macron, British Prime Minister Theresa May, and German Chancellor Angela Merkel all expressed regret at the U.S. decision and emphasized their continued commitment to working with Iran under the deal.<sup>30</sup> While President Trump has stated that the United States will impose the "highest level" of economic sanctions not only on Iran itself, but also on other countries that do business with it, he has had little success in persuading European allies to support these increased sanctions.<sup>31</sup> Their resistance has made U.S. efforts less effective and likewise exemplify the increased strain on our partnerships as a result of President Trump's withdrawal.

President Trump's hardline approach to interacting with Iran is further reflected in the actions and statements of his closest advisors. While three of President Trump's own former officials (Secretary of State Rex Tillerson, National Security Advisor H.R. McMaster, and Secretary of Defense James Mattis) supported the Iran nuclear deal, none of these individuals

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<sup>28</sup> Sasha Ingber, "In Tehran, Economic Protests Flare As Iran's Currency Plunges." NPR. June 26, 2018. Accessed February 11, 2019.

<sup>29</sup> "Iranian Foreign Minister Javad Zarif: Trump's "bully" Behavior Will Prompt Backlash." CBS News. September 30, 2018. Accessed February 11, 2019.

<sup>30</sup> Paul Dallison, "Macron, Merkel, May Express 'regret' at Trump's Iran Move." POLITICO. May 09, 2018. Accessed February 11, 2019.

<sup>31</sup> "American Sanctions Will Make It Hard to Revive the Iranian Nuclear Deal." The Economist. May 12, 2018. Accessed February 11, 2019.

remain in office.<sup>32</sup> Conversely, the current Secretary of State, Mike Pompeo, maintains a staunch anti-Iran posture and placed an emphasis on creating an anti-Iran alliance of Arab states. In September 2018, Secretary Pompeo met with foreign ministers from Saudi Arabia, Bahrain, Egypt, Jordan, Kuwait, Oman, Qatar and the UAE in order to advance the project. Secretary Pompeo hopes to create a military alliance in the region that can counter threats from Iran and foment unrest.<sup>33</sup> Secretary Pompeo likewise warns that Iran will be held accountable for its regional antagonism, stating in an interview with CNN's Elise Labott that the United States "will not let Iran get away with using a proxy force to attack an American interest."<sup>34</sup> Referring to Iran's use of Hezbollah, armed militias in Iraq, and the Houthis in Yemen, Secretary Pompeo cautioned that the United States would not hesitate to address the source if Iran is responsible for the arming and training of malign actors. Furthermore, in an address given at The American University in Cairo in January 2019, Secretary Pompeo vowed to "expel every last Iranian boot" from Syria.<sup>35</sup> Such statements reflect the United States' heightened approach towards Iran and raise concerns regarding the prospect of direct confrontation.

President Trump expounded upon this change in U.S. posture himself. In an interview with CBS's *Face the Nation*, President Trump asserted that he plans to keep American troops inside Iraq in order to monitor and maintain pressure on Iran. President Trump stated, "I want to be able to watch Iran . . . if there's trouble, if somebody is looking to do nuclear weapons or other things, we're going to know about it before they do."<sup>36</sup> President Trump's focus on military action and deterrence was supported by his appointment of John Bolton to National Security Advisor, attracting much criticism from opponents who did not support the addition of a notorious war hawk to the cabinet. Bolton has long advocated for military action toward Iran and for Iranian regime change.

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<sup>32</sup> Ivo Daalder, James Lindsay, David Greenberg, John F. Harris, and Joanna Weiss. "RIP, Axis of Adults." *POLITICO*. December 21, 2018. Accessed February 11, 2019.

<sup>33</sup> Edward Wong, and Ben Hubbard. "Pompeo's Anti-Iran Tour Faces Obstacles of a Fractious Middle East." *The New York Times*. January 15, 2019. Accessed February 11, 2019.

<sup>34</sup> Michael R. Pompeo, "Interview With Elise Labott of CNN." U.S. Department of State. September 21, 2018. Accessed February 11, 2019.

<sup>35</sup> "US to Expel Every Last Iranian Boot from Syria - Pompeo." *BBC News*. January 10, 2019. Accessed February 11, 2019.

<sup>36</sup> "Iraq Angered by Trump Idea to Watch Iran from US Base." *BBC News*. February 04, 2019. Accessed February 11, 2019.

In March 2015, he wrote an op-ed for the New York Times advocating for U.S. forces to bomb Iran in order to prevent their acquisition of nuclear weapons.<sup>37</sup> Additionally, in mid 2017, Bolton spoke at a rally for Iranian dissident group, the Mujahedeen Khalq (MEK), who Bolton views as a viable alternative to the current Iranian leadership despite the group enjoying little support inside Iran itself. Bolton stated, “The declared policy of the United States should be the overthrow of the mullahs’ regime in Tehran. The behavior and the objectives of the regime are not going to change and, therefore, the only solution is to change the regime itself.”<sup>38</sup>

### COMPARISON OF TRUMP’S POLICIES TO HISTORICAL TREND

Since 1979, the history of U.S.-Iran diplomacy has been ripe with tense moments. Military proxies and skirmishes have been intermittent and historical animosity has often prevented the emergence of constructive dialogue. While today these former allies remain as staunchly opposed as ever, never before has U.S. policy towards Iran provoked the root of Iranian grievances. Previous U.S. foreign policy has been aimed at countering Iran’s regional actions and limiting their nuclear capabilities, all while attempting to not directly provoke the Iranian leadership. President Trump’s policies towards Iran are unique in the fact that they represent a turn towards American aggression and brinksmanship. Threats of war via twitter and expressed support for a military overhaul of the Iranian regime play directly into Iranian fears of American interference and provoke the Iranian state.

The roots of Iranian resentment stem from 1953, when a coup engineered by the CIA and Britain’s MI6 overthrew democratically elected Prime Minister Mossadegh and reinstated pro-Western monarch, Shah Mohammad Reza Pahlavi. This plot, known as Operation Ajax, was framed as an anti-communist measure against the backdrop of the red scare.<sup>39</sup> However, this initiative was widely believed to be a reaction to Prime Minister Mossadegh’s nationalization of the oil industry and an effort to safeguard western economic interests.<sup>40</sup> Following the coup,

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<sup>37</sup> John R. Bolton, "To Stop Iran's Bomb, Bomb Iran." The New York Times. March 26, 2015. Accessed February 11, 2019.

<sup>38</sup> "Here's John Bolton Promising Regime Change in Iran by the End of 2018." The Intercept. March 23, 2018. Accessed February 11, 2019.

<sup>39</sup> Moyara de Moraes Ruehsen, "Operation 'Ajax' Revisited: Iran, 1953." Middle Eastern Studies 29, no. 3 (1993): 467-486.

<sup>40</sup> Mary Ann Heiss, "The United States, Great Britain, and the creation of the Iranian oil consortium, 1953-1954." The International History Review 16, no. 3 (1994): 511-535.

resentment over U.S. interference in Iran's political and economic spheres ushered in 25 years of fraught relations. Despite the fact that Prime Minister Mossadegh's move to nationalize oil earned him a reputation as a hero within Iran, he would end up spending the remainder of his life under house arrest. Meanwhile, the Shah would rise to power on the back of United States and western support.<sup>41</sup>

The United States continued to prop up the Shah's regime over the course of the next two decades, namely by pumping money into the security apparatus. During Reza Shah's rule, Iran was the largest purchaser of U.S. weapons, as well as the strongest U.S. ally in the Persian Gulf. Kissinger famously said that he did not remember making any request of the Shah that was refused. Likewise, the Shah enjoyed great benefits from his alliance with the U.S.<sup>42</sup> In 1957, the CIA and Israeli MOSSAD assisted the Shah in establishing the SAVAK secret police force, a domestic security and intelligence service with the goal of monitoring political opponents and repressing dissident movements.<sup>43</sup> SAVAK quickly became one of the country's most feared organizations, with a reputation for such severe brutality that Amnesty International named Iran one of the worst violators of human rights.

Iranian resentment over America's historical involvement fostered and erupted in the form of a popular revolution with a strong anti-American undercurrent, eventually leading to the embassy seizure and hostage crisis during the country's 1979 revolution. These actions greatly outraged the American public, who were appalled at the intense anti-American rhetoric being employed by the revolutionaries and who were largely unaware of the impacts of prior U.S. foreign policy in the region. Since the humiliation of the hostage crisis, continued Iranian aggression in the form of terrorist attacks and regional antagonism have prevented both parties from capitalizing on shared interests. Instead animosity has dominated the discourse and proven to be a repeated obstacle in reconciliation efforts since the revolution.

President Trump's pivot toward increased American aggression and military action plays directly into Iranian fears regarding U.S. interference in their political sphere. As previously discussed, U.S. interference in Iranian internal politics and intense anti-American sentiment made

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<sup>41</sup> Timothy Chilman, "Why the Iranians Hate Us—the Coup of 1953."

<sup>42</sup> Roham Alvandi, *Nixon, Kissinger, and the Shah: The United States and Iran in the Cold War*. (Oxford University Press, 2016).

<sup>43</sup> Ronen A. Cohen, "The CIA, SAVAK, and Mossad Connections with the Forqan." In *Revolution Under Attack*, pp. 101-114. (Palgrave Macmillan, New York, 2015).



Iran unwilling to negotiate after their revolution and culminated in the severing of diplomatic ties after the hostage crisis. In today's world, President Trump's unilateral withdrawal from the nuclear deal has thwarted reconciliation yet again, but has also aided Iranian radicals while alienating moderates. This posture towards Iran exacerbates the same Iranian fears that started U.S.-Iran animosity many years ago.

## THE USE OF LIMITED AIRSTRIKES TO FURTHER THE PRESIDENT'S FOREIGN POLICY GOALS

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*This paper explores the use of limited strikes, short duration airstrikes when war is not declared, and its influence on presidential approval and the behavior of international actors. Using statistical analysis of approval data and a qualitative analysis of six cases when a president has ordered a limited strike, this study finds that limited strikes may increase approval ratings but have little to no impact on the behavior of other states or non-state actors. Furthermore, any impact that a limited strike may have on presidential approval will only be short-term.*

### INTRODUCTION

In 2017 and 2018, President Donald Trump used aircraft and ship-based missiles against Syrian military bases and chemical weapons facilities. These most recent strikes represent a modern trend of the president using his commander-in-chief authority to conduct unilateral strikes as a foreign policy tool. With advancement and greater deployment of precision guided munitions since the mid-1970s, and especially the development of the cruise missile in the 1990s, the military's ability to destroy specific targets in sensitive areas has greatly increased.<sup>1</sup> Also, the capability of standoff missiles to be fired from offshore or outside a country's border makes the use of the weapons much safer for the operator. These new capabilities enable military commanders greater flexibility and less collateral damage while also creating a new type of foreign policy tool that is much less politically sensitive than the use of ground units.

From President Reagan on, presidents have ordered limited strikes to send a political message to other governments. From the retaliatory strikes in response to Libyan sponsored terror attacks to punitive strikes against the Hussein regime, these types of attacks targeted countries that were not at war with the United States. The strikes are a representation of American power and a threat of further violence if certain actions continue. Additionally, a limited strike is so time constrained that it is not part of a prolonged air campaign like those in Kosovo from 1995 to 1998 and Libya in 2011. Therefore, in the cases involving limited strikes,

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<sup>1</sup> U.S. Air Force, "USAF Target Designators and Precision Guided Munitions," accessed November 30, 2018.

the president never sought a declaration of war or congressional approval. Presidents historically claim that the authority to conduct these strikes falls under their executive prerogative or outside constitutional and War Powers Act requirements.<sup>2</sup> Specific to the War Powers Act, the president only has sixty days once hostilities are initiated to gain congressional approval, but this clause gives, in essence, the president the power to conduct limited military actions without congressional interference within this sixty day timeframe.<sup>3</sup> Limited airstrikes are a commonly used modern American foreign policy tool that has minimal congressional oversight.

Presidential actions overseas have a domestic audience as well. This research paper not only studies the impact limited strikes have on furthering a president's foreign policy goals but also how their use affects the president's approval at home. Ultimately, this paper seeks to answer two questions about the use of limited strikes. First, do limited airstrikes change the behavior of a state or non-state actor toward conduct more in line with the administration's foreign policy goals? Second, do these same strikes affect the president's approval ratings?

### **Literature Review**

There is significant literature on large scale air campaigns in addition to the effect of conflict on a presidency. This study is more specific to a niche which receives minimal published research given the few cases historically as well as the only recent use of limited airstrikes as a foreign policy tool.

In her study on the duration of coercive bombing campaigns from 1917 to 2004, Susan Allan argues that bombing an actor can change its behavior. In addition, there are specific political benefits to this type of military force including fewer friendly casualties, the signaling of resolve to address an action without long-term commitment, and the ability to incrementally engage the enemy.<sup>4</sup> She does not specifically focus on public opinion, only the regime type, and her analysis does not include the most recent strikes carried out by President Trump. Meanwhile, Michele Malvesti analyzes American airstrikes with a focus on counterterrorism and studies the bombings of Libya in 1986 and Al-Qaeda in 1998. She uses the policy goals of prevention and

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<sup>2</sup> Bruce Ackerman, "Trump Must Get Congress's O.K. on Syria," *The New York Times*, January 20, 2018, sec. Opinion, accessed February 9, 2019.

<sup>3</sup> Library of Congress, "War Powers," *Law Library of Congress*, accessed February 9, 2019.

<sup>4</sup> Susan Hannah Allen, "Time Bombs: Estimating the Duration of Coercive Bombing Campaigns," *The Journal of Conflict Resolution* 51, no. 1 (2007): 114.

holding the perpetrators responsible, broadly defined as accountability, to judge if a strike was successful.<sup>5</sup> This research paper uses Malvesti's concepts of prevention and accountability as part of its qualitative analysis of whether limited strikes against both state and non-state actors were successfully able to modify the actor's behavior to be more in line with the president's foreign policy.

Moving to the literature on the president's decision making process to use a limited airstrike, James Meernik explores the use of force as a diversionary action for the president. While he is unable to find statistically significant results supporting the theory that low approval ratings lead to a president more likely to use force abroad, he does find that the United States is more likely to act militarily if it has previously used force against an actor or in a region.<sup>6</sup> This paper builds on this approval rating analysis with emphasis on limited strikes. Highlighting the greater latitude the president has in the foreign policy realm, Dan Wood and Jeffrey Peak argue that there is an important relationship between public attention and the presidential administration as they receive policy cues from each other.<sup>7</sup> Their research finds that media coverage and public attention have a stronger impact on the president's foreign actions than the president's actions on the media.<sup>8</sup> Therefore, in order for the president to be perceived well, he must appear to attend to the foreign problems that the public believes are most important.

Building on the discussion of public opinion and foreign policy, James Fearon writes about the importance of audience costs when the president is analyzing his foreign policy options. Fearon finds that audience costs increase the longer a conflict continues after a leader backs down from a confrontation.<sup>9</sup> Also, the stronger a domestic audience, found mostly in democracies, the less likely a leader will be to retreat from an international confrontation.<sup>10</sup> This research emphasizes the importance of the political landscape surrounding a president's decision to use a limited airstrike against an international opponent. Studying unilateral action, Dino Christenson and Douglas Kriner argue that public opinion is the most powerful check on an

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<sup>5</sup> Michele L. Malvesti, "Bombing Bin Laden: Assessing the Effectiveness of Air Strikes as a Counter-Terrorism Strategy The New World Disorder," *Fletcher Forum of World Affairs* 26 (2002): 19.

<sup>6</sup> James Meernik, "Modeling International Crises and the Political Use of Military Force by the USA," *Journal of Peace Research* 37, no. 5 (September 1, 2000): 559.

<sup>7</sup> B. Dan Wood and Jeffrey S. Peake, "The Dynamics of Foreign Policy Agenda Setting," *American Political Science Review* 92, no. 1 (March 1998): 174.

<sup>8</sup> *Ibid.*, 181.

<sup>9</sup> James D. Fearon, "Domestic Political Audiences and the Escalation of International Disputes," *The American Political Science Review* 88, no. 3 (1994): 579.

<sup>10</sup> *Ibid.*, 583.

administration's decision to use unilateral action outside of the United States. They find that congressional criticism, especially on constitutional grounds, is very influential in turning the public against a president's action.<sup>11</sup>

On the other side, Louis Klarevas studies the factors that cause the public to support foreign policy and the use of force abroad. After analyzing a wide breadth of domestic and international factors, Klarevas argues that there are certain common characteristics that lead to positive domestic perception of the use of force including operations that: promote international law or support allies, are short in duration before negative public opinion can build, and have few American casualties.<sup>12</sup> Limited strikes have the benefit of already being the last two of these characteristics.

Overall, the literature highlights the connection between public opinion and the perception of military operations along with the impact public opinion has on a president's decision to use military force. In addition, there is literature to support the ability of coercive bombing to signal international adversaries. This research paper will build on the analysis of public opinion while also filling a gap in the research on airstrikes specific to the more recent use of limited strikes.

## RESEARCH DESIGN

The research executed in this study has two parts: presidential approval and the effect on an actor's behavior with regard to foreign policy goals. Furthermore, the limited airstrike's influence on presidential approval will involve a quantitative analysis while the analysis of the effect of a limited strike on an actor's behavior requires a qualitative method.

The following hypotheses represent both parts of the research conducted in this paper:

**H1:** Presidential approval ratings will *increase* after a limited strike

**H2:** The actor attacked in a limited strike will *not change* its behavior to be more in line with the president's foreign policy goals

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<sup>11</sup> Dino P. Christenson and Douglas L. Kriner, "Mobilizing the Public Against the President: Congress and the Political Costs of Unilateral Action," *American Journal of Political Science* 61, no. 4 (October 1, 2017): 778.

<sup>12</sup> Louis Klarevas, "The 'Essential Domino' of Military Operations: American Public Opinion and the Use of Force," *International Studies Perspectives* 3, no. 4 (November 1, 2002): 423–426.

The definition of a limited airstrike created for this study is the use of missiles, bombs, or other munitions launched from a plane, ship or submarine. In addition, the strike's duration must be four days or less to be considered a limited strike and the strikes cannot be part of a broader military air campaign or operation. This criterion was created to best analyze the use of force as a form of political messaging to the leader of a foreign country or non-state actor in order to deter behavior that is contrary to American foreign policy interests. For example, the airstrikes used against Libya in 1986 to deter the regime from supporting international terrorism would be considered a limited strike while the airstrikes prior to the invasion of Iraq in 1991 or Afghanistan in 2001 would not meet the requirements of a limited strike because the strikes were the initial part of a larger military action. Additionally, a declared state of war cannot exist between the United States and the actor in which the limited strikes targeted.

Without a dataset on limited airstrikes available, this paper compiled information from existing sources to create a list of six cases that meet the previously outlined definition of limited airstrikes. In addition to the two most recent Syrian strikes, the cases involve the countries of Libya, Iraq, Sudan, and Afghanistan. A dataset created by Susan Allen includes some of these cases and provided critical background information including duration, outcome, and regime types of the belligerents and targeted actors.<sup>13</sup> A brief summary of each of the six cases that are analyzed in this paper can be found in Appendix A.

The two dependent variables are presidential approval and the effect of a strike on an actor's international behavior. To measure presidential approval, this research uses Gallup's weekly presidential approval rating dataset for the presidencies of Reagan, Clinton, and Trump.<sup>14</sup> Limited strikes were not used by President Obama during his two terms. The approval rating data will be statistically analyzed over both a four and a three week period before and after a strike to determine the effect of a limited strike on the president's approval. Qualitatively judging an international actor's behavior prior to and following a limited strike requires a thorough understanding of the geopolitical background surrounding the limited airstrikes. This paper uses National Security Strategies and presidential comments to define both the president's regional foreign policy goals in addition to his desired outcome specific to the actor that was attacked. In addition to previously stated foreign policy goals, this research only uses presidential

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<sup>13</sup> Allen, "Time Bombs."

<sup>14</sup> Gallup, "Presidential Job Approval Center," *Gallup.Com*, accessed December 1, 2018,

justification immediately after the limited strike as part of the foreign policy goal. This effort is to prevent official statements, after an administration analyzed the impact of the strikes on an actor's behavior, from being tailored to mirror the outcome and not the actual initial foreign policy goal.

This research controls for two variables: presidential administration and other significant political events that happen around the same time as the limited strikes. Given the thirty year time frame of the use of limited strikes, the perception of U.S. military force abroad of both domestic and international audiences could have shifted. Also, political party and previous military actions could influence the effects of a strike. To account for this change in attitude toward military force and coercive strikes, this paper analyzes the strikes collectively and separated by presidential administration. Domestically, other significant political events like national emergencies, elections, and the release of national economic indicators around the same time as a strike could also affect approval ratings. To mitigate this risk, polling data was selected that was taken prior to any other significant political events and therefore absent of the effect of this event.

## QUANTITATIVE ANALYSIS

Since approval rating is an interval-level variable and both the controls are nominal-level, the analysis in this paper uses a comparison of means method to test H1.

$$t = \frac{\bar{x}_1 - \bar{x}_2 - \Delta}{\sqrt{\frac{s_1^2}{n_1} + \frac{s_2^2}{n_2}}}$$

**Two Sample t test for Comparing Two Means:** where  $\bar{x}_1$  and  $\bar{x}_2$  are the means of the two samples,  $\Delta$  is the hypothesized difference between the population means (0 if testing for equal means),  $s_1$  and  $s_2$  are the standard deviations of the two samples, and  $n_1$  and  $n_2$  are the sizes of the two samples.

In addition, this analysis sorts the statistical analysis by presidential administration. This paper required the creation of an approval rating dataset using all Gallup and Gallup-partnered weekly presidential approval polling available. In instances where there were multiple approval data for the same week, the results were averaged. To analyze approval rating over time, the

quantitative analysis was conducted in both a three week mean comparison and a four week mean comparison before and after a limited strike. The approval ratings the week of the limited strikes were not used because they included polling responses before and after a strike and were therefore unable to be used in the comparison. The developed polling dataset is analyzed using STATA software and produces the following results.

**Table 1:** Net Favorability t-test Comparison of Means (3 Week) Results

	Overall	Trump	Clinton	Reagan
<b>Before Strike</b>	12.125%	-16.000%	27.250%	36.000%
<b>After Strike</b>	16.764%	-13.000%	30.000%	46.500%
<b>Difference</b>	+4.639%	+3.000%	+3.000%	+10.500%
<b>Two-Tailed test</b>	P=0.577	P=0.085	P=0.460	P=0.075
<b>One-tailed Test</b>	P=0.289	P=0.043*	P=0.230	P=0.037*
	*statistically significant			

**Table 2:** Net Favorability t-test Comparison of Means (4 Week) Results

	Overall	Trump	Clinton	Reagan
<b>Before Strike</b>	13.591%	-15.250%	28.273%	36.667%
<b>After Strike</b>	17.478%	-12.250%	30.167%	46.000%
<b>Difference</b>	+3.887%	+3.000%	+1.894%	+9.333%
<b>Two-Tailed Test</b>	P=0.579	P=0.061	P=0.538	P=0.009*
<b>One-Tailed Test</b>	P=0.289	P=0.030*	P=0.279	P=0.004*
	*statistically significant			

Focusing on net favorability (or percent favorable minus percent unfavorable), Table 1 and 2 show the statistical analyses from the comparison of means t-tests. Table 1 compares the three week average before to the three week average after the limited strike, while Table 2 does the same analysis but for a four week period before and after the limited strike. In both tables, the average presidential favorability is always greater after the strike than it was before. However, the results are only statistically significant for the two limited strikes during the Trump administration and the only limited strike of the Reagan administration.

The overall column includes the aggregate of all strikes from the Trump, Clinton, and Reagan presidencies, yet the P value is not less than or equal to 0.05 for either table. The results

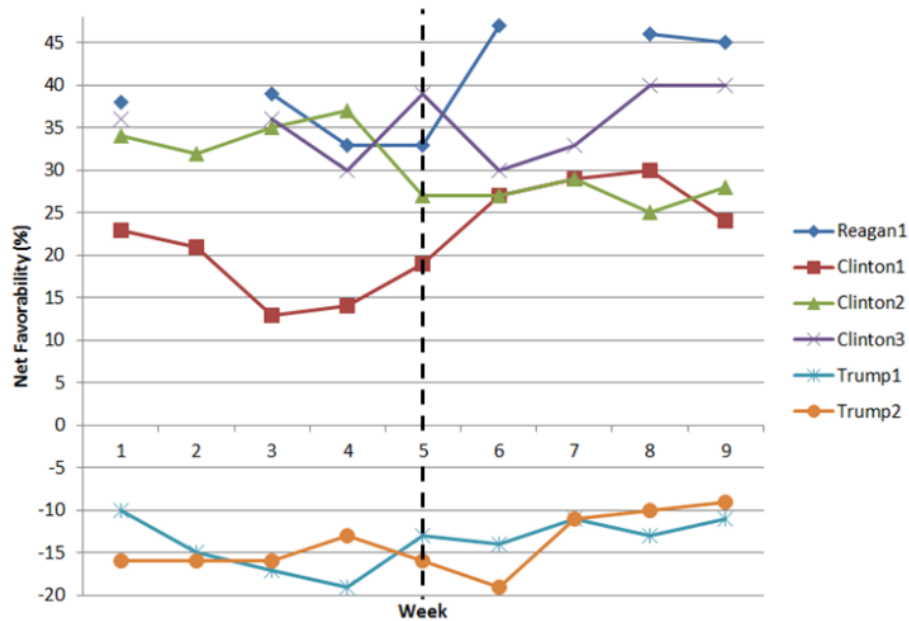


are also not statistically significant for the Clinton administration data that include three limited strikes over two presidential terms. On the other hand, President Trump had an average of three percent increase in net favorability with a statistically significant P value. The regular two-tailed test of significance resulted in a marginal P value ( $P=0.085$  over three weeks and  $P=0.061$  over four weeks). Using a one-tailed test of significance ( $H_a: \text{diff} < 0$ ) resulted in P values of 0.043 and 0.030 for three and four week comparisons respectively. The one-tail test of significance is acceptable for this analysis because it is directly testing the direction of the relationship between limited strikes and approval suggested in H1. President Trump's approval data both supports H1 and is statistically significant. In his first term, there is a relevant relationship between conducting limited strikes and increased presidential approval.

Similarly, President Reagan had a statistically significant increase in approval rating after his limited strike against Libya. He experienced a net favorability increase of ten and a half percent in the three week period and a nine and a third percent increase over the four week period. The two-tailed test of significance for the three week result was marginally significant ( $P=0.075$ ) but was statistically significant using the one-tailed test at  $P=0.037$ . In the four week analysis, both the two-tailed and one-tailed test of significance were significant at  $P=0.009$  and  $P=0.004$  respectively. There is a strong positive relationship between the use of a limited strike and increased net favorability during the Reagan presidency.

Another important result from the comparison of means tests is that the net increase in all columns of the three week analysis is greater than the net increase in the four week analysis. This suggests that the effect of limited strikes on the public's opinion of the president is greater over a shorter time frame. There is sufficient data for both time periods with forty-five weeks' worth of data in the four week period of analysis and thirty-three weeks' worth of data in the three week period of analysis. The changes in results between the two time periods support the hypothesis that any influence on public opinion from a limited strike would be short-term.

**Graph 1: Presidential Approval over Time with Strike**



Visually, Graph 1 shows a complex relationship between net favorability prior to the strike on the left of the black dashed line and the favorability following the strike on the right of the black dashed line. Both President Reagan and President Clinton’s first strikes show a substantial and immediate increase in net favorability. Possible explanations for the greater public response could be importance of international terrorism (in Reagan’s case) or Saddam Hussein’s aggression (in Clinton’s case) as well as the fact that these strikes were both the first use of limited strikes for the respective administrations. Overall, there is a trend for the three administrations to experience increased favorability after the use of limited strikes. The results of this trend are statistically significant for both the Trump and Reagan presidencies.

## QUALITATIVE ANALYSIS

Given the challenge of operationalizing presidential foreign policy goals and the behavior of international actors, this paper will use a case study method to qualitatively analyze the six limited strikes conducted by U.S. presidents.

The first case of a limited airstrike ordered by the president occurred April 14, 1986, against targets in Tripoli and Benghazi, Libya. Code-named Operation El Dorado Canyon, President Reagan initiated the strikes in response to Muammar Gaddafi's support of international terrorism – and specifically in response to the “La Belle” nightclub bombing in West Berlin.<sup>15</sup> While this attack killed two American soldiers and injured scores of other Americans, it was the addition of previous provocative actions that led to the eventual decision to strike at Gaddafi's base of power. President Reagan's response to international terrorism was a limited strike specifically targeting Gaddafi's support of terror organizations like the Red Army Faction, the Red Brigades, the Irish Republican Army, and other terror groups.<sup>16</sup> The December 1985 Rome and Vienna airport attacks and the skirmish between the U.S. Navy and Libyan forces in the Gulf of Sidra generated strong resentment among the American people and President Reagan toward the Gaddafi regime.<sup>17</sup>

Following the successful destruction of the five designated targets, President Reagan addressed the country on the Libya strike. Focusing on the evidence against the Gaddafi regime supporting terror attacks, especially the “La Belle” attack, Reagan stated that the United States would continue to strike Libya as long as the regime continues to support terrorism against American citizens.<sup>18</sup> Furthermore, Reagan explained that the purpose of the limited strikes was to diminish Libya's capacity to conduct terror operations as well as deter Gaddafi from supporting additional attacks against U.S. interests.<sup>19</sup> Reagan's ultimate goal was to coerce Gaddafi into no longer supporting international terrorism against the West and the United States. The success of this deterrence was moderate at best.

Taking Reagan's own goals of degrading the Libyan capability to conduct further attacks and deter Gaddafi from supporting international terrorism, President Reagan did not completely achieve either goal. Following the strikes, Libya is known to have sponsored two terrorist plots against U.S. facilities and at least five other anti-American terrorist attacks.<sup>20</sup> However, there is evidence to suggest that Libyan-sponsored terrorism activity decreased significantly in 1986 and

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<sup>15</sup> Brian Davis, *Qaddafi, Terrorism, and the Origins of the U.S. Attack on Libya* (New York, NY: Praeger Publishers, 1990), 115.

<sup>16</sup> *Ibid.*, 79.

<sup>17</sup> *Ibid.*, 104.

<sup>18</sup> Ronald Reagan, *Speech on Airstrikes Against Libya*, 1986.

<sup>19</sup> *Ibid.*

<sup>20</sup> Malvesti, “Bombing Bin Laden,” 19.

1987 according to the State Department.<sup>21</sup> On the topic of deterrence, the American bombings elicited widespread international condemnation - especially from other Arab states. Some of the United States' closest allies, and moderate Arab nations, condemned the American actions including Egypt, Jordan, Saudi Arabia, and Kuwait.<sup>22</sup> While the Middle Eastern states moved closer to their fellow Arab state and away from the United States, the strikes forced Western Europe to grudgingly back the United States.<sup>23</sup> Western Europe countries expelled Libyan diplomats in mass and threatened the vital trade that Libya was dependent on.<sup>24</sup> The limited strikes on Libya did not end Gaddafi's support of international terrorism, but it did increase the international pressure against his behavior. This pressure included the potential to make Libya susceptible to economic hardship through increased trade restrictions or embargoes. Furthermore, the strikes pushed the Middle East to reluctantly back Gaddafi's regime giving him a vital source of legitimacy after the strikes. While the Gaddafi regime faced increased pressure from Western Europe to lessen support for international terrorism, the strikes helped Libya gain additional credibility with other Arab states. There is evidence to suggest a decrease in Libyan-backed terror attacks, but ultimately Gaddafi continued to provide support to these extremist organizations following the limited strikes.

The next use of limited strikes occurred during Operation Desert Strike under President Clinton on September 3 and 4, 1996. With the help of British aircraft, the United States conducted ship and aircraft-based cruise missile strikes against Iraqi targets as the Iraqi military advanced into Kurdish safe zones set up following the Gulf War in 1991.<sup>25</sup> Concerns over the possibility of genocide of the Kurdish people and the violation of United Nations Security Council Resolution 688 with a renewed threat to the no-fly zone infrastructure caused President Clinton to act.<sup>26</sup> The strikes targeted the surface-to-air missiles that had been hampering and even threatening the implementation of the Northern and Southern no-fly zones.

While the strikes did effectively diminish Iraq's ability to challenge and threaten the coalition no-fly zone, there was a limited impact on the Iraqi military's encroachment into

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<sup>21</sup> Ibid., 20.

<sup>22</sup> Laham, *The American Bombing of Libya: A Study of the Force of Miscalculation in Reagan Foreign Policy*, 175.

<sup>23</sup> Nicholas Laham, *The American Bombing of Libya: A Study of the Force of Miscalculation in Reagan Foreign Policy* (McFarland, 13 November 2001), 7.

<sup>24</sup> Ibid., 164.

<sup>25</sup> Nigel D. White, "Commentary on the Protection of the Kurdish Safe-Haven: Operation Desert Strike," *Journal of Armed Conflict Law* 1, no. 2 (1996): 201.

<sup>26</sup> Ibid., 202.

Kurdish safe zones. The Iraqi Army withdrew from these zones but not before setting up a new regional government in the process. President Clinton's statements focused on the brutality and aggression of the Iraqi Army toward the Kurds as justification to enter the conflict,<sup>t</sup> which suggests that forcing the Iraqis out of the safe zones was the administration's primary goal in implementing the limited strikes. The limited strikes did not help the Kurdish people regain their sovereignty since the new Kurdistan Democratic Party was installed by the Iraqi Army. The operation was minimally successful at forcing Iraq to change its behavior toward the Kurdish people or the coalition no-fly zone operation.

President Clinton next used limited strikes against al-Qaeda in Sudan and Afghanistan following the U.S. embassy bombings in Kenya and Tanzania on August 7, 1998. Two weeks later, the United States conducted cruise missile strikes in Operation Infinite Reach. President Clinton explained that the objective of the limited strikes was to damage al-Qaeda's capacity to strike Americans and other innocent people.<sup>27</sup> The targets were al-Qaeda training facilities in Afghanistan and a pharmaceutical factory in Sudan. The President's goals to prevent further attacks and protect the United States were not successful. Even immediately after the strikes, the Jordanian government prevented an al-Qaeda attack against Americans and Israelis in 1999.<sup>28</sup> Additionally, the attack on the USS Cole in Yemen was implemented shortly thereafter in October 2000.

Looking at the short-term effect of the limited strikes against al-Qaeda prior to the September 11 attack, President Clinton did not degrade al-Qaeda's ability to strike American targets. Also, the strikes did not cause the terrorist group to pause or decrease its number of attacks. Initial Taliban suspicion of al-Qaeda transitioned to partnership, as Taliban leader Mullah Omar became one of Osama bin Laden's most ardent defenders.<sup>29</sup> The strikes failed to make Americans safer and did not diminish al-Qaeda's power leading to the conclusion that the limited strikes were unable to change the behavior of an international actor.

The Clinton administration conducted its third limited strike mission from December 16 to December 19, 1998 called Operation Desert Fox. Disarmament of Iraq's weapons of mass

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<sup>27</sup> Malvesti, "Bombing Bin Laden," 22.

<sup>28</sup> Ibid.

<sup>29</sup> Lawrence Wright, *The Looming Tower: Al-Qaeda and the Road to 9/11* (New York: Vintage Books, 2007), 326.

destruction (WMD) program became the primary goal of the coalition following the Gulf War.<sup>30</sup> The main objective was to coerce Iraq into cooperation with the United Nations Special Commission (UNSCOM) while the secondary objective was to retard Iraq's ability to rearm.<sup>31</sup> The result of these limited strikes was mixed. On one hand, Iraq refused to allow further inspection of its WMD facilities, while on the other hand the limited strikes did have a significant impact on Iraq's security apparatus for the production of WMDs.<sup>32</sup> From a tactical standpoint, the limited strike had some success weakening WMD infrastructure. However, from a political and foreign policy perspective, the limited strikes did not force a change in Iraq's behavior with regard to its disarmament program. Overall, the limited strikes were minimally successful at coercing Iraqi behavior to be more in line with American foreign policy goals.

Given the recentness of the two limited airstrikes President Trump ordered against Syria, it is challenging to form a complete qualitative analysis of the effectiveness of the strikes on influencing Syria's behavior. Both the 2017 and 2018 missile strikes were against Syrian government facilities involved in the production, storage, or distribution of chemical weapons. In addition, these two limited strikes were in response to the use of chemical weapons by the Syrian government on civilian targets. President Trump explained his reasoning behind the 2017 strike as one of a critical national security interest to prevent and deter the use of chemical weapons.<sup>33</sup> The limited strike did not deter the use of chemical weapons by Syria because President Trump had to respond again in 2018. It is still too early to determine if the most recent strike will cause the Syrian regime to stop using chemical weapons. The Violations Documentation Center in Syria continues to alert the world to the use of chemical weapons as part of its data collection. The use of chemical weapons, especially chlorine gas, has not stopped since the 2018 limited strike.<sup>34</sup> While still early to conclude with certainty, the limited strikes conducted by President Trump appear to have failed to deter the Syrian regime from using chemical weapons.

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<sup>30</sup> James McKay, "Fear of the Unknown: The Coalition from Operation Desert Fox to Operation Iraqi Freedom," *Defense & Security Analysis* 21, no. 2 (June 1, 2005): 144.

<sup>31</sup> *Ibid.*, 145.

<sup>32</sup> *Ibid.*, 146.

<sup>33</sup> Dan Lamothe, Missy Ryan, and Thomas Gibbons-Neff, "U.S. Strikes Syrian Military Airfield in First Direct Assault on Bashar Al-Assad's Government - The Washington Post," *Washington Post*, accessed February 11, 2019.

<sup>34</sup> "MONTHLY STATISTICAL REPORT ON CASUALTIES IN SYRIA-DECEMBER 2018," Violations Documentation Center in Syria, *VDC - Violations Documentation Center*, January 14, 2019, accessed February 11, 2019.

In summary, the limited airstrikes have had mixed results at furthering a president's foreign policy goals. The coercive bombing has rarely substantially shifted the behavior of an international actor. Of the six limited strikes, the Libyan strike was the most effective at changing the behavior of the international actor. The other five cases had little to no impact on shifting the behavior of a state or non-state actor toward actions more in line with American foreign policy goals.

## CONCLUSION

Since the 1980s, long range airstrikes have been used for the primary purpose of a foreign policy tool instead of just an instrument of military power. The short duration strikes against states that are not at war with the United States are defined as limited strikes by this research paper. Using a quantitative method to analyze the effect of these strikes on a president's approval ratings, this empirical study finds that there is evidence that limited strikes increase approval ratings. Using a comparison of means t-test, the statistical analysis found that President Trump's mean favorability increased by three percent and President Reagan's increased by about ten percent. These results are statistically significant using a one-tailed test of significance. This result supports H1 of this paper. In addition, the shorter time period (three weeks) comparison had a greater change in favorability than the longer period (four weeks) suggesting that the limited strikes have a more pronounced effect on the presidential approval initially.

The lack of statistical significance in the majority of the results requires further research. Improvements on this research design would be to use multiple sources of polling data and analyze the approval over an interval shorter than a week. Also, future research would benefit from controlling for economic data as this substantially affects how the public views the president.

The qualitative analysis of the limited strikes shows that the strikes had little political power abroad. Both against nation states and non-state actors the limited strikes had little impact on the behavior of other actors. There is significant evidence to support H2. As a foreign policy tool, the strikes did very little to advance presidential goals. Instead, the strikes simply showed that the president acknowledged a problem and responded with force. In conclusion, whether the limited strikes were meant for a domestic audience or not, they had a greater impact on how the American public views the president than how the strikes influence the behavior of international actors.

Even in an era where military force falls under the Authorization for Use of Military Force guidelines, the President has significant power to conduct unilateral military actions without congressional approval. Limited strikes offer a flexible as well as less politically liable foreign policy tool in which to send a message to foreign actors. Moving forward, this research highlights the potential effects of limited strikes on domestic public opinion. Without greater congressional oversight, Presidents may use limited strikes as a means to boost the public's perception of their performance in critical moments of their presidency such as ahead of an election or during a scandal. This study shows there is the possibility of presidents using limited strikes for political gain. Therefore, Congress has the challenging duty of preventing executive overreach while allowing the president to protect the United States and its interests. Ultimately, American political institutions must determine the proper amount of presidential prerogative they wish to allow in the foreign policy and national security realm.



## Appendix A

- Libya, 1986, in response to Gadhafi support of terror groups and Berlin disco explosion
- Iraq, 1996, in response to attacks on U.S. aircraft enforcing the no-fly zone and violations of Kurdish safe zones
- Sudan/Afghanistan (Al-Qaeda), 1998, in response to Kenya/Tanzania embassy attacks
- Iraq, 1998, in response to Hussein not complying with UN chemical weapons inspections
- Syria, 2017, in response to the Khan Shaykkun sarin chemical attack
- Syria, 2018, in response to the Douma sarin and chlorine chemical attack

### Note

*The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the U.S. Air Force, the U.S. Department of Defense, or the U.S. government.*

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## EXECUTIVE AGREEMENTS AND AMERICAN FOREIGN POLICY

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*In the political history of the United States, few areas have seen such dramatic philosophical changes, in both substance and method, as American foreign policy. Changes from traditional isolationism to sweeping global involvement aside, the shift in the early twentieth century from formal Senate-approved treaties to majority executive agreements as the primary method of international accord has ushered in a new era of examining executive authority. By using the power of the executive branch to produce substantial numbers of agreements between the United States and other nations and global organizations, modern presidents have significantly diminished the power of the legislative branch, and specifically the Senate, in influencing key American foreign policy decisions. For this and other reasons, many claim the rise of a new ‘imperial presidency,’ wherein a single actor makes foreign policy decisions, with advice and consent only coming from those in presidentially-appointed offices. However, even in the face of an ‘imperial presidency,’ Congress has found ways to exercise its influence on American foreign policy (if only in a reactionary manner), while limiting that of the president. In recent years, members of Congress have found ways to publicly voice their displeasure with the foreign policy decisions of the executive branch, and have used their relationships with their constituents to influence public opinion. Using the Joint Comprehensive Plan of Action (JCPOA) as a case study, this paper will examine how much of contemporary American foreign policy is invested in the executive, and how much power the Senate has in influencing American foreign policy decisions. After examination, it can be shown that while operating on a naturally disadvantageous post-hoc, reactionary basis, the Senate still holds significant power in shaping the foreign policy decisions of the United States in the contemporary era.*

### INTRODUCTION: WHEN DID THE ‘CONTEMPORARY ERA’ BEGIN?

While necessary for an in-depth discussion of the modern aspects of the topic, the idea of a ‘contemporary era’ of American foreign policy is not concrete. There is no firm consensus among scholars when presidential power over foreign policy underwent its most recent shift. Some say the current era began with the presidencies of Franklin D. Roosevelt and Harry S. Truman, while others view presidential power as cyclical, aligning its most recent upswing (from the lows of the ‘post-Watergate decline’) with the Bush-Cheney administration and the ‘War on Terror.’<sup>1</sup> For the purposes of this paper, the most recent era

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<sup>1</sup> Krutz, Glen S., and Jeffrey S. Peake. “Explaining the Rise of Executive Agreements in the Modern Era.” In *Treaty Politics and the Rise of Executive Agreements: International Commitments in a System of Shared Powers*, 53. Ann Arbor: University of Michigan Press, 2009; Rudalevige, Andrew. “‘The Contemporary Presidency’: The Decline and Resurgence and Decline (and Resurgence?) of Congress: Charting a New Imperial Presidency.” *Presidential Studies Quarterly* 36, no. 3 (2006): 511; Howell, William G. “Presidential

of presidential power over foreign policy—which will be referred to as the era of ‘contemporary foreign policy’ or the ‘contemporary era’—will begin with the breakup of the Soviet Union on December 26, 1991. The justifications for this definition rely on the convergence of three factors: the number of independent states in the international system; the dawn of the internet and the rapid spread of information; and of course, the large number of executive agreements put forth by American presidents. This is an appropriate date for the convergence of these three factors, and thus is a reasonable year to define the beginning of the contemporary era.

Of the three factors which best describe the contemporary era, the rise in nation-states may be the most unintuitive, as this trend began far before 1991. While decolonization and self-determination rapidly increased the number of nation-states in the international system as early as 1945 (and at an unparalleled rate in the 1960s), the breakup of the Soviet Union in 1991 came to define the modern era of nation-states; not only did the dissolution of the Soviet Union add fifteen new nation-states to the international system while removing one of the most powerful, it also meant that a significant number of nation-states formerly under Soviet political, economic, and military influence were now nonaligned on the international stage. From the perspective of the United States, this meant that a new group of nation-states were diplomatically accessible outside of the framework of the Cold War. In addition, the fear of nuclear war, which had for decades caused Congress to give the president a relatively powerful and quick-acting negotiating stance, had significantly diminished. Therefore, only with the breakup of the Soviet Union was the international state system, and the United States foreign policy decision-maker, fully formed into the structure of the contemporary era.

Alongside the fall of the Soviet Union, another important event happened in the early 1990s that changed not only the international political system, but the spread of information around the world: the creation of the world wide web. Created by British scientist Tim Berners-Lee in 1989, the software of the world wide web was put into the public domain on April 30, 1993.<sup>2</sup> The resulting revolution in information accessibility

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Power in the Modern Era.” In *Power without Persuasion: The Politics of Direct Presidential Action*, 2. Princeton University Press, 2003.

<sup>2</sup>“The Birth of the Web.” CERN Accelerating Science. 2019. Accessed January 25, 2019. <https://home.cern/science/computing/birth-web>.

changed forever the way states and governments interacted with their people, and each other. The idea of a ‘news cycle’ became more and more fluid, and governments of both developed and developing nations had to learn to adjust to the increasingly rapid spread of information to, from, and among their citizens. While the era of the internet is constantly evolving, and has undergone some drastic changes since its inception, its influence began in the early 1990s, and since then many things—including international politics—have never been the same.

The third defining feature of the contemporary era witnessed the liberal use of executive agreements and political commitments to determine American foreign policy. Admittedly, this trend began long before the early 1990s, and its start most often attributed to World War II and the presidency of Franklin D. Roosevelt.<sup>3</sup> The convergence of this trend with the two previously mentioned events signals the start of the contemporary era, and a new age of presidential influence in American foreign policy. With these three factors aligned, the stage is set for new and interesting relationships between the president and the Senate, and the United States and the rest of the world.

## CONTEMPORARY FOREIGN POLICY

In the contemporary era, presidential power and American foreign policy are inevitably intertwined, and this relationship affects how decisions are made. Through one of the defining features of this era—executive agreements—American presidents have been able to enter into accords with other nations without obtaining the support of two-thirds of the Senate, as formal treaties require. As a result, a majority of agreements between the United States and other nations are made without the advice and consent of Congress, and particularly the Senate, a legislative body that has historically held significant influence in deciding the foreign policy of the United States (e.g., blocking the United States from joining the League of Nations). The Senate has seen its direct influence on foreign policy decline alongside the popularity of formal treaties. Yet since executive agreements can be implemented solely through presidential authority, they likewise can be overturned at the

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<sup>3</sup> Krutz, Glen S., and Jeffrey S. Peake. “Treaties and Executive Agreements: A History.” In *Treaty Politics and the Rise of Executive Agreements: International Commitments in a System of Shared Powers*, 38. Ann Arbor: University of Michigan Press, 2009.

decision of a succeeding president. This makes executive agreements far more fragile than their Senate-approved counterparts, and this fragility can be exploited: when put under public and political pressure, especially from members of their own party, presidents can claim the authority to overturn these agreements without any input from opposing politicians or policymakers. Thus, the greatest strength of the executive agreement is also its greatest weakness. This can lead to an increasingly inconsistent foreign policy across presidential administrations as executive agreements become more and more popular.

While it is clear that such a trend has significant political implications, its impact has not been thoroughly studied. Much of the existing literature on executive agreements treats the topic as an extension of executive orders, and as a result comes to many of the same conclusions: presidents “freely exercise [executive orders, proclamations, or executive agreements] during periods of national crises” and “rely upon executive orders and executive agreements during periods of relative calm affecting policy changes that never would survive the legislative process.”<sup>4</sup> While certainly a portion of the truth, these conclusions fail to consider any appreciable distinctions between executive agreements and executive orders. The international nature of executive agreements alone means that they are dependent on an entirely separate political entity: another nation. Furthermore, they are subject to cooperation and scrutiny in not just the domestic political arena, but the international political scene. For example, the JCPOA was not just between the United States and Iran, but also between China, France, Russia, the United Kingdom (U.K.), Germany, and the European Union (EU). There were also notable nations—namely, Israel—publicly *against* the deal. With so many regional and global powers involved, it is hardly appropriate to consider agreements like the JCPOA—and other executive agreements—as merely extensions of the executive order, which are subject almost exclusively to domestic cooperation and scrutiny. The executive agreement, unique among executive powers, remains one of the least understood. An American president, through executive agreements, can advance his or her foreign policy goals with little or minor input from the Senate, in a process which has become a defining feature of contemporary American foreign policy. Moreover, the political effects of this are neither well studied nor documented. The rise of the executive agreement as the primary form of accordance

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<sup>4</sup> Howell, “Presidential Power,” 13

between nations appears to be facilitating the most recent upswing of presidential power and its impact on foreign policy.

Yet, even with the dawn of a new era of the ‘imperial presidency’ as some scholars claim, it would seem that there is hope for internationally-minded senators to find influence on foreign policy decisions. By using the JCPOA as a case study, the following sections will lay out exactly how the Senate and individual lawmakers can change the course of American foreign policy decisions in the long-term, while not necessarily in the short-term. Since the decline of treaties has facilitated the monopoly of responsibility to negotiate deals and interact diplomatically with other nations within the executive branch, the Senate can be said to be operating on a reactionary, post-hoc basis (for a more in-depth explanation of this phenomenon, see Part IV). While naturally disadvantageous, it is this feature which creates the ‘long-term’ effect possible: with little responsibility for policy-making themselves, senators can work to control the *message* of the policy put forth by the executive branch, by more directly communicating to their constituents, passing resolutions, and keeping certain issues in the national news cycle. These types of tactics became a defining feature of the JCPOA in the United States, and irreversibly changed the fate of the deal.

## **THE JOINT COMPREHENSIVE PLAN OF ACTION: A POLITICAL OVERVIEW**

The Joint Comprehensive Plan of Action (JCPOA), commonly known as the Iran Nuclear Deal, was an agreement between the United States, the U.K., France, Germany, Russia, China, the EU, and Iran which sought to prevent the nation of Iran from acquiring a nuclear weapon, while lifting decades-old economic sanctions on the country. President Barack Obama introduced the deal to the American public on July 14, 2015 at 7:02 A.M. EDT in a speech given on the White House State Floor.<sup>5</sup> The plan was, according to President Obama, “an opportunity to move in a new direction” in Iranian-American relations.<sup>6</sup> In his speech, President Obama laid out the main features of the plan, and

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<sup>5</sup> Obama, Barack H. “Statement by the President on Iran.” (speech, Washington, DC, July 14, 2015), National Archives and Records Administration. <https://obamawhitehouse.archives.gov/the-press-office/2015/07/14/statement-president-iran>.

<sup>6</sup> Ibid.

lobbied for its adoption. The deal was announced as an executive agreement, and therefore it did not need to pass the Senate with a two-thirds majority in order to go into effect. Both chambers could have passed ‘no’ resolutions against the deal, but these would have been immediately vetoed by President Obama. Since it required a supermajority in both chambers to override the veto, the deal simply needed to win over enough lawmakers to prevent a veto override—about one-third of each chamber. When President Obama announced this bill, he threatened to veto any legislation that would have impeded its implementation, including a House or Senate resolution. This left congressional Republicans and others who would be against the deal fighting an uphill battle to see it impeded.

Almost immediately, top Democrats and Republicans from both the House and the Senate reacted to the president’s landmark deal. On July 14 2015, the same day President Obama gave his speech on the State Floor, Senate Majority Leader Mitch McConnell released a statement, saying:

The comprehensive nuclear agreement announced today appears to further the flawed elements of April’s interim agreement because the Obama administration approached these talks from a flawed perspective: reaching the best deal acceptable to Iran, rather than actually advancing our national goal of ending Iran's nuclear program.<sup>7</sup>

While Senator McConnell goes on to say that the Senate will review the deal appropriately, and come to their own conclusions about its potential effectiveness, he clearly had a predisposed view that the deal was flawed, and it was not long before he publicly came out against the deal for good. Joining him were all Republican lawmakers from the House and Senate, and a number of Democrats, some notable.

Among the Democrats opposing the deal was Senator Chuck Schumer of New York, who in the summer of 2015 was one of the most important Democrats in the Senate. Schumer’s office released a statement on August 8, 2015, explaining that while he gave “tremendous credit to President Obama for his work on this issue,” due to unresolvable issues with the details of the deal, including how and when inspections were to be

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<sup>7</sup> McConnell, Mitch. “McConnell: Senate Will Review the Iran Nuclear Agreement and Its Effects on America’s National Security.” U.S. Senator Mitch McConnell. July 14, 2015. Accessed February 05, 2019. [https://www.mcconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=8a691c00-7a34-41e8-a42a-9b2c83b3f62b](https://www.mcconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=8a691c00-7a34-41e8-a42a-9b2c83b3f62b).

conducted, the failure of the deal to address Iran's development of Inter-Continental Ballistic Missiles (ICBMs), and its failure to curb Iran's investment in foreign terrorism against Israel and elsewhere, he would publicly denounce the deal and promised to vote yes on a motion of disapproval.<sup>8</sup> While Senator Schumer was not the only Democrat to publicly come out against the deal, he was probably the most important, and his decision was seen as a blow to public perception of the deal.

However, even without the support of Senator Schumer, the deal still had the backing of most prominent congressional Democrats. In the House, Democratic Minority Leader Nancy Pelosi gave speeches on the House Floor calling for her "colleagues to vote in support of the agreement that enhances our vigilance and strengthens our security," and was working in "overdrive" to lobby votes for the deal.<sup>9</sup> In the Senate, Minority Leader Harry Reid likewise threw his full support behind the agreement.<sup>10</sup> Between the work of President Obama, Representative Pelosi, Senator Reid, and other prominent supporters, the deal gained enough votes in both chambers of Congress to ensure that any veto given by the president would not be overturned, thus effectively signing it into law.

However, this does not mean that the debate was over. While some lawmakers moved on, others remained steadfastly opposed to the deal, and continued to speak out against it, both directly and indirectly. Already established in their respective camps, and more or less along party lines, congressional lawmakers dug in for what would become a long war of attrition against the deal. In the process, an agreement with global consequences found itself facing both global support—and opposition. Even with the deal already in place, congressional Republicans began planning for the long-term.

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<sup>8</sup> Schumer, Charles. "My Position on the Iran Deal | U.S. Senator Chuck Schumer of New York." Home | U.S. Senator Chuck Schumer of New York. August 06, 2015. Accessed February 05, 2019. <https://www.schumer.senate.gov/newsroom/press-releases/my-position-on-the-iran-deal>.

<sup>9</sup> Pelosi, Nancy. "Pelosi Floor Speech Ahead of Iran Nuclear Agreement Votes." Speaker.gov. September 11, 2015. Accessed February 06, 2019. <https://www.speaker.gov/newsroom/pelosi-floor-speech-ahead-of-iran-nuclear-agreement-votes/>; Lillis, Mike. "The Hill: Pelosi in Overdrive to Sell Obama's Nuke Deal with Iran." Speaker.gov. August 25, 2015. Accessed February 06, 2019. <https://www.speaker.gov/newsroom/the-hill-pelosi-in-overdrive-to-sell-obamas-nuke-deal-with-iran/>.

<sup>10</sup> Kim, Seung Min. "Harry Reid: I Will Back Iran Deal." POLITICO. August 24, 2015. Accessed February 09, 2019. <https://www.politico.com/story/2015/08/harry-reid-i-will-back-iran-deal-121648>.



## PRESIDENTIAL ACTION AND THE 'INITIAL' POLICY

When President Obama first announced the JCPOA to the American public, he knew that he needed to clearly define the intentions of the deal, both for Congress and the American public. He needed to sell the deal as having one, overarching, dominant goal: to prevent Iran from obtaining a nuclear weapon. He communicated this intention almost immediately. In his speech on the State Floor, he introduced the JCPOA as “a comprehensive, long-term deal with Iran that will prevent it from obtaining a nuclear weapon.”<sup>11</sup> There is one phrase used in this statement which sticks out as an important qualifier: ‘long-term.’ This was not a deal that the United States could approve today and ignore tomorrow: in order for the intentions of the deal to be properly realized, and in order for a foundation of trust to be built with Iran, the United States had to approach it with a mindset of long-term commitment. He reiterated later in his speech that through the deal, “every pathway to a nuclear weapon is cut off,” and that “ten or fifteen years from now, the person who holds this office will be in a far stronger position with Iran further away from a weapon and with the inspections and transparency that allow us to monitor the Iranian program.”<sup>12</sup> This deal was, to President Obama, a long-term foreign policy plan that would last years after his presidency.

Therefore, it should come as no surprise that President Obama was constantly stressing the long-term features of the plan. He was as much sending a message to the opponents of the deal as to those who remained undecided: ‘once we’re in, we’re in.’ As an executive agreement rather than a treaty, this was especially important. The deal was nearly as vulnerable to attacks from opponents in 2017 as it was in 2015 when it was being debated in Congress. As it was only an executive agreement, any sitting president could theoretically pull the United States out of the deal. This fact meant that the debate over the JCPOA would remain an ongoing one; President Obama, by consistently stressing that the long-term commitment of the United States to the deal was imperative to its success in deterring Iran from obtaining a nuclear weapon, was trying to ensure that this debate did not threaten the success of the deal. Many congressional Republicans, however, found themselves at odds with the very *intention* of the deal. What President Obama called a

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<sup>11</sup> Obama, Barack H. “Statement by the President on Iran.”

<sup>12</sup> Ibid.

‘comprehensive’ deal that will prevent Iran from obtaining a nuclear weapon, opponents called “the best deal acceptable to Iran rather than one that might actually end Iran’s nuclear program.”<sup>13</sup> In other words, many believed this deal was not going to achieve what President Obama was claiming it would. Many Republican opponents saw no use for the deal, neither in the short nor long-term. In their view, the best interests of the United States remained *outside* of the deal; whether that meant preventing the United States from joining, or pulling it out after the fact, was arbitrary so long as the United States was *out*. These opponents used their reactionary, post-hoc powers of influence to affect United States involvement in the long-term—and they succeeded. The end product—what will be called the ‘resultant’ policy—satisfies neither the original hopes of the Obama administration, nor those of the fiercest opponents of the deal, and neither side seems convinced that it will successfully deter Iran from acquiring a nuclear weapon.

### SENATORIAL REACTION AND THE ‘RESULTANT’ POLICY

So how did congressional opponents of the deal manage to ‘kill’ it in the long-term? Once the United States officially signed onto the deal, it seemed apparent to nearly all parties involved—including both allies and enemies—that the United States had committed itself to the JCPOA, and it would remain committed until the deal expired. This supposedly concrete fact was believed by all—except several key congressional figures. To the most dedicated opponents of the deal, the fight against United States involvement was not over. These lawmakers correctly believed that through a dedicated and prolonged propaganda campaign, they could sway public and political opinion away from the deal. Therefore, if the next president were against the deal, he or she had appropriate political support to withdraw the United States from the agreement. Senators used their *reactionary power* to alter the policies of the executive branch in the long-term.

Clearly, Republican lawmakers were aware of and consciously following this strategy: without enough votes on the Senate floor to override the president’s veto, and

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<sup>13</sup> McConnell, Mitch. “Key Question on Iran Nuke Deal: Does It Leave America and Its Allies Safer?” U.S. Senator Mitch McConnell. July 14, 2015. Accessed February 07, 2019. <https://www.mcconnell.senate.gov/public/index.cfm/pressreleases?ID=ACA3D9DD-D3BC-4D70-ABC3-BD7794612369>.

prospects of killing the deal fading quickly, many Republican lawmakers continued to call for a vote on a resolution against the deal, knowing that such a vote would be useless in dictating its implementation. Rather, they believed that a vote would have other, long-term consequences: Republican Senator Bob Corker, Chairman of the Senate Foreign Relations Committee, claimed that even without the votes to overcome a presidential veto, voting on a resolution “opens the door for the next president to look at this in a very different way,” implying that Obama’s successor could eventually pull the United States out of the deal.<sup>14</sup> Other congressional Republicans had similar ideas. Senator Marco Rubio warned that “the deal could go away on the day Obama leaves office,” and said directly to Secretary of State John Kerry:

Even if this deal narrowly avoids congressional defeat because we can't get to that veto-proof majority, the Iranian regime and the world should know that this deal is your deal with Iran, meaning yours and this administration's, and the next president is under no legal or moral obligation to live up to it.<sup>15</sup>

Many Republican lawmakers were publicly against this deal in the long-term, and their actions were consistent with their threats. By continuing to talk, tweet, and campaign about the shortcomings of the JCPOA, even after the deal was signed and United States sanctions on Iran were lifted, Republican lawmakers were informally using their power to advance their foreign policy goals.

Through the month of September, when it was becoming more and more clear that the deal had enough support in both chambers of Congress, Senator Mitch McConnell continued to speak out against the deal and its faults, saying that the “deal would effectively subsidize Hezbollah, Hamas, and Bashar al-Assad by channeling billions of dollars to their benefactors in Tehran,” and “would leave Iran with an enrichment capability, just as the Iranian leadership is again calling for Israel’s destruction.”<sup>16</sup> Such public statements became talking points for those who continued to oppose the deal.

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<sup>14</sup> Bolton, Alexander. “McConnell Rejects Iran Delay.” TheHill. September 09, 2015. Accessed February 08, 2019. <https://thehill.com/homenews/senate/253092-mcconnell-rejects-iran-delay>.

<sup>15</sup> Fox, Lauren. “Sen. Bob Corker Rails Against the Iran Deal.” The Atlantic. July 23, 2015. Accessed February 08, 2019. <https://www.theatlantic.com/politics/archive/2015/07/sen-bob-corker-rails-against-the-iran-deal/445863/>.

<sup>16</sup> McConnell, Mitch. “McConnell Urges Senate Democrats Not to Block Vote to Stop Iran Deal.” U.S. Senator Mitch McConnell. September 15, 2015. Accessed February 08, 2019. <https://www.mcconnell.senate.gov/public/index.cfm/pressreleases?ID=8207EEC4-AFF1-4EF1-8AA8-29748EB71402>.

Eventually, when on May 8, 2018, President Donald Trump announced the United States would cease participation in the JCPOA, he cited very similar concerns, saying that the Iranian regime “exports dangerous missiles, fuels conflicts across the Middle East, and supports terrorist proxies and militias such as Hezbollah, Hamas, the Taliban and Al Qaeda.”<sup>17</sup> President Trump claimed that if the United States remained committed to the JCPOA, it would be funding terrorism indirectly through Iran, saying that “after the sanctions were lifted, the dictatorship used its new funds to build its nuclear-capable missiles, support terrorism, and cause havoc throughout the Middle East and beyond.”<sup>18</sup> The justifications used by President Trump for removing the United States from the Iran deal were nearly the same as those given by Senate Republican leadership three years earlier. These Republican lawmakers were influencing foreign policy in the long-term in two ways; by defining potential talking points for a future president, and by implying that a reversal of the deal was politically on the table. Their talking points in particular, were brought back into the public eye by President Trump and then became the final words that killed the involvement of the United States in the JCPOA.

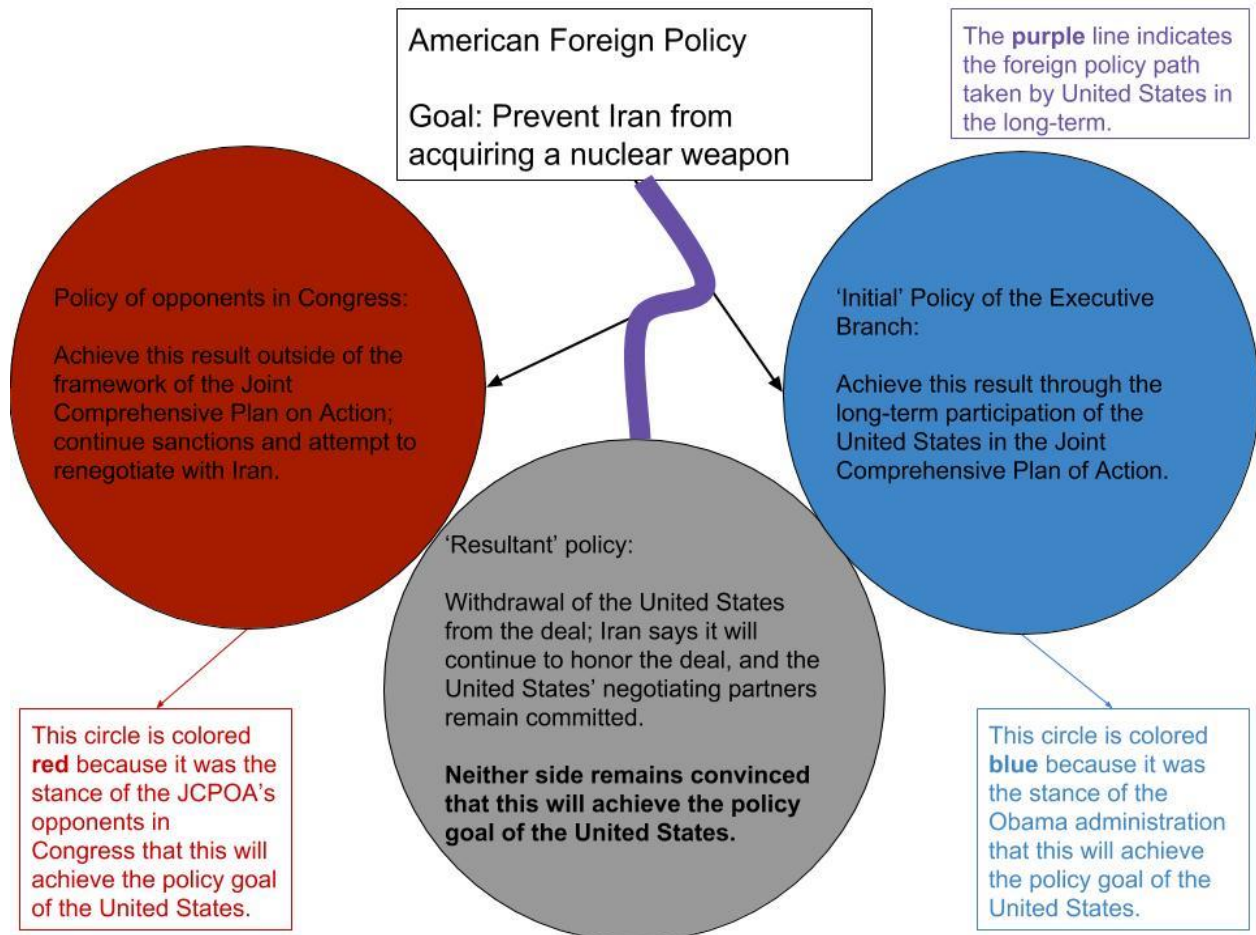
When the United States officially withdrew from the JCPOA, the international landscape changed immediately. The ‘initial’ policy of the Obama administration was dead; likewise, the world preferred by most opponents of the deal—one in which the JCPOA did not exist at all—was also gone. Consider the result of the Trump administration’s move: the remaining nations and organizations in the JCPOA—the U.K., France, Germany, China, Russia, and the EU—all remained committed to upholding the deal. Iran, after harshly criticizing the United States for going back on its word, reiterated that it would continue to honor the agreement, and that no further negotiations would take place between their regime and the United States. The supporters of the deal believed that long-term commitment to the JCPOA was the best path to successfully deterring Iran from acquiring a bomb. The opponents of the deal believed that it was a failure, and that its nonexistence

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<sup>17</sup> “Read the Full Transcript of Trump's Speech on the Iran Nuclear Deal.” The New York Times. May 08, 2018. Accessed February 08, 2019. <https://www.nytimes.com/2018/05/08/us/politics/trump-speech-iran-deal.html?action=click&module=inline&pgtype=Article>.

<sup>18</sup> “Read the Full Transcript of Trump's Speech on the Iran Nuclear Deal.” The New York Times. May 08, 2018. Accessed February 08, 2019. <https://www.nytimes.com/2018/05/08/us/politics/trump-speech-iran-deal.html?action=click&module=inline&pgtype=Article>.

was the best option for the United States. What the world looks like at the writing of this paper resembles neither of those situations.



The approach of the United States to the JCPOA has departed into an unanticipated gray area, where neither side is confident of the path forward.<sup>19</sup>

<sup>19</sup> The above image is constructed for the purposes of this paper, and is meant to visually aid in understanding what is meant by the 'resultant' policy. In the case of the JCPOA, the resultant policy meant the continued existence of the JCPOA without the participation of the United States, and the disappearance of a negotiating stance between the United States and Iran. This scenario, which arose as the result of an 'initial' action by the executive branch, followed by a long-term, responsorial action by some in the legislative branch, was not initially desired by either party. Neither supporters of the deal, nor those who oppose it, are confident that this 'resultant' policy will successfully deter Iran from acquiring a nuclear weapon, which remains the chief foreign policy goal of the United States in regards to this issue.

## FOREIGN POLICY IN THE LONG-TERM

With the example of the JCPOA in mind, it is now clear how members of the legislative branch can impact American foreign policy in the contemporary era. While this case may not be representative of all major foreign policy decisions of the era, it can be seen as a good starting point for examining executive authority, and how much control the president really has over his or her foreign policy message. While the newest age of the imperial presidency is in many ways in full swing, and the American president in the contemporary era wields a significant amount of power in determining American foreign policy, Congress has found modern ways to encroach upon this power. This process was employed in full force on the issue of the JCPOA, and as a result the foreign policy initiative of the Obama administration was defeated.

Further research of this topic could serve to better support this hypothesis. A thorough study of a large number of executive agreements in the contemporary era could be conducted, wherein it is tested whether policy discussions of these agreements follow a similar pattern. Of particular interest would be an analysis of what generates more influence in the long run: is it typical for the ‘initial’ policy of the executive branch to prevail, or do the reactions of opposing lawmakers usually steer decisions towards some ‘resultant’ policy? More importantly, which option is better for advancing American foreign policy goals?

In an era where the international system is increasingly complex, and massive amounts of information travel at unprecedented speed, it is increasingly important that ‘politics stops at the water’s edge.’ While politicians can disagree about foreign policy decisions, and debate over these decisions should be encouraged, they must recognize (as was the case with the JCPOA) that the United States has a united foreign policy *goal*. It is imperative that the United States government retain a unified front on important foreign policy issues, lest it risk blundering into some intermediate gray area where neither side remains confident about the path forward. Therefore, when it comes to foreign policy, few opinions are more important than those of senators. These influential lawmakers have the unique power to unite, and United States foreign policy is at its most powerful when it is unified through the long-term support of the entire nation.



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