

IN THIS TEMPLE
AS IN THE HEARTS OF THE PEOPLE
FOR WHOM HE SAVED THE UNION
THE MEMORY OF ABRAHAM LINCOLN
IS ENSHRINED FOREVER

The Fellows Review

2019 - 2020



CSPC

The Fellows Review

SELECTED PAPERS OF THE
2019-2020 PRESIDENTIAL FELLOWS PROGRAM

CENTER FOR THE STUDY OF THE PRESIDENCY & CONGRESS

Editor

ERICA NGOENHA

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The Fellows Review: 2019-2020

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Foreword

CSPC launched the Presidential Fellows program 50 years ago in response to the domestic political turmoil that plagued the late 1960s and early 1970s. The goal was to bridge the divide between young people and government leaders. In pursuit of that mission, we set out to build an elite program for college students to develop their leadership skills and instill in them a commitment to civil dialogue and public service. Though the structure and scope of the program has evolved over time, that core mission has never changed. As we find ourselves in a similarly challenging moment for this country and the world, we are reminded of the importance of investing in the next generation as we seek to build a better future.

We are immensely proud of the 2019-2020 Presidential Fellows. Beyond their outstanding research, this group has displayed resilience and determination in overcoming challenges stemming from the coronavirus pandemic. They forged ahead despite upheaval in their academic careers, personal lives, and professional pursuits. Through both our in-person policy conference held in the fall and our Zoom-enabled conference in the spring, this cohort learned about leadership in the national security field from former Secretary of the U.S. Air Force, Dr. Heather Wilson and the COO of SpaceX, Gwynne Shotwell; discussed U.S. foreign policy with Congressman Michael Turner; and explored the opportunities and challenges of leading a presidential administration with former White House Chief of Staff to President George W. Bush, Joshua Bolten, and former Deputy Secretary of Labor in the Obama Administration, Chris Lu. The lessons offered in these conversations and others helped shape their understanding of the U.S. Congress and presidency as institutions and informed their research on these subjects.

Each year we have the pleasure of publishing the best of the Fellows' work in the Fellows Review. This year, 24 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 Uma Kalkar of The University of Toronto for her examination of the growing digital divide in the United States ("Digital Fault Lines: An Examination of Internet Inequality in the United States").

The Donald B. Marron Award for the Best Historical Analysis was presented to Ross Snyder from Georgetown University. In his research, Ross explored the links between civil rights and foreign policy during the Truman administration ("The

Politics of Equality: Harry Truman and the Intersection of Race and Foreign Affairs in The American Presidency”).

Dean LaGattuta from the United States Military Academy was recognized with the Robert A. Kilmarx Award for the Best Military, Intelligence, or National Security Strategic Analysis for his research on how domestic and foreign crises have impacted the evolution of the National Security Council (“Adapting to the Moment: How Crises Shape the NSC”).

George Washington University student Zach Hollander won the James R. Moffett Award for the Most Original Paper on the Modern Presidency or Congress for his analysis of federal housing assistance for low-income renters (“Policy Retrenchment and Low-Income Renters: The Failure of Federal Housing Policy”).

Maya Ungar of the University of Arkansas took home the Richard H. Solomon Award for the Most Original Paper on Foreign Policy or Diplomacy for her evaluation of the factors that propel the U.S. government to distribute foreign aid in cases of extreme conflict (“Bosnia, Rwanda, and the Global Fragility Act: United States Foreign Aid and Genocide Prevention”).

We are proud to recognize these Fellows for their outstanding work, and we congratulate all of the members of the 2019-2020 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. 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 of their students.

We are indebted to Aida Olivas, Wyatt Newsome, Emily Stone, Nick Schroeder, and Danielle Anjeh for their editorial work on the 2019-2020 Fellows Review under the guidance of Erica Ngoenha, Director of the Presidential Fellows Program.

The pages that follow feature expert analysis, innovative ideas, and illuminating explorations of American history. Please enjoy reading the thought-provoking research that our 2019-2020 Presidential Fellows have produced.

Glenn C. Nye III
President & CEO
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Part 1

The Presidency

THE DIGITAL DISRUPTION OF DONALD TRUMP: HOW A REPUBLICAN CANDIDATE WON THE INTERNET

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Digital campaigning and small donor fundraising have been dominant features of successful presidential campaigns for over two decades; however, the intersection of these two trends have proven to be assets for Democrats more so than Republicans. Republican candidates had been statistically unable to match the online engagement and small donor reach that Democratic candidates have. In each presidential election cycle since the earliest widespread emergence of campaign landing pages in 1996 through the 2012 election, the digital strategy employed by Democrats have been significantly integral to Democrats' electoral success. In 2016, however, this narrative was abruptly reversed, and insufficient scholarly attention has been devoted to how the Republican party was able to reach its digital zenith so quickly. This paper attempts to demonstrate that the Republican party's digital growth was the result of a combination of reaching laggard stages (16%) of the internet adoption curve, the anomalous nature of the Republican nominee, and the masterful employment of digital campaigning. This paper will attempt to ascertain whether or not the new narrative which emerged from the 2016 election is an aberration or indicative of a new era in American politics.

INTRODUCTION

Since its inception, politicians have attempted to utilize digital media to reach a mass audience of the constituency. Providing a direct line of communication between a candidate or representative and the general public transmitted at an individual level created a sense of personal connection to the politician and political field. The ability to participate in the democratic process is an inherent part of American democracy, the belief that citizens have political agency and are able to select an individual to represent them.² Despite both parties' attempts to capitalize on digital media, successful media campaigns—as defined by fundraising

¹ B.A. Candidate, Communications, 2020. I am grateful for the tremendous support and invaluable advice of Professor Karen North, and I appreciate the thoughtful commentary of Professors Henry Jenkins, Stacy L. Smith, and Larry Gross, as well as my parents, Trish and Dan Burger, all of whom were integral to the development of this paper. I am thankful for the mentorship of Alexander Fullman, who generously volunteered his time to support and assist my work.

² Stromer-Galley, 2013

and levels of interaction—became a more potent weapon in the political arsenal of the left than for the right.

Despite fluctuations in campaign finance regulation and party support, a singular aspect of presidential campaigning has remained constant. In the two decades from Rob Arena launching the first landing page in a presidential election for Bob Dole in 1996 until Donald Trump's use of social media to great effect in the 2016 presidential election, Democratic candidates have managed to use the power of the Internet to greater effect than their Republican opponents. In the 2000, 2004, 2008, and 2012 election, Democratic presidential nominees triumphed in fundraising in two distinct categories. Firstly, they raised far more money through digital platforms than did their Republican counterparts. Secondly, whereas Republicans relied heavily on large donors, Democrats raised a significant amount of small donations, ultimately comprising a significant portion of their campaign financing.

The digital dominance may have occurred over a period of less than two decades, however, they also occurred during the vast majority of the internet timeline. The web was first used somewhat regularly by technologically savvy individuals around 1995. It did not enter the majority of American households until 2001.³ Throughout the entirety of that time span, Democrats digitally outmaneuvered Republicans to such an extent that it became clear this platform was an asset to only one party.

This success is not extraneous from the statistical averages of Democratic voters, which have trended younger than the average Republican voter. As of 2018, Democrats maintained a 27% advantage among millennial voters, with 59% of millennials in one survey indicating that they identify as Democrats or leaning Democratic, whereas 32% identified as Republican or as leaning Republican.⁴ Understanding of the adoption curve of technology suggests that the earliest users or adopters of the internet skewed younger, and therefore statistically likely more Democratic. This could be a possible explanation for the dominance that Democrats held over digital donations and small donor contributions.

In the 2016 presidential election, this narrative was shaken. Donald Trump, the Republican nominee, garnered more online donations. Trump collected significantly more funds from small donors than did Hillary Clinton, his Democrat opponent. This shattered the

³ Pew, 2014

⁴ Identified in said survey as being between the ages 22 and 37; Pew, 2018

conventional wisdom that Democrats would outpace Republicans in digital fundraising in presidential elections. Regardless of the other aspects of discord which emerged from the 2016 presidential election, a noticeable disruption in party advantage became evident.

Throughout this paper, I will examine the trends which have dominated digital campaigning throughout the past decades and analyze the historical digital advantage held by the Democratic Party. I will next analyze the aspects of Donald Trump's online campaigning which reversed such a continuous and dominant narrative. I will consider the Rogers innovation and adoption curve in the digital era, positing that the emergence and activation of digital laggards, trending conservative, greatly aided this transition. I will next attempt to ascertain whether or not the 2016 digital campaigning outcome was an exception to the Democratic control of digital campaigning, or if the premise of Democratic advantage itself has been disturbed. For all intents and purposes, President Trump has presided as a significant alternative to the political norm, unsurprisingly, as he was nominated with such intentions. Political scholars must now ask if his approach to digital campaigning and substantial success with online fundraising is as much of an exception to the political process as is Trump himself. Otherwise, it must be concluded that the very nature of digital campaigning has shifted and is no longer the Democratic advantage it has been safely assumed for the past several presidential election cycles.

I conclude by analyzing the various aspects of Donald Trump's campaign in an effort to determine whether or not the irregularities in this Republican campaign indicates a shifting narrative amongst the party itself, or if the digital success of Donald Trump's 2016 campaign is indicative of his irregular candidacy. My research indicates that the paradigm shift which occurred in the 2016 election paralleled the leaps in technological innovation by the Republican party. I determine that the ineffective ways in which the Democratic Party attempted to reach their audience online led to a shift in digital dominance. Ultimately, it was the Republican party which authentically developed a grassroots movement within their party that digitally revolutionized conservative campaigning, effectively winning the internet.

INITIAL DIGITAL CAMPAIGNING

In the 1996 presidential election cycle, the emergence of the internet as a communication resource motivated candidates to create web pages for their campaigns. As there was little to no previous political communication which utilized this new platform, the 1996 candidates effectively developed a foundational template from which campaign websites have since been derived. It provided a way in which to brand candidates with certain identities. In his bid for the presidency, then-Senator Bob Dole (R-KS) launched what was at the time an incredibly well-designed and savvy landing page for supporters with the assistance of Rob Arena.⁵

Senator Dole, then seventy-three, used his website in an effort to portray himself as at the precipice of the digital revolution; however, a noticeable clash between his online and offline personalities was jarring, and the public took notice. Despite this relatively unsuccessful attempt at garnering the youth vote, his presence online stimulated a conversation about Dole, and interactive features such as e-postcards furthered the perceived interpersonal connection between supporters and the candidate. These early websites served as basic outreach tools, repositories for past speeches, and nuanced guides to detailed policy positions held by the candidates. Although these sites differed between campaigns, they all provided supporters with sections on how to “get involved.”⁶ Lack of technological advances and campaign financing regulations that had not considered internet development precluded candidates from driving campaign contributions through the websites, an innovation that would emerge in subsequent presidential campaigns and alter the way in which Americans participated in the political process.

AN ASSET FOR THE LEFT

A party split began to emerge in digital campaign strategy during the 2000 election. The Internet director for the McCain campaign, Max Fose, aimed at capitalizing on external events

⁵ Senator Dole was not the only candidate during this election cycle to launch a landing page. Other candidates include Lamar Alexander and incumbent Bill Clinton; these websites maintained relatively similar capabilities to Dole’s; Rob Arena is credited with drafting a “New Media Blueprint”, which described in detail his web presence strategies and specific content creation methods and is considered the foundation of the digital campaigning revolution. He designed Dole’s website and online presence; Stromer-Galley, 2013.

⁶ Stromer-Galley, 2013

and creating brief high intensity fundraising drives during important periods of time. Fose noted that many strategists viewed the webpage as the “virtual headquarters” of the McCain campaign, a limiting perception, similar to the online activity of the Bush campaign.⁷ The McCain campaign raised a mere \$210,000 through online donations, significantly lower than Bush’s \$500,000 or Gore’s \$600,000.⁸ Additionally, an emerging split between small donors and large donors becomes increasingly noticeable. The 2000 election was the last that limited donations to \$1,000, not taking into account monetary inflation. With this regulation, George W. Bush raised 72% of his money from \$1,000 donors, the highest possible donation, whereas Al Gore raised only 63%.⁹

Noticeably different from the Republican online strategy, digital advisors to candidate Al Gore focused on increased utility of online platforms. Ben Green, the Internet director for the Gore campaign recognized the potential in the use of websites. Over the continuation of the campaign, Green believed “it became evident that this was not just a function of information technology. It was message delivery, it was fundraising, it was organizing. It cut across.”¹⁰ Perhaps most importantly, senior leadership of the Gore campaign recognized this overlap as well and integrated the Green and the digital campaign strategy into the communication department of the campaign.

It is evident that the distinction in approach to digital political campaigning between parties emerged with this presidential election cycle. Where the Republican party used their candidates website to provide the public with information on the candidate and start rudimentary communications, the Democratic Party focused on the social and communal aspects of digital campaigning as being a primary objective of the website.¹¹ The distinction which financially favors Gore’s digital fundraising method is inherently connected to the way in which the site was curated and managed.

Early interpretation of web campaigning and fundraising by some scholars and political pundits suggested that digital campaigning was not a successful tool to actively reach voters. Many disregarded the idea as being allotted more consideration than it deserved. One

⁷ This quote was obtained in personal communication by Jennifer Stromer-Galley on April 21, 2000; Broder & Natta 2000

⁸ Epstein, 2018

⁹ Campaign Finance Institute, 2005

¹⁰ This quote was obtained in personal communication by Jennifer Stromer-Galley on November 29, 2012

¹¹ The Republican website included financial contribution options as well; Stromer-Galley, 2015

conservative scholar held the belief that the use of the internet was “little more than a big electronic auditorium where millions of people gather to spout off much like high-school kids in a civics class--but nonetheless have little impact on the crafting of policies that govern them.”¹² Although this could indicate a manifestation of fear regarding a new and increasingly digital society, it is more likely that this position was simply held without foresight into the potential of the digital arena and the emergence of additional capabilities such as mass fundraising operations within it.

With the digital advantage leaning towards Democratic candidates, the 2004 presidential election solidified the Democrats as leaders in successful digital campaigning. Democratic candidate Howard Dean began to actively fundraise and communicate with supporters using digital media; he was an early subscriber to the importance of internet politics as indicative of national attitudes, and in many ways, Dean pioneered the use of online forums as free, accessible, and highly vocal focus groups. “The Internet community is wondering what its place in the world of politics is,” Dean was reported to have said. “Along comes this campaign to take back the country for ordinary human beings,” he continued, “and the best way you can do that is through the Net. We listen. We pay attention.”¹³

Howard Dean’s website during the Democratic primaries was equally advanced to the final editions of both the Bush/Cheney and Kerry/Edwards websites immediately prior to the election, indicating months of foresight that neither nominee’s campaign attained during the primaries.¹⁴ As a vocal component of the Democratic field, Dean outlined the future intertwinement of politics and digital networking within that party, effectively advancing Democratic digital positioning.

Dean was incredibly advanced in his recognition for the potential of digital political campaigning and is often overlooked in favor of the highly successful campaign run by then-Senator Barack Obama in 2008. The technological and interpersonal approaches taken to online campaigning by the Democrats differ so greatly from those undertaken by Republicans that online campaign fundraising became an integral part of the Democratic fundraising efforts; furthermore, these successes appeared significantly beyond the reach of the Republican party.

¹² Browning, 2002

¹³This was reported in WIRED magazine, 2004

¹⁴ 4President, 2020

Similar to the previous presidential election cycle, there was a noticeable gap between party solicitation. In the election, Kerry was able to raise approximately a third of his total contributions on the internet, while Bush raised significantly less online.¹⁵

This advance was capitalized upon and further augmented by Barack Obama's successful 2008 presidential campaign, in which he effectively developed and launched a platform which was able to directly communicate with supporters. It was this campaign which scholars agree determined the absolute necessity of digital media use in presidential campaigning, with scholars arguing that the medium must be utilized if a candidate is serious about winning the election.¹⁶ Barack Obama's digital approach effectively developed and launched a platform which was able to directly communicate with supporters.¹⁷ It was remarkably evident that the savviness of Obama's successful digital campaign relied on the personal connection of creating online communities. In an effort to capitalize upon the success of Facebook, the Obama campaign hired one of the company's founders, Chris Hughes, to design the social media platform designated for the campaign.

The site, known as My Barack Obama, or MyBo, synthesizes a direct personal relationship between the candidate and voters, placing foremost the determinant and self-serving pronoun as a suggestion of inherent personal relation to the self. It was not a candidate shared amongst the collective; it was a candidate that cared about the individual—addressing emails personally and signing them without including titles or distinctions, simply as 'Barack' or 'Barack and Michelle'. The colloquial nature of the emails fostered a sense of familiarity with the candidate. The Obama campaign understood a fundamental truth of digital media: it is perceived on a personal level with less regard to group identity and heightened focus on individuality and self-identity.¹⁸

According to staff members of Barack Obama's digital campaign team, over \$500 million was donated to his campaign through his online operations. Members of Obama's digital staff further clarified this conclusion: These donations were made from more than 3 million donors, making a total of 6.5 million online donations, equating to an average of less than \$100

¹⁵ Dwyer, 2004

¹⁶ Hendricks & Schill, 2015

¹⁷ Carr, 2008

¹⁸ Referenced by some sources as MyBO; Stromer-Galley, 2008

per donation.¹⁹ Obama brought in an unprecedented number of small donors, claiming that approximately 80% of the campaign's financing came from small donors.²⁰ Of all email users, only 24% received messages from the McCain campaign, whereas 37% received messages from the Obama campaign.²¹

Despite this success, researchers were hesitant to connect the integration of social and digital media into the daily lives of the public and their subsequent political interactions. Some believed it would be shortsighted to contend that this connection will provide exceptional change to the mass communication model that has dominated American politics for the past century.²² This was dispelled with the continued success of this model through subsequent campaigns. Further analysis on Obama's utilization of digital media left academic scholars and political pundits alike wondering if the political impact of digital media on presidential campaigns was an exception or the new rule. At this juncture, the future intertwinement of politics and digital media was yet unknown, and the potential for various campaigns were not capitalized upon. There was neither definitive confirmation that candidates made successful use of digital media during election campaigns, nor establishment that voters in turn follow politicians through these social platforms.²³ This source uses a quantitative statistical analysis to confirm his hypothesis that social media political presence likely increases both the saliency and the name recognition of the politician, digital contributions, as well as the likelihood that voters will actively participate in the election cycle.

It has been established that the link between the candidate and the constituency is not the sole benefit of digital campaigning; it provides politicians with the ability to speak directly to their audience without media filter.²⁴ Political rhetoric, however, has shifted from the digital to the social, disseminating information through platforms already utilized by the young electorate. The transition from campaign-developed platforms to social platforms such as Twitter, Instagram, and Facebook, occurred in close time proximity to the 2012 presidential elections.

¹⁹ Vargas, 2008

²⁰This was the position of the Obama campaign but has been questioned by the Campaign Finance Institute and is not confirmed in accuracy.

²¹ Pew Internet, 2019

²² Metzgar & Maruggi, 2009

²³ Spierings & Jacobs, 2014

²⁴ Schill & Hendricks, 2018; Bimber & Davis, 2003

Interrogating the active participatory use of social media in the 2012 election, we see an evident impact on the youth's perception of the candidates.²⁵

An anonymous digital campaign director spoke to *Politico* about the party line divide in digital campaigning. Romney's digital strategy was "not a disaster, but it's all so average and they're going up against Mickey Mantle."²⁶ This understanding of the political landscape as it exists online is representative of the past several presidential election cycles. Clear Democratic dominance of digital platforms and online fundraising made it exceptionally difficult for Republican contenders to compete in the slightest. This narrative continued as America entered into 2016 election, as it had each election cycle before.

THE DISRUPTOR

The successful presidential bid of Donald Trump ruptured the consistent narrative within the Republican party of traditionalist appeals to older and more conservative individuals. Democratic candidates had successfully dominated decades of small donor fundraising by reaching and appealing to middle class America. Clinton had significant advantages entering the 2016 presidential election, such as her notable experience in public service which greatly contrasted Trump.²⁷ Perhaps more importantly, however, were her digital advantages. The generalized market for liberal or left-leaning messages tended towards younger Americans, more likely to access and use social media or digital platforming, whereas the market for more conservative messages focused on an older, more traditional audience. It was this rift which had precluded Republicans from successfully soliciting donations using these platforms in previous presidential election cycles.

The self-proclaimed billionaire accomplished something which had eluded the Republicans during each presidential election in the past two decades. By all metrics, Trump was able to dominate the digital sphere over Hillary Clinton.²⁸ Throughout much of the presidential campaign cycle, the race seemed decidedly in favor of Clinton. She significantly outraised and

²⁵ Schill & Hendricks, 2018

²⁶ Referring to Obama; Friess, 2012.

²⁷ First Lady of the United States, United States Senator, United States Secretary of State.

²⁸ Hendricks & Schill, 2018.

outspent her republican competitor, had more field offices, and ran more television advertisements in more key states. Public opinion polls consistently placed her ahead of Trump. While the nation would eventually find out that Hillary Clinton actually won the popular vote, securing 65,853,516 votes to Trump's 62,984,825 Trump earned 306 electoral college votes to Clinton's mere 232.²⁹ While a multitude of factors likely contributed to this surprising but resounding victory, the intersection of digital campaigning and small donor fundraising reached its apex for the Republican party under the Trump campaign.

Over 100 individuals worked on the Clinton digital team across a medley of social media platforms including Twitter, Facebook, Instagram, YouTube, Tumblr, and Snapchat.³⁰ Clinton's highly organized digital presence clashed dramatically with the apparent freethought, stream of consciousness commentary made online by Trump.

Trump raised a vast majority—69%—of his individual contributions from small donors, compared to Clinton's 22%. Where Obama had shattered records on both small donor fundraising and digital fundraising, Trump raised significantly more individual contributions from small donors than the combination of Obama's 28% (2012) and 24% (2008) *See Figure 1*.³¹

How the Republican party was able to actively reach their desired audience and successfully campaign using these platforms is cause for debate. The heightened irregularity of the 2016 election left many wondering if the sturdy digital footing newly located by Republicans was as anomalous as the candidate was himself. The theorized adoption model of innovations put forth by Everett Rogers in 1957 focused on agriculture and home economics. Referred to as the Rogers Adoption Curve, this model indicates how innovations are adopted by various subcultures and group identities.³² In recent years, American organizational theorist, Geoffrey Moore, further developed this model to meet the nuanced specifications of digital adoptions. The curve and chasm of technology innovation maintains a distinct trajectory in product adoption. The model focused primarily on the adoption of technological advances by the public at large was brought into contention by Moore (1991, revised 1999 and 2014), who posited that a split

²⁹Hillary Clinton secured more votes in the 2016 election than did President Obama in his 2012 reelection campaign (Stromer-Galley 2019); This is about the same number of votes earned by President Bush in his 2004 campaign.

³⁰ Allen, 2017.

³¹Data obtained via February 21, 2017 Press Release from the Campaign Finance Institute. [Analysis of the Final 2016 Presidential Campaign Finance Reports: President Trump, with RNC Help, Raised More Small Donor Money than President Obama; As Much As Clinton and Sanders Combined.](#)

³² Also called the Diffusion Process.

within early adopters was an inherent part of digital media adoption. *See Figure 2.*³³

The categories of users over time are most commonly referred to as Innovators (2.5%), Early Adopters (13.5%), Early Majority (34%), Late Majority (34%), and Laggards (16%). Research suggests that innovators and early adopters to technological advances are more likely to be younger and more risk oriented. These individuals are more open to new concepts and may have pursued higher education.³⁴ On the opposing end of the spectrum, individuals who subscribe to the late majority or laggard adoption models tend to be older, more conservative, and less active in community-based activities.³⁵ When applying the political use of digital networking technologies to this model, the chasm referenced by Moore is no longer significantly relevant. The American electorate has surpassed the stage of early adopters of political engagement online, therefore leaning towards the latter stages of digital adoption which are largely comprised of older and more conservative individuals.

Initial efforts of online campaigning which supported individual small donor contributions and active civic participation greatly benefited the party which had a significant percentage of its base already present on the network. It follows common logic that the Democratic Party would experience greater success through digital campaigning, as their constituents lean more closely toward innovator and early adopter status. The well-developed strategic digital tactics employed by the Democratic Party in subsequent presidential election cycles furthered their advantage over the republican party. Prior to the 2016 presidential election cycle, it seemed as though online fundraising and small donor activation was a tool that belonged entirely to the left. The radical break in this paradigm must be analyzed further in an effort to determine how the future of presidential campaigning will develop given an almost entirely digitally integrated society.

When considering the success that the Trump campaign had online, the status of American technological adoption must be considered. It must be determined if the increased success attained by the Republican party in the 2016 presidential election was the inevitable result from an electorate finally completing the adoption life cycle of technology or indicative of a rapidly evolving party identity which came to digital fruition during the candidacy of Donald

³³ This graphic is an adaptation of the organic adoption curve modified for digital consumer models. It was obtained from Kumbar via *Medium*.

³⁴ Kumbar, 2017.

³⁵ *Ibid*.

Trump. I posit that the success experienced by the Trump campaign in both digital fundraising and small donor contributions emerged from a remarkable positioning in American politics.

Trump's fundraising metrics were revolutionary in comparison with the traditional financial nature of the Republican party; however, they did not compare to the incredible numbers brought in by the Clinton campaign. Whereas Republican party fundraising during years of presidential campaigns significantly outnumbered the Democratic Party fundraising during the same years, this trend did not continue into the 2016 presidential election when all numbers are adjusted for inflation *See Figure 3*.³⁶ What these graphs indicate is a clear disjunction in traditional presidential fundraising. In 2016, the Democratic Party raised significantly more than the Republican party, for the first time during a presidential election year since the Campaign Finance Institute records began recording complete presidential election in 2000.³⁷ While these numbers indicate a potential rift in fundraising methodology, the means of financing campaigns expanded dramatically during the 2016 elections. The range of approaches to political fundraising seemed dependent on the type of campaign which the candidate decides to run, however, it is also dependent on the type of candidate being brought forth. By the very nature by which the final stages of the 2016 presidential election campaign were executed it became evident that a gaping space in politics had emerged. This sudden and haphazard realization has segued America into a political rift unparalleled in recent history:

We are facing something Kuhn's structure didn't contemplate: a super-anomaly that precipitates an actual *paradigm rift*—blowing up the current conception of political reality whose impact will be felt immediately. With a change that happens so quickly there is not enough time to process a new world order. If this is the case we are going to need a whole new model of how the world is going to work in a hurry—a Theory of Trump.³⁸

This description of the anomalous success of Trump's presidential candidacy must be applied to his use of digital platforms as well. A highly successful digital campaign brought forth to a conservative voter base by an individual of debatable qualifications indicated a shift in

³⁶ Campaign Finance Institute, 2019.

³⁷While the CFI does have data from earlier elections, they are not comprised of the same metrics and therefore cannot be accurately contrasted with the data analyzed by this paper.

³⁸ Hatkoff, Craig. "A Theory: Trump as Super Anomaly." 2016

American identity politics. The data that emerged following the 2016 presidential election is disorienting for political pundits. For the first time since the emergence of digital campaigning, the Republican candidate had activated more small donor contributions than the Democratic candidate. Furthermore, this was the first time that the Democratic candidate significantly outraised and outspent their Republican opponent. While fundraising metrics fail to entirely account for the various contributions Trump made to his own campaign which was predominantly self-funded, data indicated that victory was all but guaranteed to Hillary Clinton. Where Clinton outraised and outspent her opponent, Trump navigated through digital channels, reaching large swaths of his base demographic. Although Clinton had meticulously well-organized local, state, and federal campaigning offices, she lacked much of the organically grown digital support that Donald Trump was able to capture and exploit prior to the election. This is evident in data gathered by Pew Research which analyzes the digital engagement captured by candidates. Although the candidates were actively using both Twitter and Facebook at similar rates, Trump's engagement on both platforms was significantly higher than his opponents. *See Figure 4b.*

A notable difference between the campaigns digital strategies which may explain in part the greater engagement driven by the Trump campaign is a campaigning technique similar to the MyBO strategies of 2008. In an effort to create highly personalized and relatively informal correspondence with his base, much in the same way that Barack Obama did, Donald Trump focused on creating individualized content for his supporters. While Clinton ran 66,000 variations of ad content, Trump by comparison ran 5.9 million different variations of his advertisements.³⁹ Given the Democrats clear success with digital campaigning, it is noteworthy that Donald Trump outspent Hillary Clinton on digital advertising by over 400%, spending \$83.5 million to her \$20.2 million.⁴⁰ Trump's personalized approach to campaigning flourished in a digital environment focusing primarily on the individual. The 2016 presidential campaign cycle demonstrated the first networked media environment that paralleled the mass media of past elections. Digital influence and unparalleled microtargeting fronted the election of Donald Trump during a drastic shift in American politics. In order to understand the digital fundraising potential that exists, it is essential to understand the incoming presence of Republicans as digital

³⁹ Stromer-Galley, 2019

⁴⁰ Williams, 2018

opponents. If the 2016 election confirmed anything, it was that the only constant is change and innovation.

LOOKING FORWARD

The nature of digital campaigning has greatly evolved since candidates first adopted digital communication technologies. Fundraising strategies and campaign regulations have struggled to match the increasingly malleable and expandable reach of digital platforms. Because of the nature of campaign finance laws at the end of the twentieth century, there was little incentive to approach communication technologies with the intention of fundraising. This limitation was removed in 2000, allowing for candidates to appeal to their base for financial support. It was during this campaign cycle in which the Gore campaign capitalized upon the power of interactivity and personal connection through real-time chat rooms and messaging interfaces. The Bush campaign in 2000 saw different potential in online campaigning, as an access point to a vast database of personal information rather than a source for microtargeting and supporter interactivity.

Under the incredible innovation brought forth by Howard Dean in the 2004 presidential primaries, a paradigm shift occurred where dominant communication platforms were not limited to mass-mediated sources, but could exist through network-mediated sources as well. This realization created a foundation on which the 2008 Obama campaign was able to actively recognize the changing digital landscape and engage with supporters online and develop an interactive social networking platform. The 2012 election proved to be a reasonably foreseeable extension of the 2008 developments in digital campaigning. The break in this linear progression came prior to the 2016 presidential election, and following the radical departure from traditional politics, may have effectively reshaped the way in which Americans civically engage.

In the 2016 presidential election, digital communication technologies were successfully utilized and integrated into campaigning; therefore, it should be no surprise that digital media holds renewed promise for successful campaigning. As of the most recent presidential election, Facebook had roughly the same reach as cable television. While digital advertising has been historically less expensive than traditional or linear media advertisement spots, the greatest advantage to the candidate comes from microanalysis of engagement and interaction, as well as

its ability to successfully target and reach a minute percentage of the population meeting specific criteria. The emergence of microtargeting advertisements as mainstream ad-agency methods and a shift towards conspiracy signaling and meme-based campaigning proved to have revolutionary impact in political arena.

From its inception up until recently the internet was entirely held as Democratic territory, beholden to an era of political hope and change. Similar to other innovative industries, the internet was run primarily by young digital natives and media elites. As the adoption cycle of technology suggests, these early leaders rendered the digital sphere effectively impenetrable to the Republican party. The factors leading to the downfall of the digital wall are abundant but can be boiled down to relative complacency and the misguided vision that the progression of the digital activities of both parties would naturally remain linear. Regardless, the 2016 election disrupted this vital part of our society and must be acknowledged as such. For all the debate given to the digital havoc wreaked by the Republican party in 2016, it must be acknowledged that this is not simply an anomaly or an unpredicted exception to the rule. The boundaries which guided digital campaigning are no longer in effect, and the digital landscape is no longer held as liberal territory. The republican party has not just invested in digital media, it has redefined its role within the digital sphere, and has left the Democratic Party scrambling to regain their hold of the digital attention span of a vital base of the electorate.

Attached Figures

Figure 1 – Millions of Dollars from Small Donors
Data obtained from Campaign Finance Institute

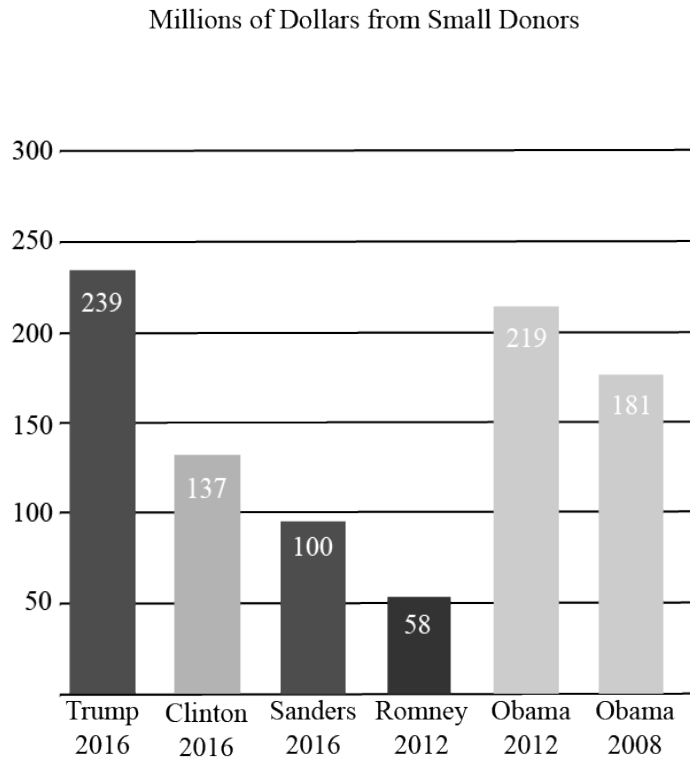


Figure 2 –Traditional Adoption Curve

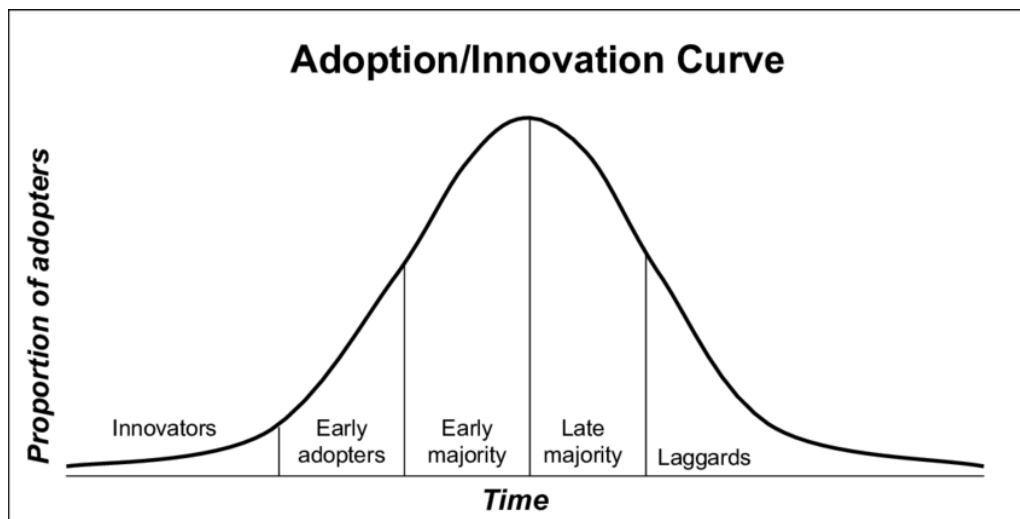


Figure 2a – Modified Digital Adoption Curve
Graphic obtained from Medium

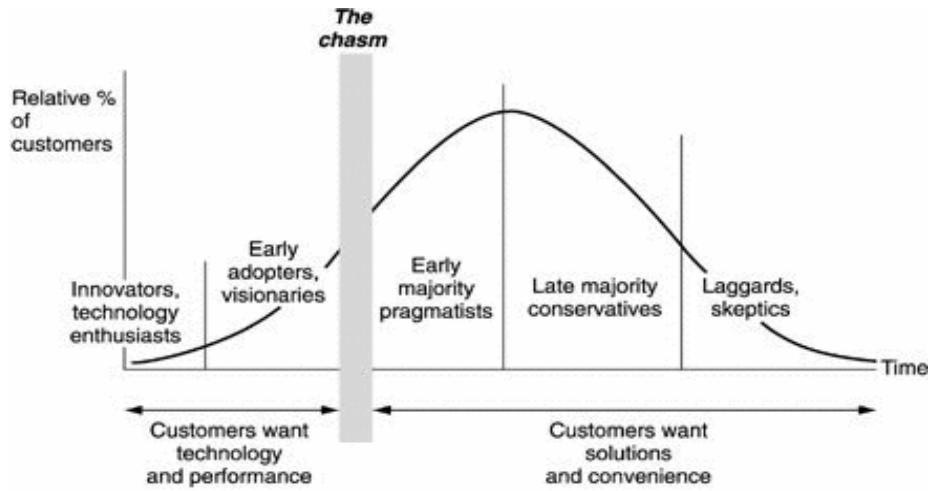


Figure 3 – Campaign Fundraising by Party (Adjusted for Inflation)
Graphic obtained from the Campaign Finance Institute

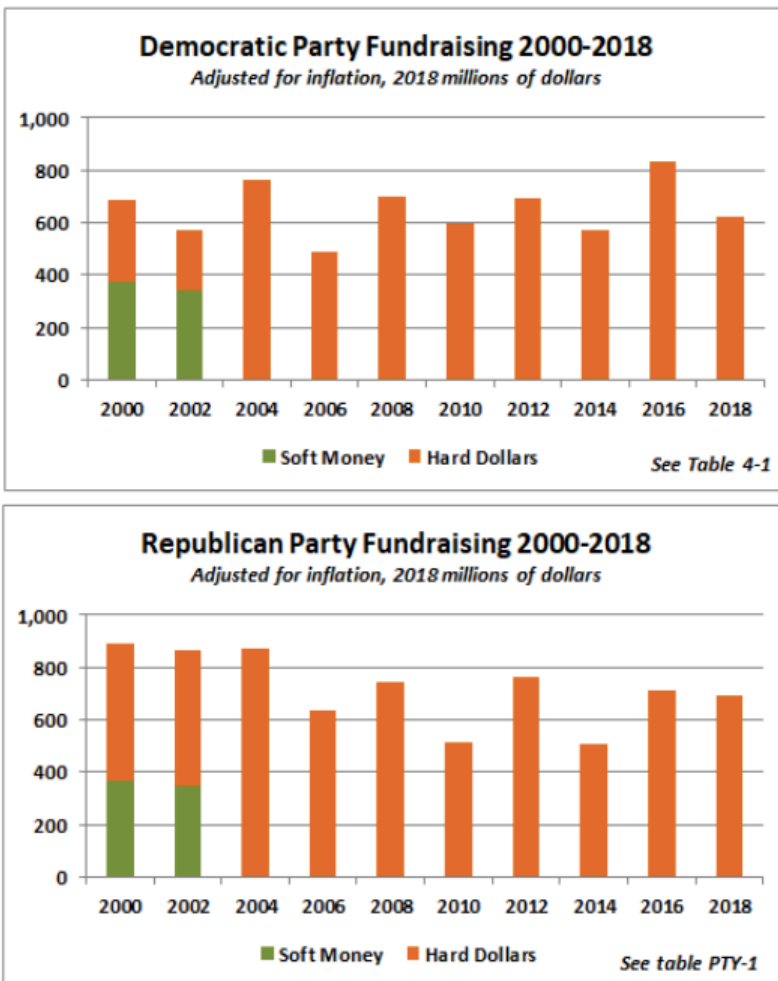
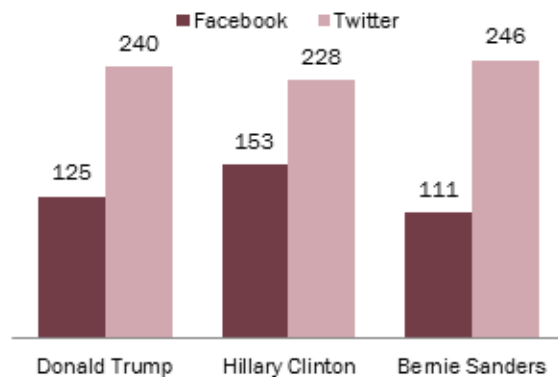


Figure 4a, 4b – Digital Engagement in 2016 Election
Data obtained from Pew Research Analysis, 2016

All three candidates post at similar rates, but Trump gets the most response overall

Total # of posts on each platform over the three weeks studied



Average ... per post

Candidate	Facebook			Twitter
	Shares	Comments	Reactions	Retweets
Donald Trump	8,367	5,230	76,885	5,947
Hillary Clinton	1,636	1,729	12,537	1,581
Bernie Sanders	6,341	1,070	31,830	2,463

Note: Reactions are a sum of all reactions to a post, including "like," "love," "angry," "sad," "haha" and "wow." Audience reactions were measured at least two days but no more than one week after a post was created. Retweets do not include posts that the candidate retweeted from another user.

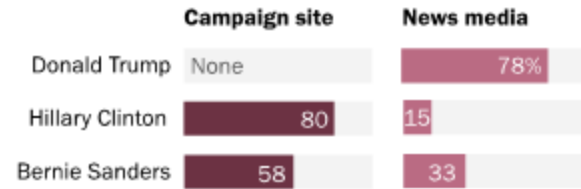
Source: Pew Research Center analysis of posts on Facebook and Twitter from May 11-31, 2016.

"Election 2016: Campaigns as a Direct Source of News"

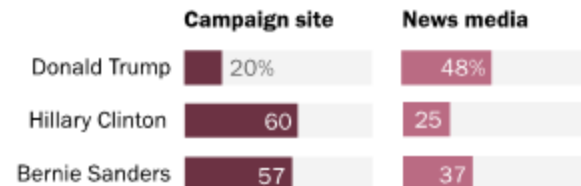
PEW RESEARCH CENTER

On Facebook, Sanders and Clinton mostly link to their own campaigns, Trump mostly to news media

% of Facebook posts containing links that go to ...



% of Twitter posts containing links that go to ...



Note: "Other" not shown.

Source: Pew Research Center analysis of posts on Facebook and Twitter from May 11-31, 2016

"Election 2016: Campaigns as a Direct Source of News"

PEW RESEARCH CENTER

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THE PRESIDENCY IN A DIGITAL WORLD

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This paper seeks to dissect how the president's courtship of popular leadership is manifested on social media and how its implications impact institutional development. The author first traces motivations for the president to use popular leadership as a political tool, highlighting its popularity in the modern presidency. Alongside this, a literature review on social media politics reveals the polarizing yet popularizing effects of social media. The author traces how President Obama's use of grassroots campaigning and issue promotion compared to President Trump's tactics of frequent self-promotion both have adapted the presidency to use social media as a means to cultivate popular leadership and set precedents for future use by the executive, the author then compiles these findings to demonstrate how social media can not only permit a platform for demagoguery and polarization but also democratize the presidency in a way that is unfavorable to the institution's Constitutional design and future development.

OUR DEMOCRACY

American democracy has been fortunately crafted with the ability of adaptation. Remarkably, the United States Constitution has guided the nation for over 232 years in times of both political peace and political turmoil. Its foundations support an undying democracy, while its vagueness presupposes the accommodation of democratic values with a modern touch. The present political time is no exception to this epic story of American politics, as the same document crafted in the summer heat of 1787 still faithfully guides our current governing body.

Yet, since 1787 our way of politics has adapted, combining technological advancements in communication, connectivity, and information gathering into widespread networks of political agency. The birth of the internet and by extension, social media, has come to revolutionize American politics. Social networking sites such as Twitter and Facebook have created a vast cataclysm of political insurgency.¹ For politicians, social media is a key mechanism for engagement and outreach, providing a platform for worldwide viewing with the swipe of a

¹Sarita Yardi and Danah Boyd, "Dynamic debates: An Analysis of Group Polarization Over Time on Twitter," (*Bulletin of Science, Technology & Society* 30, no. 5 (2010): 316-327)

finger.² For those legislators whose key role is constituent interaction, it is an incredible advancement in representative government. Yet, for those branches with an inherently more republican nature, notably the Office of the Presidency, social media applications have introduced more direct avenues for political engagement.

It is in this intersection, of online political engagement and the development of the institution of the presidency, that the adaptiveness of our democracy is seeing a new challenge. By entwining itself too closely with the temptations of popular will, this paper posits the presidency's continued entanglement in the social media realm as a potential threat to demagoguery, democratization, and further political polarization. For, when the president has such a widely available platform to spread rhetoric, if abused, it could greatly damage the credibility and perception of the institution.

THE MODERN PRESIDENCY

The core of this paper then questions how active the president should be in leading the mass public on political endeavors and influencing popular opinion. The rise of split-ticket voting, the mass media apparatus, and reforms of political corruption in the progressive era were all early nudges for the presidency to develop closer ties with the American public.³ In this development, a 1800s presidency largely concerned with relations of the party apparatus became more willing to break ties and seek popular support for political leadership. Boosted by the technological advancements of the 20th century and the growth of the modern executive, the presidency has become more willing to engage directly with the public when leading a political agenda.⁴ The effects of these developments thus normalized the president's role in public leadership, and along with it, incentivized the president to address common political qualms as a means of leadership and maintaining public credibility with constituents.⁵ Yet, have presidents found that this public leadership provides political opportunity? Research suggests involvement

² Stephen J Farnsworth, *Presidential Communication and Character: White House News Management from Clinton and Cable to Twitter and Trump*, (Routledge, 2018)

³ Brandice, Canes-Wrone, *Who Leads Whom?: Presidents, Policy, and the Public*, (Chicago: University of Chicago Press, 2006, 12-4)

⁴ *Ibid.*, 13

⁵ *Ibid.*, 12-4

of the mass public as a consistently unpredictable political move.⁶ In *Who Leads Whom*, authors concluded that presidential involvement of the mass public does not significantly shift policy toward a majority opinion. Regardless to of the inconsistency of this political tactic, speaking to the public and policy pandering were traced in multiple modern administrations. Evidence of this nature suggests a presidency more willing to actively court popular will. As recent scholarship will show, this practice has not only been reinforced by a new Constitutional interpretation of the Presidency but also shaped by the demands of modern leadership as they have adapted to technology.

THE PRESIDENCY AND PUBLIC LEADERSHIP

A constitutional refounding by Woodrow Wilson could be viewed as one of the major set-points of the development of presidential public leadership. Tulis' *Two Constitutional Presidencies* explains the shift in the president's role as public leader in his discussion of the public interpreter, a tactic conceptualized by Woodrow Wilson and present in the presidency throughout its modern growth. Woodrow Wilson, in part coming to terms with the new political organization of the early 1900s, took a reformed view of the president's constitutional power as not one rooted in the Constitution, but in the favor of the public.⁷ This view revised the president's authority has granted to the president by the people's vote and confidence, and not found in the Constitutional doctrine.⁸ In practicing the role of the public interpreter, Wilson asserts the main role of the president to fathom the people's desires and guide these needs in the practice of government.⁹ The president is the people's chosen leader, risking the presence of demagoguery for energy and representativeness in government.¹⁰

The public interrupter theory was not wholly born with Wilson yet following F.D.R.'s Presidency and post-WWII the presidency's growing power was more frequently championing the public's issues. As the practice of public pandering has become more significant, evidence in the most recent presidencies suggests that public leadership has only become more accessible to

⁶ Ibid., 183

⁷ Jeffrey K Tulis, "The Two Constitutional Presidencies." *The Presidency and the Political System* 8th ed, (2003): 57-87., 16

⁸ Ibid., 16

⁹ Ibid., 16

¹⁰ Ibid., 20

the executive. President Trump and President Obama both exhibit tendencies of using the public to promote further bargaining within government. For example, each president took heavily to social media, specifically Twitter, to promote their take on the healthcare issue and reiterate its potential success. These presidents' uses of Twitter are reminiscent of F.D.R.'s use of the radio or even Kennedy's use of the television as utilization of technology to help further bridge the gap between president and citizen. Yet, as research has shown, certain types of media are better suited for direct engagement.

The Presidency has historically utilized print media, the radio, and television as ways to bring their message to the public. While all three of these platforms are very direct, the president is often working with members of the media establishment to broadcast administration news. Specifically, presidents are also at odds with the news media, for although they provide the president with an outlet, they also act as critiques and informants on the state of the administration. Then, to the dismay of our nation's presidents, exerting influence in the media is not easily controlled, for the media often has its own agenda and its own critiques. Authors Michael Grossman and Martha Kumar describe the relationship between the news media and the president as "close and cooperative" in their desire to lead and engage the American people, but "balanced in a mutual need to exploit one another."¹¹ Essentially, the president needs a certain degree of publicity, provided by the media, in order to raise issue salience or to further promote and enact the administration agenda.¹² Without the cumulative effect of publicity and issue promotion, the president's role in promoting policy is much harder without the national media.¹³ Yet, despite this cooperative relationship of publicity and information spreading, the news media has historically been at odds with the president's desires, or the president at odds with the media's reporting styles.¹⁴

Research conducted by Tim Groeling and Samuel Kernell points to a phenomenon with more relevancy in modern politics, the instance of anti-presidential reporting bias spouting from major news networks. Though research on the subject has shown a varying degree of the consistency of this tendency, Groeling and Kernell highlight that major information networks

¹¹ Michael Baruch Grossman and Martha Joynt Kumar, "The White House and the News Media: The Phases of their Relationship," (*Political Science Quarterly* 94, no. 1 (1979): 37-53.), 51

¹² Randy E. Miller and Wayne Wanta, "Sources of the Public Agenda: The President-Press-Public Relationship," (*International Journal of Public Opinion Research* 8, no. 4 (1996): 390-402), 391

¹³ *Ibid.*, 391-2

¹⁴ *Ibid.*, 392

such as ABC, NBC, and CBS all exhibit varying degrees of reporting bias.¹⁵ Most conclusively, this study highlighted the media's unique role in shaping the news and each independent network's role in discretionary reporting that can often involve the same story being reported in very different styles.¹⁶ An underlying explanation for this is in part due to partisanship. The current era of polarization and divided government has made party lines not only more fortified, but also inspired a presidential refute of news reporting due to a belief in biased reporting. Groeling and Kernell conclude that the most noteworthy takeaway from this phenomenon is that the *relationship* between president and media is what has become news. To name a few, all Nixon, Bush, Obama, and Trump presidencies have experienced the instance of hostile media reporting or a belief in the instance of media bias. This relationship has taken hold, especially in the Trump presidency, for his hostility toward the media is consistently voiced by the president. The intensity of polarized news coverage begs the question as to whether or not it is something future presidents will continue face to face in governing. Whether or not this tension between media and president will persist to the degree that the United States has seen in recent years, it is still likely that presidents will continue to present themselves to the public either to lead or to retain credibility. Here then, is where social media can provide an aid to this course.

ONLINE INTERACTION

Whether to combat unfavorable reporting, change the narrative, or simply connect in a more personable way, the centerpiece of social media's political usefulness is its ability to provide an intimate platform for the president to *connect* with the public. These connections are essential in maintaining important objectives like accountability and performance that the national public has historically been quite interested in monitoring. Arguably, most salient with the nationwide audience, as identified in research by Stephen Farnsworth, is the usefulness of modern presidential communication in emphasizing presidential character. From Obama's graceful composure to Trump's fiery rhetoric, each president has found incredible agency online in order to sell themselves and by extension, their policies, to the American people.¹⁷ Farnsworth

¹⁵ Tim Groeling and Samuel Kernell. "Is Network News Coverage of the President Biased?," (*The Journal of Politics* 60, no. 4 (1998): 1063-1087), 1081

¹⁶ *Ibid.*, 1081

¹⁷ Stephen J Farnsworth, *Presidential Communication and Character: White House News Management from Clinton and Cable to Twitter and Trump*, (Routledge, 2018), 1

reaches the conclusion that social media only helps this trend of presidential character-spreading in ways that will allow for a far more “extensive and unmediated” form of presidential interaction with the national public.¹⁸ While social media does provide a direct statement to the president’s followers, that is not to say that the president’s tweets do not receive critiques in the media like any other public statement.

It is rare to now watch television news without mentions of presidential twitter action. For, in both Obama and Trump’s cases, many media organizations will even show or reference the president’s tweet as his personal statement. In the same way, online news will often link the president’s Twitter post directly to articles. The New York Times took a particular interest in presidential Tweets, and as a perfect example to the media’s wish to dissect the president’s Twitter messages, analyzed 11,000 of Trump’s Tweets in an effort to comment on the trends of his narratives and rhetoric.¹⁹ In addition to the spread of presidential social media messages by the news media, direct engagement online is quite popular. Both presidents Obama and Trump have a sizable following online. As of February 2020, both Obama and Trump have over 180 million Twitter followers combined.²⁰ Having an account on Twitter, both president Obama and Trump can craft a presidential message which can instantly be in the hands of millions of followers both in and out of the United States. Thus, the internet has provided the president with an incredibly democratizing method to spread rhetoric, and it is clear how drastically social media can strengthen presidential connectivity.

While social media has the potential to allow for a widespread method of public leadership, how is it used *successfully* in the modern presidency? Before this can be analyzed, it is first important to discuss what research is pointing to concerning its effects on American democracy. Both Yardi and Boyd and Kelly et. al. discuss a potentially harmful effect of social media in the cultivation of echo-chambers. Kelly et al.’s research has warned of the effects of mass group polarization online, characterizing the internet as an “anticommons” that allows

¹⁸ Ibid., 180

¹⁹ Michael D Shear, Maggie Haberman, Nicholas Confessore, Karen Yourish, Larry Buchanan, and Keith Collins, “How Trump Reshaped the Presidency in Over 11,000 Tweets,” (The New York Times. The New York Times, November 2, 2019. <https://www.nytimes.com/interactive/2019/11/02/us/politics/trump-twitter-presidency.html?smid=nytcore-ios-share>.)

²⁰ Obama, Barack, “Barack Obama (@BarackObama),” (Twitter. Twitter, February 28, 2020, <https://twitter.com/BarackObama>) and Donald J Trump, “Donald J. Trump (@RealDonaldTrump),” (Twitter. Twitter, February 28, 2020, <https://twitter.com/realdonaldtrump>)

people to digest information and discuss with others on the basis of shared interests and values.²¹ Yardi and Boyd reveal a similar trend, that in online theaters such as Twitter people are in-fact more likely to engage and interact with those that share similar views as they do.²²

This homophily in political views is a phenomenon identified by others, notably in Conover et al.'s paper studying the effects of political polarization on Twitter. In this study, like Kelly et. al and Yardi and Boyd, Conover et al. concede that Twitter does inhabit those politically active web users to engage in "homogenous communities segregated along partisan lines."²³ This study also identified the tendency for retweets to be highly polarized, whereas the mentions network on Twitter is not. This could suggest that Twitter does allow for some sharing of political information across party lines, however, Conover et al. urges that this is not necessarily the case, as users who are exposed to differing political views are not likely to rebroadcast this information, and even less likely to share it among their own political group.²⁴

Research by Stieglitz and Dang-Xuan dissected over 165,00 tweets concerning political themes and discovered a similar polarizing effect. In this study, the authors identified that emotionally charged Twitter messages were those that tended to be retweeted more often and more quickly as compared to neutral ones.²⁵ This study also discovered a link to sentimentality and retweets, suggesting that emotionally charged political messages with high retweets were those that found a great deal of political agency. These results are alarming, as highly partisan narratives that are considered in this study "emotionally charged" are those that receive the most fame. This suggests a perpetuation of polarized political discussion on social media.

Then, it appears social media is a uniquely essential and harmful political tool for the modern politician. Research has shown the dangers in polarization, but it has also pointed to the benefits of social media in issue awareness and political discussion.²⁶ Yet, presidential

²¹ John Kelly, Danyel Fisher, and Marc Smith. "Debate, Division, and Diversity: Political Discourse Networks in USENET Newsgroups," (*Online Deliberation Conference*, pp. 1-35. Stanford University, 2005), 1

²² Sarita Yardi and Danah Boyd, "Dynamic debates: An Analysis of Group Polarization Over Time on Twitter," (*Bulletin of Science, Technology & Society* 30, no. 5 (2010): 316-327), 325

²³ Michael D. Conover, Jacob Ratkiewicz, Matthew Francisco, Bruno Gonçalves, Filippo Menczer, and Alessandro Flammini, "Political Polarization on Twitter," (*Fifth international AAAI Conference on Weblogs and Social Media*. 2011), 89

²⁴ *Ibid.*, 91

²⁵ Stefan Stieglitz and Linh Dang-Xuan. "Emotions and Information Diffusion in Social Media—Sentiment of Microblogs and Sharing Behavior," (*Journal of management information systems* 29, no. 4 (2013): 217-248)

²⁶ Michael D. Conover, Jacob Ratkiewicz, Matthew Francisco, Bruno Gonçalves, Filippo Menczer, and Alessandro Flammini, "Political Polarization on Twitter," (*Fifth international AAAI Conference on Weblogs and Social Media*. 2011)

administrations that have found themselves in the era of social media have been eager to make their presence known, with both Obama and Trump having profiles that we actively engaged with during their presidential tenure.²⁷ Understanding past scholarship on presidential leadership, it is safe to assume that future administrations will continue to engage in public policy leadership in order to promote their own goals and establish a legacy of their presidency. Likewise, given the growing popularity of social networking, it is highly unlikely that American democracy will soon untangle itself from the internet. It is then safe to predict that the president will continue to find agency via online platforms.

THE TWITTER PRESIDENCY

So, if these tactics are to be continued, what are their implications for future development of the office of the presidency and for American democracy? The degree that a president can connect with the public may seem objectively good, yet what if the president resorts to narratives that borderline on demagoguery? What if the president uses social media to aggressively attack and shame political opponents? Do these situations not pose a threat to presidential accountability? This paper posits that social media provides precisely the right platform to court these dangers, and abuse of a social media voice can have the potential to damage not only to the president's approval but the institution as a whole. When this damage takes the form of demagoguery or continued politicization it is in threat to core tenants of democracy.

SETTING THE EXAMPLE

In the Trump Presidency, scholars of political science hear and discuss conceptions of demagoguery quite frequently, but was this the same case with Obama? While Obama was less inclined to flirting aggressive rhetoric, he was instrumental in linking the presidency with the digital world. Obama's bid for the White House was successful largely in part to his extensive grassroots campaigning that was cultivated using social media.²⁸ Authors James Katz, Michael

²⁷ Obama, Barack, "Barack Obama (@BarackObama)," (Twitter. Twitter, February 28, 2020, <https://twitter.com/BarackObama>) and Donald J Trump, "Donald J. Trump (@RealDonaldTrump)," (Twitter. Twitter, February 28, 2020, <https://twitter.com/realdonaldtrump>)

²⁸ Stephen J Farnsworth, *Presidential Communication and Character: White House News Management from Clinton and Cable to Twitter and Trump*, (Routledge, 2018), 94-6

Barris, Anshul Jain also credit both Obama and Romney's campaign with further stimulating party interaction with voters, and most importantly providing a wider audience "primed for social media outreach."²⁹ This "priming" is useful, as it provides the president with an "extremely convenient way to micro-target certain constituencies," thus gathering support for ideas in communities in which it would resonate.³⁰ This proved essential not only to Obama's rise to the White House but also in aspects of governing during his tenure as president. In Obama's push for the Affordable Care Act (ACA), author Stephen Farnsworth claims Obama's "decision to employ a targeted mass media strategy to maximize policy success was one of the key positive examples for other strategic communication campaigns."³¹ Here, Obama utilized his popularity on applications like Twitter to engage in healthcare debate, policymaking, and policy approval with the American public. The results of his online activities not only raised awareness of his issues but were also an interaction that brought citizens more closely into the decision-making process of Washington politics. While incredibly integral to the ACA's promotion, Obama continued to use social media as an engagement platform for the remainder of his presidency.

Yet, data concerning Obama's influence in *aiding* policy leadership has been unimpressive. Katz, Barris, and Jain note that there is little evidence that the Obama administration used social media to generate any significant policy initiatives nor overwhelmingly provide leading influence in the direction of national policy.³² Looking back to the public interpreter theory, this data then suggests that although social media is better at direct engagement than other forms of media, it does not significantly shift the possibility to control the national political agenda. Then, Obama's crucial legacy with social media was how he used it to advance himself by both promoting his character and selling himself to the American public.³³ In Obama's use of social media as an administration promoter, he was far more successful in using his popularity to gain legislative support than in convincing the policy world to come to a

²⁹ James Katz, Michael Barris, and Anshul Jain. *The Social Media President: Barack Obama and the Politics of Digital Engagement*, (Springer, 2013), 153

³⁰ *Ibid.*, 166

³¹ Stephen J Farnsworth, *Presidential Communication and Character: White House News Management from Clinton and Cable to Twitter and Trump*, (Routledge, 2018), 122

³² James Katz, Michael Barris, and Anshul Jain. *The Social Media President: Barack Obama and the Politics of Digital Engagement*, (Springer, 2013), 120

³³ Stephen J Farnsworth, *Presidential Communication and Character: White House News Management from Clinton and Cable to Twitter and Trump*, (Routledge, 2018), 121

definitive solution.³⁴ Obama's willingness to engage with the people and the new attention he gave his character to a broader online audience was formative in providing precedent that the presidency can be willing to court popular opinion.³⁵ Then, it appears that Obama's greatest strength was his reassertion of the presidency as an online national leader, with the president as responsible for directing online communications to certain administration goals and other government happenings. Perhaps then this is his greatest legacy for institutional development, for as the Trump presidency has showcased, social media remains an actively used tool for the sitting president.

PUBLIC INTERPRETOR TO PUBLIC AGITATOR

Where Obama used Twitter mostly for administration promotion and issue discussion, Trump uses it for both these and as a means to address the opponents of his agenda. President Trump took the precedent of Obama's use of social media and expanded it into that of a presidential blog updated multiple times a day. However, aspects of Trump's online interaction have shown implications of a president with a more overbearing and imposing character than President Obama. Rather, Trump's fiery rhetoric often resorts to aggressive tactics to reinforce support in the Trump administration. In a New York Times analysis of the rhetoric of Trump's tweets, it found trends in his social media use that relied heavily on attacking and addressing his political opponents and governmental challengers. Tweets analyzed were posted in the 33 months between January 2017 and October 2019 and consisted of 11,000 entries. 5,889 of the 11,000 tweets were Trump attacking someone or something. 1,308 of these tweets attacked media organizations and 2,065 attacked investigations into his presidency.³⁶ In his twitter tirades, Trump also actively engaged issues that were key to his base such as healthcare reform, immigration tightening, and refocusing American foreign policy. In doing so, Trump often finds agency in using harsh or inflammatory rhetoric when pushing these policies. Just in the timespan of the New York Times analysis, Trump attacks minority groups in 851 tweets, attacks

³⁴ Ibid., 121

³⁵ Ibid., 121

³⁶ Michael D Shear, Maggie Haberman, Nicholas Confessore, Karen Yourish, Larry Buchanan, and Keith Collins, "How Trump Reshaped the Presidency in Over 11,000 Tweets," (The New York Times. The New York Times, November 2, 2019.

[https://www.nytimes.com/interactive/2019/11/02/us/politics/trump-twitter-presidency.html?smid=nytcore-ios-share.](https://www.nytimes.com/interactive/2019/11/02/us/politics/trump-twitter-presidency.html?smid=nytcore-ios-share))

immigrants in 570, attacks previous administrations in 453, and attacks allied nations in 233 tweets. Occasionally, Trump also appears to align himself with populist-style political tactics, tweeting 183 times about the immense crowds and love he receives from the people, publishing 132 tweets that praised dictators, tweeting thirty-six times referencing the media as the “enemy of the people,” and referring to himself proudly in sixteen tweets as “everyone’s favorite” president.³⁷ These types of outreach are different from Obama’s more positive narratives online and dignified online style. While not focusing on the merits of each president’s character, it is still evident that character plays largely into the choices of rhetoric. President Trump is not afraid to challenge those against him just as Obama was willing to use the internet as a means to gain political credibility for his administration. What both of these presidents have established, however, is an expectation for the public that the president is to be engaged online and active on social networks.

Yet, with Trump’s Presidency, there appears to be a significant negative shift in his online rhetorical practices and the national public’s perception of the American presidency. Trump’s actions have been considered by many political scientists as borderline populism, a dangerous tactic when discussing potential moments of demagoguery.³⁸ For, as Trump’s tweets have showcased, he is not hesitant to scorn those that his views deem worthy of rhetorical abuse. He is also more than apt to spread this rhetoric to his followers and to encourage the spread of his discourse. Research in online communication by Sven Engesser, Nayla Fawzi, and Anders Larsson has discovered that social media users are those most susceptible to populist commentary and influence.³⁹ Applying data on the tendency for social media to cultivate echo-chambers, this data suggests an alarming trend for aggressive rhetoric to be consumed if promoted by a prominent figure.⁴⁰ The president has the opportunity to become this figure. Trump has shown the ease at which the president can spread inflammatory rhetoric and is arguably a modern demagogue. What then is to stop the next president from taking his example,

³⁷ Ibid.

³⁸ Ibid.

³⁹ Sven Engesser, Nayla Fawzi, and Anders Olof Larsson. “Populist Online Communication: Introduction to the Special Issue,” (*Information, Communication & Society* 20, no. 9 (2017): 1279–92. <https://doi.org/10.1080/1369118x.2017.1328525>)

⁴⁰ Elanor Colleoni, Alessandro Rozza, and Adam Arvidsson. “Echo Chamber or Public Sphere? Predicting Political Orientation and Measuring Political Homophily in Twitter Using Big Data.” *Journal of communication* 64, no. 2 (2014)

and spreading his or her inflammatory rhetoric that further divides the political community and disregards the impact of these practices on the institution of the presidency?

IMPLICATIONS FOR FUTURE GOVERNANCE

The news media does not aid presidential twitter use, for presidents have identified the directness that is inherent in social media and have favored its uses for when the media is at odds with the goals of the administration. Likewise, due to the popularity of monitoring the president's twitter, the rise of social media popularity overall, and the ease at which one can engage in politics online, it is unlikely the public demand for presidential social media presence will wane. Thus, we are in a dangerous moment for the development of the presidency and communications. While Trump continues to bash his opponents and enflame his enemies, the American public becomes more use to the president using these types of tactics online. Looking back to President Wilson's commentary on the role of the public interpreter, his commentary of the corruption of the role resulting in demagogic tactics seems more real when the president is offered not only an uncensored platform for direct rhetoric but also handed precedent that presidents have done this before.⁴¹ Social media only further temps this corruption of public leadership, and if continually present as a key mechanism to presidential engagement, could prove to be a readily available platform to practice demagogic leadership.

Additionally, the polarizing nature of negative narratives and aggressive rhetoric will continue to separate Americans over issues and limit chances of inter-party connectivity and issue solving. For, if Americans continue to engage in partisan echo-chambers online, they might become less and less willing to reach compromises. For presidents to continue to entertain the success of intense polarization is an insult to democracy, for it has and always must lie in a place of compromise. Likewise, when the president acts as a figurehead of polarizing rhetoric, it further reinforces partisan differences in national politics and in the office of the presidency. This is not a wise course of action for American democracy, especially when the modern era has shown normalization of divided government. Just as the intimacy of social media can provide an

⁴¹ Jeffrey K Tulis, "The Two Constitutional Presidencies." *The Presidency and the Political System* 8th ed, (2003): 57-87, 18-9

outlet for demagoguery, so too can it provide a platform for the president to inflame the partisan divide.

The threats of demagoguery and politicization are both critical to further presidential engagement via social media. Still, these effects are but small disadvantages to the greater threat that social media poses for the presidency. In its formation, Alexander Hamilton argues that the executive's republican nature allows it to be both responsive to the people, but rightfully guarded against the abuse of the masses.⁴² In Federalist No. 68 Hamilton explains this reasoning through a discussion of how the president is elected. The electoral college is an attempt to include chosen (and presumably more renowned) citizens to act as an electorate to pass votes for the president off of mass popular will. In this way, the views of the masses are isolated from the power of the president. Likewise, the electoral college isolates the president from courting views of certain constituencies that he or she might need to regain election, thereby avoiding the sacrificing of presidential duty for the sake of political gain.⁴³ Why would the founders insulate the presidency to this degree? The answers to these questions are due to the threat of popular rule, for the president to encompass the persona of a demagogue, and to rule by the tyranny of the majority. To remedy this, Hamilton and the other founders made the foundations of the presidency innately republican. The detachment of the popular will was necessary to rein in the power of one figure and justified due to the people's branch of Congress being an outlet for popular motivations. Yet, as the modern presidency has taken on more responsibility and as Congress has digressed more control and discretion to the executive, threats of popular will now seem to be dangerously mixing with a noticeably more democratic office.

As this paper has highlighted, social media is the exact opposite trend to further slow the growth of popular leadership in the presidency. Rather, social media in effect breaks the distance between the public and the president and more closely entwines their political existence. This consistent courting of the popular will is dangerous for an institution designed to have its limits on popular leadership. It also paints the image of the presidency as that of wholly responsible to the popular will. Rather, the American public forgets that its branch of popular leadership lies with the Congress and not the presidency. Though, when the president tweets consistently on

⁴² Alexander Hamilton, John Jay, and James Madison. *The Federalist Papers*. Mineola, NY: Dover Publications Inc., 2014, 328

Congress' issues and attempts to lead policy, how is the public to understand the infringement of the presidency on Congress' role? Obama's precedent in the usefulness of Twitter as a political tool in addition to Trump's validation of frequent, derogatory, and self-supporting rhetoric has threatened future inhibitors of the executive office to continue to court popular leadership in an office that is better managed with a distance from popular will. While critics of this thought process applaud the democratization of the presidency as a way to bring the people more closely to government, they miss the danger that online use engrains in the public. The effect of this is reinforcing the notion that the president is a larger player in government than the office's power Constitutionally allows. Thus, the Twitter Presidency is one that Americans must watch with a careful eye, for its ability to be abused is exceptionally high. If the American presidency is to continue mass engagement and leadership via social media, then it must understand the influence it holds and the power it has to be abused. For, if American democracy is to continue to adapt to a changing world, it too must continue to adapt its reflexes toward avoiding demagogic government.

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FROM THE WAR ON DRUGS TO THE OPIOID CRISIS: A COMPARISON OF THE NIXON APPROACH AND THE TRUMP APPROACH IN COMBATTING DRUG USE IN AMERICA

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This research paper explores the evolution of the drug epidemic and the presidential responses to address it. Specifically, I analyze the approach of the Nixon administration and compare it to the approach of the Trump administration. I argue that although there has been much change in the fight against drug misuse, the policies used by the Nixon administration are very similar to the approach that the Trump administration is taking today. This lack of change in policy is the reason that there has been a continual increase in drug misuse between 1969 and 2019. President Nixon's administration focused on drug control by way of law enforcement, foreign policy and treatment options, which is a model that is largely similar to the approach that of President Trump.

INTRODUCTION

In the wake of the recent vote to impeach President Donald Trump, various comparisons between the current president and Richard Nixon have been made, alluding to similarities in character, including their “outsider” status and disdain for the press, as well as similarities in policy, such as strict border regulations.¹ In this paper, I point out another likeness between the two administrations: their approaches in the fight against drug abuse in America. Both the Nixon and Trump administrations used similar language to present the issue of drug abuse to the American public as a pressing matter of the time. President Nixon declared “America’s public enemy number one in the United States (as) drug abuse,” in a press conference in 1971.² Comparably, on October 26th 2017, President Trump said, “today my administration is declaring the opioid crisis a national public health emergency.”³ Both forms of language used by these two presidents express the urgency of drug misuse in America, yet neither one of them actually

¹ Coleman McCarthy, “Nixon and Trump: What a Pair,” National Catholic Reporter Online (National Catholic Reporter: The Independent News Source, July 16, 2019), <https://www.ncronline.org/news/opinion/its-happening/nixon-and-trump-what-pair>

² Chris Barber, “Public Enemy Number One: A Pragmatic Approach to America’s Drug Problem,” NixonFoundation.org (Richard Nixon Foundation, June 29, 2016), <https://www.nixonfoundation.org/2016/06/26404/>

³ Jenna Johnson and John Wagner, “Trump Declares the Opioid Crisis a Public Health Emergency,” Washingtonpost.com (The Washington Post, October 26, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/10/26/trump-plans-to-declare-the-opioid-crisis-a-public-health-emergency/>

declare a “national state of emergency,” which is the language needed in order to expedite the use of funds in order to address the issue.

In this paper, I argue that although the fight against drug misuse has evolved significantly from President Richard Nixon’s declaration of a “War on Drugs,” in June of 1971 to President Donald Trump’s declaration that the opioid crisis is a public health emergency in October of 2017, the policy surrounding the management of drug use is very similar between the two administrations. The absence of a shift in policy in this crisis characterized by its ever-changing nature is, therefore, the reason that we have not seen significant progress in decreasing the detrimental effects of drug misuse. It is also why drug use has significantly increased since the Nixon era. President Nixon’s administration had a three-fold approach to drug use, which included law enforcement, foreign policy and treatment. While seemingly comprehensive at the time, we continue to see this approach from the Trump administration, rather than an evolution of this policy.

THE NIXON APPROACH

While drug abuse may not have been on the forefront of important issues concerning the public during the late 1960s and early 1970s, it was on the mind of then presidential candidate Richard Nixon. In a Gallup poll that asked respondents what they thought the most important problem facing the country was in 1971, only 8% solicited mentioned drugs in their response.⁴ Nevertheless, in 1968 Nixon announced on the campaign trail that “narcotics (were) the modern curse of American Youth,” clearly demonstrating that, in Nixon’s opinion, drug abuse was a pressing matter of that time.⁵ Therefore, upon election into office Nixon began to develop the approach that his administration would take in order to address the misuse of drugs in America. This approach aimed to tackle the drug problem by way of foreign policy, law enforcement and treatment.

From the standpoint of tackling drug misuse through foreign policy, President Nixon realized that it was necessary to attack the source of drugs in America. Turkey accounted for a

⁴ David F. Musto and Pamela Korsmeyer, “The First Nixon Administration: Early Approaches to Drug Policy,” in *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse, 1963-1981* (Yale University Press, 2002), pp. 38-71, <http://www.jstor.org/stable/j.ctt1nq9hf.8>

⁵ Ibid.

majority of the heroin that was being supplied in the United States in 1971, therefore President Nixon administered a supply reduction policy, the Turkey Poppy Moratorium, which helped Turkish farmers end the farming of opium poppies over the span of a three-year program.⁶ By using money on behalf of foreign policy, the federal government during the Nixon administration was able to cut off the source for the “domestic social problem” of drug abuse.⁷

A second aspect of the attack on drug abuse via foreign policy during the Nixon administration was the creation of the Special Action Office for Drug Abuse Prevention (SOADAP) in 1972. This program was meant to act as a management force in coordination with the Cabinet Committee for International Narcotics Control in addressing drug misuse via foreign policy. Primarily, SOADAP set up the Office of Drug Abuse Control in the Executive Office, instituting as one of the main objectives to “set policies, which relates international considerations to domestic considerations.”⁸ This new office was specifically aimed to address issues of domestic drug misuse through an international framework and concerns of foreign policy. During the Vietnam War, the use of drugs among servicemen was of severe concern to the Nixon administration. Not only was drug abuse prevalent among service men abroad, but the Nixon Administration was also worried about an influx of those drugs back into the United States as soldiers began to return home. Therefore, the first objective of SOADAP was “aimed at identifying and detoxifying narcotics-abusing service personnel before they could return from Vietnam to the United States.”⁹

In keeping with the ban on poppy cultivation in Turkey, the Nixon administration continued to institute other Narcotic Control Action Plans, such as policy implementations on heroin smuggling in Panama. These plans were organized through the Coordinating Subcommittee of the Cabinet Committee on International Narcotics Control, whose committee chair at the time was Walter Minnick, deputy assistant director for the Office of Management and Budget from 1972 to 1973. With the focus of giving drug control “a proper place in the list

⁶ Ibid.

⁷ Ibid.

⁸ David F. Musto and Pamela Korsmeyer, “The First Nixon Administration: Treatment and Rehabilitation,” in *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse, 1963-1981* (Yale University Press, 2002), pp. 72-105, <http://www.jstor.org/stable/j.ctt1nq9hf.9>

⁹ Ibid.

of US governmental priorities,” these missions exerted force towards drug control in “production, process, consumption, or transmitting of illicit hard drugs.”¹⁰

In accordance with presidential candidate Nixon’s emphasis on fighting drug misuse throughout his 1968 campaign, his focus expanded beyond solely approaching this issue via foreign policy. Nixon also ran his 1968 campaign on the idea that the lack of harsh law enforcement by the Lyndon B. Johnson administration combined with their liberal policies on drug control had contributed to the wave of crime that America was facing during that time period. Therefore, when Nixon became president, as another prong to his three-fold approach, he wanted to address the relationship between drugs and crime in America using the criminal justice system. By imposing stricter law enforcement, the Nixon administration believed that this would serve as a mechanism to reduce crime while simultaneously cracking down on drug misuse.

One of the first ways that President Nixon began to increase law enforcement in response to drug misuse in America was his introduction of S. 2637 along with his “Special Message to the Congress on Control of Narcotic and Dangerous Drugs” in 1969. The main purposes of this legislation all directly involved the regulation of drug control through law enforcement. Those purposes included providing “more meaningful regulation of over (...) sources of drugs,” strengthening “law enforcement against illicit drug traffic,” and eliminating “inconsistencies in the present regulation of drugs.”¹¹ Additionally, this piece of legislation included the “No-Knock” provision, which allowed law enforcement to enter without warning (as long as they had a warrant) under the presumption that evidence of drug use would be destroyed with prior notice of entry.¹²

Another piece of legislation that was implemented during the Nixon administration that was devoted to curtailing drug misuse through heightened law enforcement mechanisms was the Prevention and Control Act of 1970. This act revised the penalty structure for law enforcement pertaining to the use of drugs and made the penalty for heroin greater than the penalty for marijuana.¹³ These examples of legislation introduced during the early years of the Nixon administration were, not only a means of cracking down on drug misuse with an increased

¹⁰ Musto and Kormsmeier, *Early Approaches to Drug Policy*, 38-71.

¹¹ “The American Presidency Project,” *The American Presidency Project* (Richard Nixon, July 14, 1969), <https://www.presidency.ucsb.edu/documents/special-message-the-congress-control-narcotics-and-dangerous-drugs>

¹² Musto and Kormsmeier, *Early Approaches to Drug Policy*, 38-71.

¹³ Ibid.

emphasis on criminal justice, but they also “made sense from the point of view of electoral politics,” as Nixon had been focused on drawing “national attention (...) to the crime problem in general” surrounding the narcotics problem in the US since his early days on the campaign trail.¹⁴ Even the Jaffe Committee Report, which was a national treatment plan that focused on methadone maintenance, also served as a tool to further Nixon’s law-and-order agenda. Methadone maintenance is the long term prescription methadone as an alternative to opioids for addicts.¹⁵ Yet ultimately, this program highlighted the “interrelations between theories of criminality and of mental health,” because the “evidence of efficacy in crime reduction helped establish methadone treatment maintenance as an effective treatment in heroin addiction.”¹⁶

The Prevention and Control Act of 1970 not only furthered the political means of the Nixon Administration in terms of electoral politics, but also created a basis for legalized discriminatory policy measures pertaining to drug abuse. John Ehrlichman, the Nixon Administration White House counsel even said, “Nixon’s drug policies were racially motivated.”¹⁷ This was primarily achieved by the way that the Act classified drugs, through five different drug schedules. The first one, imposing the highest level of scrutiny towards penalties for drug misuse targeted “high abuse potential drugs,” such as heroin, ecstasy, and even, marijuana.¹⁸ This classification of drugs was implemented through legislation, rather than by recommendation of medical experts, and allowed for higher levels of scrutiny against minority groups.¹⁹ This was because the penalty structure for cases of drug misuse “presumably used by traditional minorities” was a way to apply “coercive reform” in order to protect the “drug-related activities of reputable populations.”²⁰

¹⁴ Ibid.

¹⁵ Musto and Korsmeyer, *Treatment and Rehabilitation*, 72-105.

¹⁶ Mical Rax, “Treating Addiction or Reducing Crime? : Methadone Maintenance and Drug Policy Under the Nixon Administration,” *Journal of Policy History* 29, no. 1 (2017): pp. 58-86, <https://muse.jhu.edu/article/643889>

¹⁷ John Hudak, “Richard Nixon Fires the Opening Shots in the War on Drugs,” in *Marijuana: A Short History* (Washington, D.C.: Brookings Institution Press), pp. 49-58, accessed February 27, 2020, <https://www.jstor.org/stable/10.7864/j.ctt1hfr1qj.8>

¹⁸ Michael Gabay, “The Federal Controlled Substances Act: Schedules and Pharmacy Registration,” *Hospital Pharmacy* 48, no. 6 (June 2013): pp. 473-474, <https://doi.org/10.1310/hpj4806-473>

¹⁹ Ibid.

²⁰ Ruth D. Peterson, “Discriminatory Decision Making at the Legislative Level: An Analysis of the Comprehensive Drug Abuse Prevention and Control Act of 1970,” *Law and Human Behavior* 9, no. 3 (September 1985): pp. 243-269, <https://www.jstor.org/stable/1393797>

The third prong to President Nixon's three-fold approach to drug misuse in the United States involved treatment for those who were already victims of drug addiction. Jeffrey Donfeld, assistant to Egril Krogh who was the appointed member of the Nixon administration in charge of drug affairs, outlined the concept for treatment in Nixon's National Drug Rehabilitation Prevention Program. He said that "there ought to be a sufficient amount of treatment capacity in the United States so that no addict could claim that he committed a crime because didn't have access to treatment."²¹ Therefore, it was evident that the Nixon administration was acutely aware and prepared to act on the assumption that the need for treatment for drug addicts was fundamentally connected with reducing crime in America, and therefore went hand in hand with the increased law enforcement provision of the administration's approach to controlling drug misuse. It was President Nixon's belief that if his administration were to lower crime rates in America, then an effective way to do that was by "getting a maximum number of addicts out of circulation (of the criminal justice system) and into treatment programs."²²

In order to streamline the productivity of the treatment approach to drug control in the United States, President Nixon's Advisory Council on Executive Re-Organization (PACEO) conducted a study on drug control. This study was intended to focus on the organizational aspects of who should control which aspects of drug abuse policy. For example, this study suggested that the Public Health Service should take the reins in controlling the "Drug Abuse Training, Education, and Rehabilitation Administration (DATERA)," in order to more productively act on treatment for drug misuse.²³

Additionally, methadone treatment became an increasingly useful and prevalent method for drug control. SAODAP played a role in the expansion of these programs in their contributions of providing regulations to ensure the proper use of methadone and accounting for budget increases to fund these treatment programs.²⁴ The Jaffe Report also solicited the use of methadone programs in their recommendations. In particular, this report highlighted the importance of a "multimodality program in which its own disadvantages would be partially overcome by the advantages of other methods of treatment and rehabilitation, and, in turn

²¹ Musto and Korsmeyer, *Treatment and Rehabilitation*, 72-105.

²² Ibid.

²³ Ibid.

²⁴ Mical, *Treating Addiction or Reducing Crime?*, 58-86.

methadone would contribute to overcoming some of the limitations of other components.”²⁵ This program demonstrated the ability to provide a system of comprehensive support for recovering addicts.

PRESIDENTIAL APPROACHES FROM 1974 TO 2017

Approaches to drug policy in the United States have shifted over the years depending on different administrations political beliefs and degree of importance attributed to the issue. After 1974, President Ford largely continued Nixon’s approach to drug control and the programs implemented by the Nixon administration did not change much under his administration. Due to his emphasis on decriminalizing marijuana, during President Carter’s administration, drug use was at a peak among younger generations.²⁶ With the Reagan administration, came a return to the more aggressive approach towards drug misuse. Additionally, during the Reagan administration, the Anti-Drug Abuse Act, which provided guidelines for drug offense charges based on different categories of drugs, acted as a way to discriminate against black Americans, similarly to the drug scheduling that was implemented in Controlled Substance Act of 1970.²⁷ In the period leading up to the Obama Administration, increases in the money allotted to drug control in the federal budget were the only significant policy changes. Yet, incarcerations for drug-related crimes increased during this period as a result of the continuation of hardline law enforcement. This highlighted the racial discrepancy within the realm of controlling drug misuse, as black Americans were more frequently targeted for such charges.²⁸ During the Obama administration, there was an increased focus on depenalization of drug misuse and a more comprehensive treatment approach in response to the high incarceration rates and his liberal political ideologies.²⁹ In addition, the legalization of marijuana at the state-level came to the forefront of the drug conversation as ten states have legalized marijuana to date.³⁰ Furthermore, the Controlled Substance Act of 1970 remains in place, as does the drug scheduling framework

²⁵ Musto and Korsmeyer, *Treatment and Rehabilitation*, 72-105.

²⁶ History.com Editors, “War on Drugs,” HISTORY (A&E Television Networks, May 31, 2017), <https://www.history.com/topics/crime/the-war-on-drugs>

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ DISA Editors, “Map of Marijuana Legality By State,” DISA (DISA Global Solutions), accessed February 28, 2020, <https://disa.com/map-of-marijuana-legality-by-state>

that it created, which still classifies marijuana as a Schedule I drug, along with more severe drugs such as cocaine and heroin.³¹

THE TRUMP APPROACH

Contrary to the 1960s and 1970s during the Nixon administration, in 2016 public opinion surrounding the misuse of drugs was much more aware and concerned with this crisis during then candidate Trump's presidential campaign. In 2016, a Gallup public opinion poll asked respondents how they would describe the problem of drugs in the United States. Over 65% of respondents reported that the problem was either "extremely serious" or "very serious."³² Similarly to President Nixon, President Trump established drug control as a priority while campaigning for office. In a statement released during his 2016 presidential campaign, President Trump remarked that it was "tragedy enough that so many Americans are struggling with life-threatening addiction" and that such a tragedy should not be exacerbated with "government policies and bureaucratic rules that make it even harder for (addicts) to get help."³³ In addition to the similarity with President Nixon of the importance given to drug control during the campaign, the Trump administration's overall approach to drug misuse thus far in his presidency, has followed the comparable framework of addressing the issue through means of foreign policy, law enforcement and an emphasis on treatment options.

President Trump has primarily taken a national security approach to applying drug control as a means of foreign policy. This is unsurprising considering the harsh stance that President Trump has maintained on immigration and his "border wall," ever since the earliest stages of his campaign. President Trump's severe rhetoric towards Mexicans, in particular, is synonymous to the discriminatory provisions of drug scheduling included in the Drug Abuse Prevention and Control Act of 1970, implemented during the Nixon administration. Furthermore, these provisions within the Act still exist today, and constitute another example of how little the

³¹ Lisa N. Sacco, "Drug Enforcement in the United States: History, Policy, and Trends" (Congressional Research Service, October 2, 2014), <https://fas.org/sgp/crs/misc/R43749.pdf>

³² "Illegal Drugs: Gallup Historical Trends," Gallup, accessed January 29, 2020, <https://news.gallup.com/poll/1657/illegal-drugs.aspx>

³³ Damian Garde, "Trump Is 'Doubling down' on the Opioid Crisis with Promises of Expanded Treatment," Statnews.com (STAT, October 15, 2016), <https://www.statnews.com/2016/10/15/trump-opioid-expanded-treatment/>

drug misuse approach has improved in the context of today's contemporary drug situation, which is characterized by face-paced change.

The Trump administration has used collaboration with other countries as a way to attack drug misuse, as well as act as a measure of foreign policy. Due to the connection between terrorist groups and transportation of drugs, as well as the belief that the threat of terrorism is enhanced through drug trafficking, the Trump administration works with the State Department, Department of Homeland Security and other countries in order to deter the funds of drug related transactions.³⁴ In addition, Jim Carroll, President Trump's drug czar, has helped further the Trump administration's national security approach to addressing drug control with his support and work towards the "wall" between U.S. and Mexico. At a press conference in Kentucky, Carroll justified his support for the wall in its capacity of "saving American lives by helping stem the flow of illegal drugs into the country."³⁵

The Trump administration's strategy of approaching drug misuse in America by way of foreign policy can be observed in American presence and dealings with three different countries: Mexico, China and Canada. In Mexico, there has been a steady increase in the amount of homicides per year beginning in 2015, according to Mexico's Secretary of National Public Security.³⁶ This rise in homicides has been connected to the opioid crisis in the United States, and its relation to poppy production in Mexico as the source for drug cultivation. Therefore, in 2018, the Trump administration helped Mexico, as a means of foreign policy, to better assess their poppy problem through supplying drones and geolocation technology.³⁷ Additionally, in May of 2017, the Trump administration had a 1st Cabinet-level Strategic Dialogue on disrupting transnational criminal organizations (TCOs) with the objective of defining "a new approach to addressing the business model of TCOs, with emphasis on drug production, drug distribution, cross-border movement of cash and weapons, drug demand markets and illicit revenue."³⁸

³⁴ Celina B. Realuyo, "The New Opium War," *PRISM8*, no. 1 (2019): pp. 132-142, <https://www.jstor.org/stable/10.2307/26597315>

³⁵ Bruce Schreiner, "US Drug Czar Says Border Wall Will Reduce Influx of Drugs," *Apnews.com* (AP News, March 18, 2019), <https://apnews.com/51bd3308f9074cccb6421bccd3ca65eb>

³⁶ "Victimas De Delitos Del Fuero Común 2019: Instrumento Para El Registro, La Clasificación y Reporte De Delitos y Las Víctimas CNSP/38/15," *Victimas de Delitos del Fuero Común 2019: Instrumento para el Registro, la Clasificación y Reporte de Delitos y las Víctimas CNSP/38/15 §* (2019), https://drive.google.com/file/d/1lQJLtBVTLLtJZxOquYCx4C_C1fLvEWDd_/view

³⁷ Celina B. Realuyo, "The New Opium War," *PRISM8*, no. 1 (2019): pp. 132-142, <https://www.jstor.org/stable/10.2307/26597315>

³⁸ *Ibid.*

In addition to these one-on-one relations with Mexico pertaining to the curtailment of drugs in both the United States and Mexico, both countries also participated in other multilateral conversations that included cooperation and foreign policy involving other countries. Firstly, was the Trilateral National Fentanyl Conference for forensic chemists from Mexico, the United States, and Canada. The objective of this conference was to allow the chemists to “share best practices on the detection, analysis, and handling of fentanyl.”³⁹ Secondly, was the 2017 Trilateral Assessment on Opioid Trafficking, also with Mexico, Canada, and the United States. This assessment served as “baseline” for providing information surrounding the issue of fentanyl and how that could inform further foreign cooperation and policy between the three countries.⁴⁰

President Trump has outlined several different areas for the exercise of foreign policy as it pertains to drug control in China as well. Overall, one of the four objectives that the Trump White House has delineated for the control of drug abuse in the United States is the practice of targeting supplies at the source, an objective that was also used by the Nixon administration. This objective is backed in the idea that it allows the administration to use foreign policy to attack the drug problem before the drugs even reach American communities. President Trump is primarily working with China to crack down on the Dark Web’s position as a supplier in their country.⁴¹ Additionally, United States and Chinese law enforcement and information-sharing operations work together to “reduce the production and trafficking of illicit fentanyl and fentanyl analogues.”⁴² For example, in 2017 the United State Department of Justice and Department of Homeland Security worked alongside officials in Hong Kong to seize fentanyl packages that were headed towards the United States and Canada.⁴³

Further evidence of United States foreign policy efforts towards drug control under the Trump administration include President Trump’s encounter with the president of China at the G20 Summit in Buenos Aires in 2018. During this summit, fentanyl was newly classified as a controlled substance, meaning that anyone selling this substance in the United States in also

³⁹ “International Narcotics Control Strategy Report,” 1 International Narcotics Control Strategy Report § (2018), <https://www.state.gov/wp-content/uploads/2019/04/2018-INCSR-Vol.-I.pdf>

⁴⁰ “Illicit Fentanyl, China’s Role and U.S. Foreign Policy Options,” *FAS.org* (Congressional Research Service, December 21, 2018), <https://fas.org/sgp/crs/row/IF10890.pdf>

⁴¹ The White House, “President Donald J. Trump Has Dedicated His Administration to Fighting Back Against the Opioid Crisis,” [whitehouse.gov](https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-dedicated-administration-fighting-back-opioid-crisis/), September 5, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-dedicated-administration-fighting-back-opioid-crisis/>

⁴² Realuyo, *The New Opium War*, 132-142.

⁴³ *Ibid.*

subject to criminal consequences in China (or any other country included in the G20). President Trump toots his own success in this victory, saying that “he convinced the Chinese president, Xi Jinping, (...) to designate fentanyl as a controlled substance.”⁴⁴

Similarly, the United States has cooperated through influence of foreign policy with Canada under the Trump administration in order to stem the flow of drugs and detrimental effects of such in both countries. By way of coordinated law enforcement teams “US agencies cooperate extensively with Canada to enhance regulatory frameworks to prevent access to precursor chemicals and law equipment for criminal use.”⁴⁵

As seen during the Nixon administration, the Trump administration has also invoked the use of law enforcement in order to address the drug misuse issue in the United States. As mentioned above, the Trump administration has outlined four objectives pertaining to drug control in the United States. One of those objectives is the targeting of supplies used for drug cultivation and distribution with the intent of curbing the drug problem before they reach the hands of the addicts.⁴⁶ This objective pertains, not only to foreign policy, but the curtailment of drugs that come for the United States as well, primarily by way of law enforcement officials. The Trump administration reports having conducted law enforcement seizures from supplies, including 5,000 lbs. of fentanyl in 2018 within the United States.⁴⁷ Additionally, the White House Office of National Drug Control (ONDCP) reports having “programs (that) seek to strengthen the rule of law, promote judicial reform, improve information sharing with our law enforcement partners, target criminals and corrupt leaders, and disrupt illicit trafficking.”⁴⁸ A final example of the efforts to use law enforcement in the Trump approach to drug control involves the convictions of CEOs of pharmaceutical companies for the part they have played in the excessive availability of harmful drugs to the general public. Charges include that of the Rochester Drug Co-Operative, as well as other CEOs of different pharmaceutical companies.⁴⁹

The third similarity between the Nixon approach and the Trump approach pertains to the use of treatment in order to contain drug abuse in the United States. As did President Nixon,

⁴⁴ Khushbu Shah, “Nothing Is Going to Stop Us’ : Trump Touts Progress in Opioid Crisis Fight,” *Theguardian.com*, April 24, 2019, <https://www.theguardian.com/society/2019/apr/24/trump-touts-progress-opioid-crisis-fight-atlanta-summit>

⁴⁵ Realuyo, *The New Opium War*, 132-142.

⁴⁶ The White House, *Trump Has Dedicated His Administration*.

⁴⁷ Ibid.

⁴⁸ Realuyo, *The New Opium War*, 132-142.

⁴⁹ Khushbu, *Nothing in Going to Stop Us*.

President Trump has delineated several different avenues for the development of treatment for drug addicts. Firstly, the Trump administration has launched different campaigns that address different areas of importance and guidelines for treatment. Specifically, “The Truth About Opioids,” is a public awareness campaign organized by the Trump administration that is made up of four releases of television advertisements in order to target addiction among young people.⁵⁰ According to the ONDCP, the areas touched upon throughout this series of advertisements include “addressing opioid community-based drug prevention efforts, detecting early signs of opioid addiction, monitoring prescription drug programs and increasing access to the opioid-overdose-reversing drug, naloxone.”⁵¹ The Truth Initiative, as well as the Veterans Affairs’ Opioid Safety Initiative have cooperated on behalf of another one of the four drug control objectives of the Trump administration: raising awareness through targeting over-prescription.⁵²

The first of the four objectives that President Trump dedicated to fight drug abuse in the United States during his time in office is the allotment of more federal resources to the issue. So far, the administration has set aside \$1.8 billion in grants to states to aid in treatment, research and data, community health centers, rural organizations and academic institutions on behalf of drug control.⁵³ Within these federal resources President Trump announced his Initiative to Stop Opioid Abuse and Reduce Drug Supply Initiative, which addresses underlying factors of the drug abuse crisis including the availability of supplies, as well as access to treatment and recovery services.⁵⁴ The SUPPORT Act is also encompassed in the allocation of federal funds towards treatment options for drug addicts. This act was passed October of 2018 and paved the way for provisions allocated specifically towards the opioid crisis in Medicaid, Medicare, and FDA & Controlled Substances.⁵⁵ The final objective of the Trump White House in regards to treatment for drug misuse entails additional support for the addicted, including larger access to treatment and naloxone expansion programs.⁵⁶ In addition, the Trump administration has provided \$93 million in grants to help people affected by opioid addiction rejoin the workforce.⁵⁷

⁵⁰ Realuyo, *The New Opium War*, 132-142.

⁵¹ Ibid.

⁵² The White House, *Trump Has Dedicated His Administration*.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Rep. Walden Greg, “H.R. 6 - SUPPORT for Patients and Communities Act,” Congress.gov (The Library of Congress), accessed January 30, 2020, <https://www.congress.gov/bill/115th-congress/house-bill/6>

⁵⁶ The White House, *Trump Has Dedicated His Administration*.

⁵⁷ Ibid.

While all of these objectives, proposals and plans are well meaning, it is also important to point out some of the contradictions that have arisen among some of the ideological standpoints of President Trump, and how those affect access to treatment. Specifically, the issue that arises as the Trump administration calls “for more access to addiction treatment while (trying) to roll back the Affordable Care Act and Medicaid (which are) the biggest payer(s) of behavioral healthcare.”⁵⁸ Nonetheless, the similarities of approach to drug control in America between the Nixon administration and the Trump administration are widely apparent, as both presidencies sought to address the problem of drug misuse primarily by way of foreign policy, a law enforcement response and treatment options for the addicted population.

A GROWING CRISIS WITH A LACK OF EVOLVING POLICY

While policies surrounding the abuse of drugs have not changed since the Nixon era, the amount of people, different drugs, and the severity of those drugs have changed significantly since the 1970s. Not only has the nature of drug abuse in American changed since the Nixon administration, its overall dimension has amplified to a full-fledged drug epidemic.

In a data brief from the Center for Disease Control and Prevention (CDC), measuring the rate of unintentional drug overdose deaths in the United States from 1970 to 2006, it was reported that the death rate per 100,000 increased almost 5-fold over the span of 36 years.⁵⁹ Furthermore, in another data brief from the CDC measuring the overdose rate in the United States from 1999 to 2017, it was reported that the deaths per 100,000 standard population increased from 6.1 to 21.7.⁶⁰

There are several reasons to be pointed towards when looking to explain the considerable drug crisis in America. Firstly, it is evident from these statistics that more Americans overall are using drugs and opioids than they were in the 1970s.

⁵⁸ Brianna Ehley, “Trump Campaigned on Defeating the Opioid Crisis. It's Hard to Tell If He's Winning.,” *www.politico.com*(POLITICO, June 16, 2019), <https://www.politico.com/story/2019/06/16/donald-trump-opioid-crisis-1531485>)

⁵⁹ Center for Disease Control and Prevention. “Unintentional Drug Poisoning in the United States, Department of Health and Human Services.” (Accessed December 1, 2019), https://www.cdc.gov/medicationsafety/pdfs/cdc_5538ds1.pdf)

⁶⁰ Center for Disease Control and Prevention. “Opioid Data Analysis and Resources.” Department of Health and Human Services. (Accessed December 1, 2019), <https://www.cdc.gov/drugoverdose/data/analysis.html>)

Secondly, we have watched the evolution of the severity of drugs that circulate within this epidemic, and they are getting increasingly more deadly year-by-year. Due to influx of fentanyl in the drug market, drug traffickers have discovered that they can make more money, as well as “heighten the potency” of cheaper drugs by mixing it with fentanyl.⁶¹ This not only increases the “quality” and high of the drug, but it also increases the likelihood overdosing from the drug, many times resulting in death as fentanyl has proven to be “30 to 50 times” more lethal than heroin.⁶²

Thirdly, many of the most commonly used drugs are very small and easy to transport. This allows for quick and efficient trafficking of drugs, especially across borders as Mexico TCOs have increased their focus on heroin and fentanyl trafficking since 2010.⁶³ Going hand in hand with quick transportation of these drugs, poppy production in Mexico is also quick and efficient, as their growing cycle is only four months long.⁶⁴ This quick turn-around allows for a larger amount of drugs entering the market at a much more rapid pace, therefore contributing to expanding drug epidemic at hand.

Finally, in a time of rapid modernization, the drug crisis is also responding to the progressing nature of modern technology. Increasingly, the Dark Web, as well as black markets are used as mediums of communication and supply for drug dealers.⁶⁵ The ease with which this technology allows for connection of drug networks greatly increases the amount of drugs entering the United States and infiltrating our local communities. The Dark Web allows for “anonymity and decreased exposure to law enforcement interdiction, (making) the Dark Web a preferred method of fentanyl trafficking.”⁶⁶ This encourages more people to partake in buying and selling drugs, and therefore increasing the amount of people involved in the drug crisis overall.

⁶¹ Realuyo, *The New Opium War*, 132-142.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Musto and Korsmeyer, *Early Approaches to Drug Policy*, 38-71.

⁶⁵ Realuyo, *The New Opium War*, 132-142.

⁶⁶ Ibid.

POLICY RECOMMENDATIONS

In an attempt to reverse the effects of what has become a full-fledged drug crisis in the United States, regard for advice of medical professionals in the creation of policy is crucial. Medical professionals have conducted much research and published different evidenced-based treatment and prevention strategies for drug abuse. Therefore, in order to combat this epidemic, their advice must be consulted in the creation of policy, and development of drug abuse approach methods by the executive branch.

In terms of prevention, some of the most effective strategies to curtail drug abuse include the blockage of drug misuse through the health care system and academic detailing. Developing programs that provide education for medication prescribers, and requiring this for such positions is a way to ensure that clinicians are “trained in safe prescribing practices and recognition of a potential substance disorder.”⁶⁷ Academic detailing provides a way to “market” evidence-based practices to healthcare providers, including regular visits by medical professionals to train and provide assistance to prescribers in order to ensure that they are effectively prescribing potentially dangerous medication.⁶⁸

In terms of treatment, ensuring that insurance plans cover evidence-based addiction treatment is crucial in preventing patients from turning to addictive substances. Coordination with Medicaid and Medicare should allow for evidence-based addiction treatment to be covered just like other medical conditions, because “restrictive payer policies should not prohibit access” to those in seek of treatment.⁶⁹ Additionally, in getting those who are in need of treatment or immediate medical attention as a result of drug abuse, the federal implementation of “911 Good Samaritan Laws” is necessary to provide a safety net for others helping out in crisis situations. These laws create amnesty for those involved in such situations “with the goal of reducing barriers to calling 911 in the event of an overdose.”⁷⁰

⁶⁷ Kelly J. Clark, “ASAM,” *ASAM* (American Society of Addition Medicine, May 5, 2017), [https://www.asam.org/docs/default-source/advocacy/letters-and-comments/asam-comments_2017-national-drug-control-strategy.pdf?sfvrsn=68747cc2_2#search="drug treatment strategies"](https://www.asam.org/docs/default-source/advocacy/letters-and-comments/asam-comments_2017-national-drug-control-strategy.pdf?sfvrsn=68747cc2_2#search=))

⁶⁸ Jennifer J. Carroll, Traci C. Green, and Rita K. Noonan, “Evidence-Based Strategies for Preventing Opioid Overdose: What's Working in the United States” (National Center for Injury Prevention and Control, 2018), <https://www.cdc.gov/drugoverdose/pdf/pubs/2018-evidence-based-strategies.pdf>)

⁶⁹ Clark, *ASAM* (*American Society of Addiction Medicine*).

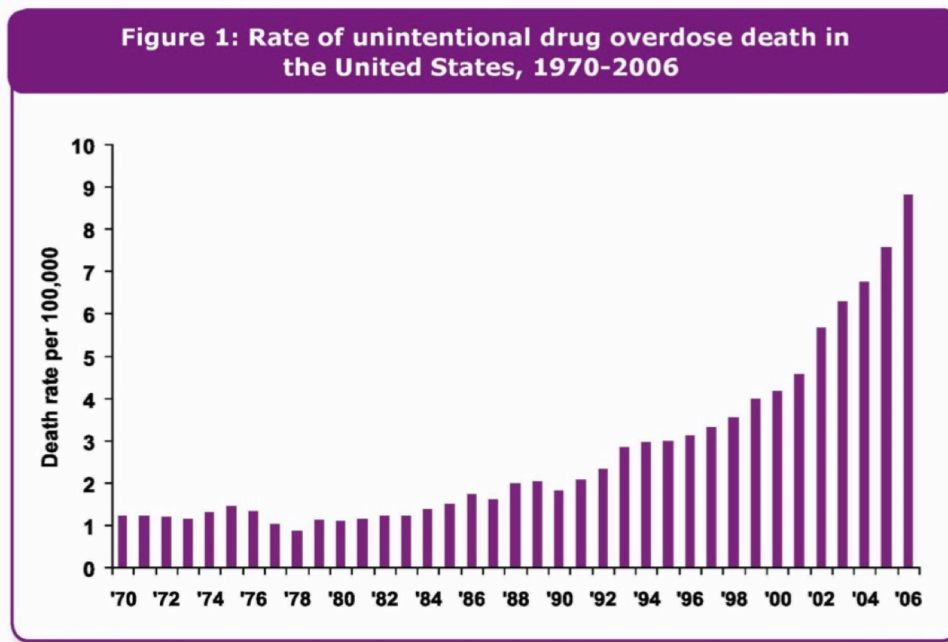
⁷⁰ Carroll, Green & Noonan, *Evidence-Based Strategies for Preventing Opioid Overdose*.

CONCLUSION

In conclusion, the drug epidemic in America has evolved significantly from the beginning of the Nixon administration in 1969 to the Trump administration today. Not only have we graduated from the title, “War of Drugs” and moved on to the title “The Opioid Crisis,” we have seen what started as a seemingly alarming trend of overdose deaths escalate into a fully developed drug abuse crisis that expands much beyond the borders of the United States. The reason behind this being that there has been little change in the presidential approach to address this problem from the Nixon era to the Trump era. The method of drug control during the Nixon administration was comprised of a three-fold plan including addressing drug misuse by means of foreign policy, stricter adherence to law enforcement and increased use of treatment options for victims of drug abuse. Fast-forward 40 years, and the approach being carried out by the Trump administration regarding the rampant “Opioid Crisis” is parallel in framework to that of Nixon’s three-fold approach during “The War on Drugs.”

APPENDIX

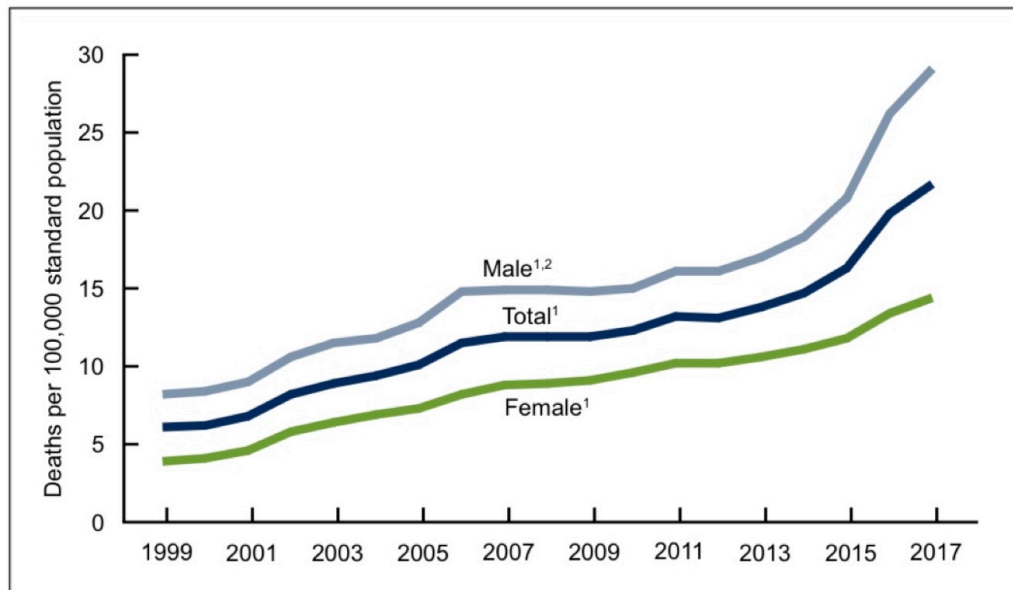
Figure 1: Rate of unintentional drug overdose death in the United States from 1970 to 2006



Source: National Vital Statistics System

Figure 2: Rate of drug overdose death rates in the United States, according to age from 1999 to 2017

Figure 1. Age-adjusted drug overdose death rates: United States, 1999–2017



¹Significant increasing trend from 1999 through 2017 with different rates of change over time, $p < 0.05$.

²Male rates were significantly higher than female rates for all years, $p < 0.05$.

NOTES: Deaths are classified using the *International Classification of Diseases, 10th Revision*. Drug-poisoning (overdose) deaths are identified using underlying cause-of-death codes X40–X44, X60–X64, X85, and Y10–Y14. The number of drug overdose deaths in 2017 was 70,237. Access data table for Figure 1 at: https://www.cdc.gov/nchs/data/databriefs/db329_tables-508.pdf#1.

SOURCE: NCHS, National Vital Statistics System, Mortality.

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Part 2

Congress

ORDINARY CIRCUMSTANCES: RULE CHANGE IN THE MODERN U.S. SENATE

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I consider a new framework for analyzing partisan decision-making regarding rule change in the modern United States Senate. Analyzing the case study of the filibuster, I employ a process tracing approach to test the assumptions and predictions of existing theories of rule change. I argue that a cost-benefit framework is necessary to understand recent changes that have occurred (and not occurred) to the Senate filibuster and conclude by suggesting emerging case studies to which this framework might be applicable. I supplement this analysis with brief interview commentary from Capitol Hill staffers, which offers a “gut check” for these theoretical claims.¹

INTRODUCTION

Institutional rules define the institution in which they are found. This is particularly true when contrasting the United States’ bicameral legislature. The House of Representatives is majoritarian; the majority sets the agenda, and a majority approves the agenda. This has led the House to be seen as efficient, responsive, impulsive. The Senate, on the other hand, is *supermajoritarian*. A majority vote ultimately approves legislation, but not before a supermajority—typically sixty votes—is convinced of the legislation’s merits and viability. This roadblock has led the Senate to be seen as slow, deliberative, calming.

For ambitious lawmakers seeking legislative accomplishments, these characteristics of the Senate are far from calming; instead, they serve as a source of frustration. In their quest to change the status quo, the filibuster is a common target. In the 2020 presidential campaign, both from the trail and from the White House, calls have echoed to abolish the archaic procedure, citing its propensity to halt progress on pressing yet controversial matters.² These calls have not emerged from a vacuum; the last fifteen years has witnessed a universal effort to weaken the power of the Senate filibuster. But despite these successful attempts, the filibuster survives. This

¹ Each anonymous interviewee worked for Democratic offices. I was unable to find willing interviewees from Republican offices. However, I do not present a partisan argument—like existing literature, I present a framework of majority-minority interaction rather than Democrat–Republican interaction—and therefore still find the input valuable.

² Burgess Everett, “Warren calls for ending the filibuster,” *Politico*, April 5, 2019.

Donald J. Trump (@realDonaldTrump), “Mitch, use the Nuclear Option and get it done! Our Country is counting on you!” Tweet, December 21, 2018, <https://twitter.com/realdonaldtrump/status/1076100620581511170>.

paper will examine that process by which the rule has been changed, testing existing theories of rule change, and assessing the continued durability of one of the most impactful rules in American government.

THEORIES OF RULE CHANGE

Substantive rule change is a relatively uncommon occurrence in a legislature steeped in tradition. Perhaps this is why there have yet been relatively few analyses of the rule change process. Two major theories of institutional rule change can be synthesized from present literature: a *collectivist* theory and *individualistic* theory. The collectivist theory, presented by Sarah Binder (1997) along with strong-party theorists like Gary Cox and Matthew McCubbins (2007), offers a framework of rule change based around party needs. In this theory, rule change occurs when parties are ideologically polarized, when parties are consistently competitive in elections, and when parties need to eliminate legislative roadblocks to achieve legislative wins.³ The individualistic theory, presented by Eric Schickler, Gregory Wawro and Kenneth Shepsle, favors short-term coalitions over parties. In this theory, rule change occurs when a diverse set of interests come together to favor a particular rule change and when an entrepreneurial member is able to employ “political imagination” within the legislative process to accomplish the change.⁴

These theories were both developed largely within the context of the 20th century. I argue that they therefore fail to account for the myriad of ways in which politics have changed in the last thirty years and fail to explain the successful (though as of yet unfinished) weakening of the filibuster over the last fifteen. This essay tests the assumptions and predictions of the collectivist and individualistic theories against the historical evolution of the filibuster and concludes that a new element of the framework is warranted. I argue that a cost-benefit framework is the most effective way to conceptualize modern partisan decision-making and is particularly valuable in the context of institutional rule change. To do this, the relevant short- and long-term costs and

³ Sarah Binder, *Minority Rights, Majority Rule* (Cambridge: Cambridge University Press, 1997); Gary W. Cox and Mathew D. McCubbins, *Legislative Leviathan: Party Government in the House* (New York: Cambridge University Press, 2007).

⁴ Eric Schickler, *Disjointed Pluralism* (Princeton: Princeton University Press, 2001); Gregory Wawro and Eric Schickler, *Filibuster: Obstruction and Lawmaking in the U.S. Senate* (Princeton: Princeton University Press, 2001); Kenneth Shepsle, *Rule Breaking and Political Imagination* (Chicago: University of Chicago Press, 2017).

benefits to a rule change must be assessed, assuming that rule change will be conducted by a majority coalition in its own favor relative to a minority coalition.

I propose that the relevant costs to a majority coalition concern its source of power: the majority. If a rule change jeopardizes this, it will likely be avoided. With evidence that the voting public cares more about legislative “wins” than parliamentary procedure, however, parties have become more incentivized to push for rule changes when they favor their party agenda.⁵

While costs to a majority coalition are relatively consistent regardless of the legislative action—rule change or otherwise—the relevant benefits to a majority coalition depend on the nature of the legislative action itself. I propose that these benefits are made up of two considerations: the *decisiveness* of a rule change and the *durability* of a rule change’s outcome. The decisiveness of a rule change depends on the institutional arrangement structuring a given legislative action. A rule change allowing a bill to more easily pass the Senate, for instance, is not decisive because it requires cooperation from the House of Representatives and from the White House. It therefore has few benefits in any form of divided government, which has been the norm since the 1990s.⁶ A rule change allowing a Supreme Court nomination to more easily pass the Senate, on the other hand, is more decisive because it does not require cooperation from the House and assumes implicit cooperation from the president who selected the nominee. The durability of a rule change’s outcome depends on these same institutional arrangements and can be illustrated with the same examples above. A rule change allowing a bill to more easily pass the Senate allows a future Senate opportunity to pass a new bill overruling the previous one; any instance of united government would therefore result in an unencumbered wave of major policy changes. A rule change allowing a Supreme Court nomination to more easily pass the Senate, however, does not present such long-term volatility because Supreme Court appointments have a lifetime term.

To reiterate, substantive rule change is relatively uncommon. It is therefore difficult to choose a sufficient number of cases to definitively prove one theory over another. I have chosen recent changes to the filibuster because they represent some of the most significant institutional developments in the modern era and because more changes continue to be proposed. It is my

⁵ Steven Smith and Hong Min Park, “Americans’ Attitudes About the Senate Filibuster,” *American Politics Research* 41, no. 5 (2013): 735-760.

⁶ Frances Lee, *Insecure Majorities* (Chicago: University of Chicago Press, 2016), 1.

belief that if any theory claims to generalize partisan rule change it should be able to explain the most significant rule changes of the last fifty years. The history of the filibuster and its recent changes will be examined with a critical application of existing theories, along with an application of the theory briefly outlined above which I hope will offer new insights into these recent developments.

RULE CHANGES TO THE SENATE FILIBUSTER

Though some aspects of the Senate are as old as the institution itself, there are many ways in which it has undergone fundamental changes. Senators went from being indirectly elected by elite party operatives to being directly elected by their constituents; the size and scope of the Senate has continued to grow as American interests become more global in nature; the right to suffrage was expanded, with previously-ignored populations now vital for party strength; and the daily process of Capitol Hill became much more accessible to the newsreader than it ever had been before with the continued development of mass-information systems. These are just some examples of the myriad ways in which Congress has changed over its two-and-a-half century lifespan, changes that more historically-oriented theoretical approaches fail to fully consider.

These recent significant changes warrant a critical examination of the collectivist and individualistic theories of rule change. If these frameworks are sufficiently dynamic, they will be just as accurate in predicting how these developments will translate into successful or unsuccessful rule change. In testing existing theories and the new cost-benefit framework, I will examine four developments to the filibuster in the last fifty years: (1) the implementation of a two-track system for filibusters in 1970; (2) the “Gang of 14” and the nuclear option threat of 2005; (3) the nuclear option of 2013; and (4) the nuclear option of 2017. I then turn to the enduring puzzle of the legislative nuclear option, which despite changes to partisan costs favoring its adoption, faces continued resistance in a Senate that otherwise seems receptive to rule change.⁷

⁷ Frank Thorp V (@frankthorp), “McConnell Spox @davidpopp out with new statement...” Tweet, December 21, 2018, <https://twitter.com/frankthorp/status/1076146967888187392>.

Mike Mansfield's Two-Track System

The 1960s was a period of intense obstruction in the Senate. Pro-civil rights Republicans and Democrats, led from the White House by Democratic President Lyndon B. Johnson, attempted to pass civil rights legislation that was routinely held up by Southern Democrat Senators—a partisan dynamic that would be nearly unthinkable today. The Civil Rights Act of 1964 was filibustered for seventy-five hours, over fourteen hours of which came from Senator Robert Byrd (D-WV), before a cloture vote eventually cleared the then-two-thirds vote threshold.⁸ Following this particularly contentious period, the Senate had an appetite to find ways to limit debate—or, at least, alter Senate procedure so that a filibuster did not bring the Senate to a standstill.

During the filibuster battles of the 1960s, Senate procedure dictated that if a bill was on the table and being filibustered, it prevented other legislation from coming to the floor. This procedure was changed during the early 1970s by Democratic Senate Majority Leader Mike Mansfield (D-MT) and Majority Whip Byrd with cooperation from the Republican Minority Leaders. Senator Byrd, who by 1989 had changed his views on civil rights, recounted this “innovative device [which permitted] ... two or more pieces of legislation pending on the floor almost simultaneously by designing specific periods during the day when each measure or matter would be considered.”⁹

This particular development is often glanced over by those studying the history and evolution of the filibuster. More significant weight is placed on the other filibuster change of the 1970s, which lowered the threshold for cloture to three-fifths of Senators from two-thirds.¹⁰ It is true that this development was not an explicit change to Senate rules like the 1975 change to cloture requirement was; rather, it was an innovative effort by a few pioneering Senators consistent with the internal-individual theoretical framework. However, at even just a first glance, the long-term impact—even the immediate impact—of this two-track system is startling: the 91st Congress (1969-1971) featured seven motions for cloture; the 92nd Congress (1971-1973) tripled that number at twenty-four; with relatively consistent increases, the current 116th

⁸ United States Senate, “Civil Rights Filibuster Ended,” *Art & History*, https://www.senate.gov/artandhistory/history/minute/Civil_Rights_Filibuster_Ended.htm.

⁹ Robert Byrd, *The Senate, 1789-1989, Addresses on the History of the United States Senate*, Volume 2 (Washington: U.S. Government Printing Office, 1991), 203.

¹⁰ Binder, *Minority Rights, Majority Rule*, 196.

Congress (2019-2020) has already, as of March 1, 2020, filed motions for cloture over 228 times.¹¹ While countless developments have occurred between the establishment of the two-track system to the current Congress, the time of its establishment indicates a clear change: minority coalitions could now filibuster more freely and more frequently, despite its supposed intent to streamline the legislative process in the Senate.

This development fits well with both the collectivist and individualistic theories of rule change. As the collectivist theory predicts, lawmakers recognized the potential for procedural standstills as the result of controversial legislation like that seen in the 1960s. Though coalitions on either side of those civil rights debates did not perfectly map onto a partisan spectrum—evinced by the cross-party alliances of anti-civil rights southern Democrats and pro-civil rights northern Republicans—there was nonetheless sufficient polarization for both sets of leadership to find procedural changes warranted. Similarly, as the individualistic theory would predict, diverse interests—in this case, pro- and anti-civil rights—came together to agree that legislation *other* than civil rights legislation would need to be able to emerge from the chamber. The two-track system even relied on the “political imagination” of one legislator, albeit the powerful Majority Leader Mike Mansfield, to successfully implement the change.

The implementation of the two-track system thus appears to be a victory for both the collectivist and individualistic theories. However, it marks the beginning of a shift in costs and benefits to the institution of the filibuster—a dynamic development unaccounted for by either theory. As is seen from the rapid increase of filibusters following its implementation, the two-track system had the unintended consequence of significantly reducing the costs of filibustering. Now, a filibuster did not hold up any and all legislative business currently being considered; instead, it could be used more indiscriminately to halt controversial bills without disrupting other important workflows. If it was the norm before 1970 to save filibusters for only the most controversial legislation, such a norm was clearly discarded afterwards; such restraint was no longer necessary. This lack of procedural and logistical cost quickly became the new normal in the Senate.

Indeed, neither the collectivist nor the individualistic theory predicts such a deterioration of restraint. There is little evidence for any discernable increase in polarization immediately

¹¹ United States Senate, “Cloture Motions,” *Legislation & Records*, <https://www.senate.gov/legislative/cloture/clotureCounts.htm>.

following 1970s—if anything, the fact that civil rights legislation was dealt with would suggest less opportunity for polarization; the singular change was a reduced cost to filibuster. While the continued rise of filibusters over the next fifty years cannot be attributed exclusively to the two-track system—increased polarization and electoral competition are other relevant factors—its implementation clearly indicates an adjustment to the cost-benefit analysis of engaging in obstruction. It is an important development in the continued rise of the filibuster, and a necessary condition for the its next major change: the nuclear option.

The Nuclear Options of 2005, 2013, and 2017

According to Senate reports, cloture was filed for approximately twenty-six times in 2005—a far cry from the single-digits of the pre-two-track system era—suggesting at least as many threats to filibuster.¹² The norm of withholding filibusters had been replaced by a system in which all controversial legislation could be delayed. This precipitated the filibuster’s next major development—or proposed development—in a dispute over the judicial branch. In 2005, Senate Democrats had engaged in a continued filibuster blockade of some judicial nominees by Republican President George W. Bush, particularly his choice of Miguel Estrade for the D.C. Court of Appeals.¹³ Eager to break through this standstill, then-Senate Majority Leader Bill Frist (R-TN) devised a plan to end filibusters with a simple majority vote. As scholars, particularly Binder (1997) have noted, such a process would be directly contrary to the rules of the Senate, specifically Rule XXII.¹⁴ Michael Gerhardt and Richard Painter outline the complex procedural gymnastics necessary to achieve such a ruling:

First, after an unsuccessful effort to vote cloture on a judicial nomination, the Senate Majority Leader would ask the Parliamentarian of the Senate to rule on whether filibustering a judicial nomination was consistent with a proper reading of Rule XXII. Second, if anyone disagreed with the Parliamentarian’s determination that such filibusters were inconsistent with the Senate rules, it could be appealed to the Presiding Officer of the Senate, the Vice President United States. Third, the Vice President, who was, at the time, Dick Cheney, was expected to uphold interpreting Rule XXII not to allow a filibuster of a judicial nomination. The Vice

¹² United States Senate, “Cloture Motions”.

¹³ Michael Gerhardt and Richard Painter, “Extraordinary Circumstances: The Legacy of the Gang of 14 and a Proposal for Judicial Nominations Reform,” *University of Richmond Law Review* 46 (2012), 3.

¹⁴ Binder, *Minority Rights, Majority Rule*, 205.

President's ruling could in turn be appealed to the full Senate, which could affirm or overrule it by a majority vote.¹⁵

This procedural change—a clear departure from the norms of the Senate—was understood as having the potential to “[change] the Senate forever,”¹⁶ both now after the fact as well as in the moment: Senator Trent Lott (R-MS) coined the term “nuclear option” to note its capacity to blow up the Senate in its then-current form.¹⁷

Such a move would be consistent with some aspects of both the collectivist and the individualist theories of rule change. Majority Leader Frist displayed entrepreneurship by attempting such a rule change, though there is little evidence any diverse interests played a role; indeed, the scope of the proposal was deliberately confined to judicial confirmations, suggesting a singular collective interest in approving judges. In an era of intense electoral competition and partisanship, the collectivist model also expects such a move to restrict minority party rights. Here, the collectivist model predicts successful rule change. The individualistic model less so.

Ultimately, this procedure was avoided. A collection of fourteen Senators—seven Democratic, seven Republican—called the “Gang of 14” engineered a compromise to prevent such a massive change to the Senate’s traditional operations.¹⁸ In addition to preventing any judicial filibusters for the remainder of President Bush’s time in office, the agreement established a sort of pseudo-precedent for Senators regarding filibusters of this type: the ill-defined principle of “extraordinary circumstances.”¹⁹ Using this precedent, which was best described by participating Senators DeWine and Lieberman as a “know it when we see it” decision, the Senate hoped to ensure that filibusters on judicial nominees—a process that was traditionally uncontroversial and bipartisan—occurred only in the most necessary of situations: “a character problem, an ethics problem, some allegation about the qualifications of a person, not an ideological bent,” as Gang of 14 Senator Lindsey Graham defined it.²⁰ In a similarly vague component of the Gang of 14 compromise, the participating senators encouraged a more active

¹⁵ Gerhardt and Painter, “Extraordinary Circumstances,” 3-4.

¹⁶ *Ibid* 15, 1.

¹⁷ William Safire, “Nuclear Options,” *New York Times*, March 20, 2005.

¹⁸ Senators Byrd (D-WV), Chafee (R-RI), Collins (R-ME), DeWine (R-OH), Graham (R-SC), Inouye (D-HI), Landrieu (D-LA), Lieberman (D-CT), McCain (R-AZ), Nelson (D-NE), Pryor (D-AR), Salazar (D-CO), Snowe (R-ME), and Warner (R-VA).

¹⁹ Gerhardt and Painter, “Extraordinary Circumstances”.

²⁰ *Ibid* 19, 2; *Ibid* 19, 1-2.

interpretation of the “Advice and Consent” clause and suggested this be done “in good faith.”²¹ However, whether understanding the weakness of this doctrine or expecting continued conflict, Senator Orrin Hatch (R-UT) referred to the agreement as a simply “a truce, not a treaty.”²² Indeed, his unease was well-placed. While 2005 offered willingness to prioritize rules over legislative victories, no such willingness was found during the Obama administration. As Gerhardt and Painter described in 2011, two years before the first successful use of the nuclear option, “the remaining Republican members of the Gang of 14 have each found ‘extraordinary circumstances’ justifying their support of some judicial filibusters”—filibusters that led to “Almost fifty...judicial nominations still pending before the Senate, including twelve of the federal courts of appeal, while eighty-four judicial vacancies remain, thirty-one of which are considered emergencies based upon, among other things, extremely high caseloads.”²³

Filibuster reform was being pushed by Democratic senators who now found themselves in the majority. In January 2013, then-Senate Majority Leader Harry Reid (D-NV) initially took a bipartisan approach to reform, agreeing with then-Minority Leader Mitch McConnell (R-KY) on a set of temporary and permanent reforms that allowed debate to end with a bipartisan coalition of Senators including leadership. To these Democratic senators pushing for reform, this bipartisanship was needlessly limited, as “[Senators Jeff] Merkley (D-OR), [Tom] Udall (D-NM) and [Tom] Harkin (D-IA) believed Reid had the fifty-one votes for the nuclear option – and this week, even Reid himself acknowledged” sufficient support within his caucus.²⁴ Less than a year later, these ambitious Democratic senators would get their way: in November 2013, after “years of frustration over what Democrats denounced as a Republican campaign to...stymie President Obama’s agenda and block his choices for cabinet posts and federal judgeships,” the Democrat-controlled Senate passed the nuclear option with specific limitations that it only be applicable to lower court—that is, not the Supreme Court—judicial nominees. The final vote was 52-48, with

²¹ “Text of Senate Compromise on Nominations of Judges,” *New York Times*, March 24, 2005.

²² Hendrik Hertzberg, “Filibuster” *The New Yorker*, June 6, 2005.

²³ Gerhardt and Painter, “Extraordinary Circumstances,” 1, 2; Note; these specific figures are cited by Gerhardt and Painter in 2011 and likely changed prior to the 2013 filibuster; however, the nature of the judicial obstruction is the same here, in 2011, as it would eventually be in 2013.

²⁴ Karoun Demirjian, “Senate approves modest, not sweeping, changes to the filibuster,” *Las Vegas Sun*, January 24, 2013.

all Republicans—including some from the Gang of 14, voting opposed along with three Democrats, including Senator Mark Pryor (D-AR).²⁵

In speeches before the Senate vote, the ultimate fault for the rule change was, as expected, passed back and forth across the aisle. “There has been unbelievable, unprecedented obstruction... The Senate is a living thing, and to survive it must change as it has over the course of this great country,” argued Majority Leader Reid, who motioned for the rule change. “You think this is in the best interest of the United States Senate and the American People?” responded Minority Leader McConnell, adding: “I say to my friends on the other side of the aisle, you’ll regret this. And you may regret it a lot sooner than you think.”²⁶

Senator McConnell was right. In 2017, with the election of Republican President Donald Trump, the now-Majority Leader McConnell was presented with the perfect opportunity to make his warning ring true. Following another example of norm violation, the stalling of Obama Supreme Court nominee Merrick Garland, McConnell easily expanded Harry Reid’s intentionally-limited use of the nuclear option to encompass Supreme Court nominees, successfully placing Justice Neil Gorsuch on the bench on essentially a party-line vote.²⁷ Of those forty-eight Republican senators that voted against Reid’s first nuclear option, thirty-seven remained to vote on McConnell’s expansion, and all thirty-seven supported the measure. Of those fifty-two Democratic senators that voted in favor of Reid’s first nuclear option, forty-one remained to vote on McConnell’s expansion, and all forty-one opposed the measure.²⁸ The filibuster was no longer relevant to the Senate’s responsibilities regarding the judicial branch, as a simple majority could now confirm any nominee to a federal court.

²⁵ United States Senate, “Roll Call Vote 113th Congress – 1st Session,” *Legislation & Records*, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00243

²⁶ Jeremy W. Peters, “In Landmark Vote, Senate Limits Use of the Filibuster,” *New York Times*, November 21, 2013

²⁷ Ashley Killough and Ted Barrett, “Senate GOP triggers nuclear option to break Democratic filibuster on Gorsuch,” *CNN*, April 7, 2017. <https://www.cnn.com/2017/04/06/politics/senate-nuclear-option-neil-gorsuch/index.html>

²⁸ United States Senate, “Roll Call Vote 115th Congress – 1st Session,” *Legislation & Records*, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=1&vote=00109

THE PUZZLE OF THE LEGISLATIVE FILIBUSTER

The filibuster as it related to the judicial confirmation process no longer exists. This is the end state of a fifteen-year process in which the nuclear option was repeatedly threatened and often succeeded. There is a clear partisan dynamic to these developments; Republicans saw Democrats' filibuster of conservative judges to be an obvious breach of norms, only to engage in the same obstruction under a Democratic president. Democrats, in turn, saw Republicans' nuclear option threat to be a complete disregard of a sacred Senate institution, only to themselves begin the weakening when they possessed majority control.

Neither the collectivist nor the individualistic theories of rule change seem to fully explain these developments. To begin with, they operate under the now-disproven assumption that any rule change that occurs must be done within the standard procedure for changing rules. Binder makes this explicit, stating that it is “the Senate’s Rule 22 [the rule establishing cloture as a Senate procedure] and the Senate’s status as a continuing body” that have served as roadblocks to “favored rules changes.”²⁹ This is no longer the case. The intense partisanship has also offered no evidence that rule change has emerged from a singularly-focused coalition of diverse interests; all party members appear on the same page, whether in the majority or the minority, when it comes to these rule changes. And yet, a puzzle emerges: why have Senate majorities been so willing and able to change the rules of the filibuster in some cases, but not in others? Why has the judiciary been the battleground on which these procedural wars have been fought? Despite pressure from within his own party, McConnell has not yet been willing or able to abolish the filibuster for legislation.

Changes in Costs

Since the implementation of the two-track system in 1970, the logistical costs of a filibuster have declined significantly. This is evinced by the rapid increase of filibusters in the five decades since.³⁰ The costs of a rule change regarding the filibuster are slightly different, but related. In each case, the biggest cost involved is majority control—a party must consider whether its members will be electorally punished for participating in a controversial institutional change. There is a second cost to consider, however: the cost of messaging. Indeed, messaging

²⁹ Binder, *Minority Rights, Majority Rule*, 205.

³⁰ United States Senate, “Cloture Motions”.

could be one of the tactics employed by a majority party to minimize the potential electoral cost of rule breaking.³¹ This is relevant if the majority party sees its electoral base as fundamentally opposed to rule change, particularly those engineered to produce partisan outcomes. However, recent literature suggests that the opposite may be the case: that the public is not fundamentally opposed to rule change engineered to produce partisan outcomes but are in fact in favor of such rule changes *provided their party is the one doing it* and are only opposed to rule changes by the other party.³²

It is not difficult to imagine that some senators—perhaps those with relatively moderate personal ideologies, or those who represent “swing” states—would be unwilling to go along with such partisan rule change. Algara and Zamadics (2019) find that though the Senate has gradually become more polarized, vulnerable members (those at risk to lose their seats) are willing to buck the party line on controversial issues to separate themselves from the party apparatus. Further, they find that these majority-party senators who “break from their party and behave like minority party obstructionists” are in fact rewarded for doing so.³³ This phenomenon is borne out to some degree in the 2013 nuclear option case, which featured Senators Carl Levin (D-MI), Joe Manchin (D-WV), and Mark Pryor (D-AR)—a Gang of 14 member—opposing the rule change. It is not, however, seen at all in the 2017 nuclear option case. Here, partisan dynamics were in full view, with every Republican opposed to the 2013 nuclear option voting in favor and every Democrat in favor of the 2013 nuclear option voting opposed.

A simple polarization argument begins explaining the shift between 2013 and 2017. Algara and Zamadics (2019) offer an analysis of Senate polarization regarding procedural votes that shows a clear increase in polarization in the last five decades.³⁴ It is not unreasonable to conclude that, like voters, politicians support rule change when it favors their ideological disposition and oppose it when it does not.³⁵ This simplistic approach, however, is not supported by those that work in Congress. While ideology and polarization indeed exist, they admit, reducing procedure to a question of ideology is inaccurate. “If you asked every single senator except for five...in a dark room with no microphone, they would say ‘no this [rule change] isn’t

³¹ Lee, *Insecure Majorities*.

³² Smith and Park, “Americans’ Attitudes About the Senate Filibuster,” 738.

³³ Carlos Algara and Joseph Zamadics, “The Member-Level Determinants and Consequences of Party Legislative Obstruction in the U.S. Senate,” *American Politics Research* 47, no. 4 (2019): 768-802.

³⁴ *Ibid* 34, 779.

³⁵ Smith and Park, “Americans’ Attitudes About the Senate Filibuster,” 738.

the point of the Senate’,” said one Senate staffer who focused on judiciary issues.³⁶ There is even an element of regret for some senators, with one Senate Judiciary aide admitting that their boss wishes they had not signed on to the 2013 nuclear option.³⁷ This personal resistance to rule change is reflected in the continued persistence of the legislative filibuster, which McConnell says he does not have the votes to eliminate. However, if personal opposition cannot be overruled by partisan legislative interest, it is unclear why it was overruled in the case of lower-court and Supreme Court Justices—individuals with perhaps more long-term policy influence than any lawmaker.

If lawmakers, even moderate ones, are for the most part willing to engage in partisan rule change, it is likely that they either believe that their voting base is at the very least unopposed to the change or potentially in favor of it, or that they can successfully portray the rule change as having some value beyond partisan gain. There is evidence for both of these possibilities. As discussed above, voters are willing to prioritize their preferences for favored policies over their value of institutional norms.³⁸ This conforms to recent literature on the increased polarization and nationalization of politics like that of Daniel Hopkins (2018) which argues that national issues are more salient in the minds of voters than local issues. As a result, lawmakers can feel pressure from a national group of voters—the base—rather than just from those in their own state.³⁹ This, too, was referenced by Capitol Hill staffers; said one House staffer, “When a lawmaker is sitting in committee, they pull out their phone or look at Twitter...the people who are tweeting at them are younger folks with stronger [partisan] views.”⁴⁰ Because of this, lawmakers are constantly under the influence of messaging—not just their own messaging, sent to voters, but the messaging voters send to them. Perhaps more than any other topic, “messaging” dominates lawmaker actions on Capitol Hill and dominated my interviews. This finding is reflected by Frances Lee (2016), who finds in her own interviews with Hill staffers that messaging is the priority for lawmakers: for the majority party, the message is *things are getting done and things are getting better*; for the minority party, the message is *we are doing everything we can to not let things get worse*.⁴¹

³⁶ Interview with Democratic Senate Office Staffer, July 3, 2019.

³⁷ Interview with Democratic Senate Judiciary Committee Staffer, August 5, 2019.

³⁸ Smith and Park, “Americans’ Attitudes About the Senate Filibuster”.

³⁹ Daniel Hopkins, *The Increasingly United States* (Chicago: University of Chicago Press, 2018).

⁴⁰ Interview with Democratic House Office Staffer, July 2, 2019.

⁴¹ Lee, *Insecure Majorities*.

This premium that is placed on messaging offers a unique lens through which the costs of rule change can be viewed. A majority party is faced with the need to accomplish legislative priorities; in this regard, the Senate filibuster provides a major obstacle. It also is faced with a voter base that demands partisan gains more than procedural compliance—a hierarchy of preferences that is becoming more entrenched as politics nationalizes and polarizes.⁴² This, coupled with a minority party that is increasingly incentivized to obstruct, presents a perfect opportunity for rule change.⁴³ Yet the filibuster has only been neutralized in the case of judicial nominees, rather than in the case of the major legislation that voters of all kinds increasingly demand from their party. Costs have changed in a way that makes rule change more attractive to parties and lawmakers, but rule change has still failed to materialize in many circumstances, chief of which is regarding the legislative filibuster. An assessment of the relevant benefits begins to solve this puzzle.

Differences in Benefits

For some members, particularly those in safe seats, there are undoubtedly messaging benefits to engaging in partisan-based rule change.⁴⁴ Most of the benefits of rule change, however, are derived from tangible policy change. With this consideration, it is no surprise that Senate rules have been changed for judicial nominees and not for simple legislation. When a majority is considering a controversial court nominee, which would not be able to survive a minority filibuster, any procedural change that would eliminate the supermajority requirement in favor of a simple majority requirement would be *decisive*—that is, it would all but guarantee the confirmation of the judge or justice. Because the Constitution grants these individuals lifetime appointments, the change would also cause *durable* policy outcomes—the appointee would be able to influence policy in the ideological direction of the appointing president and the Senate majority for decades.

The elimination of the filibuster for regular legislation offers neither the decisiveness nor the durability of the judicial nuclear options. A significant number of variables must align for the legislative filibuster to be worthwhile. Regarding its decisiveness, it would likely need to occur

⁴² Hopkins, *The Increasingly United States*.

⁴³ Lee, *Insecure Majorities*.

⁴⁴ Lee, *Insecure Majorities*.

under united government, an electoral accomplishment that has become increasingly rare in the last forty years.⁴⁵ Even under united government, it is no small task to get the executive and both chambers of Congress to agree completely on significant legislation. Regarding its durability, once legislation is passed it is only durable until the other party achieves united government. This too introduces the added risk of allowing the opposing political party nearly unfettered legislative capacity; it is no wonder, then, that voters find newfound appreciation for procedural constraints on majority rule when their party is not in the majority.⁴⁶

CONCLUSIONS FROM THE CASE OF THE FILIBUSTER

Over time, rules institutionalize and come to define the institution of which they are a part. Members of the Senate claim that these rules should only come into question in “extraordinary circumstances;” however, a cost-benefit framework suggests that this may not be the case. Developments in the political landscape in the previous decades have created an environment in which parties and legislators are increasingly encouraged to favor partisan rule change. Even if lawmakers are personally resistant to these changes, they offer tangible policy benefits that are valuable to the party’s legislative agenda and to its capacity to present itself as productive to its voting base. When considering why the most significant rule in the Senate, the system of filibuster and cloture, has been changed in some cases—for judicial nominations—and not in others—regular legislation—a consideration of the different degrees of benefit afforded to the rule breaking party is necessary. I find that because judicial nominations present greater opportunity for parties to enact decisive rule changes with durable policy outcomes, along with a limited ability of the other party to use it for their own partisan gain, they are naturally a better target for rule change than simple legislation.

While the Senate filibuster is the most significant recent example of rule change, it is not the only example. This theory could be further tested on the Senate Judiciary Committee’s blue slip practice—another Senate institution that, while not as codified or historically-enshrined as the filibuster, nonetheless functions as a necessary step of the judicial nominations process. Though the dearth of case studies and the path-dependent nature of rule change makes case selection

⁴⁵ Ibid, 45.

⁴⁶ Smith and Park, “Americans’ Attitudes About the Senate Filibuster”.

difficult, here it presents an opportunity for a natural experiment to test a cost-benefit framework when combined with the 2013 nuclear option. This development significantly limits the potential for minority obstruction for lower-court nominees, therefore making any elimination of unnecessary roadblocks—of which a strong blue slip practice is one—more decisive and, according to the cost-benefit framework, more likely. There is preliminary evidence that this is indeed what is occurring; Senate Republicans, upon achieving united government, expressed interest in weakening the blue slip practice and have since confirmed judicial nominees with unprecedented efficiency, including some over negative blue slips. However, more time is necessary to fully test the framework in this case.

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SUCCESS UPON ARRIVAL: EXPERIENCE-BASED FACTORS OF LEGISLATIVE EFFECTIVENESS FOR FORMER STATE LEGISLATORS IN CONGRESS

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Half of all Members of Congress have state legislative experience upon being elected, and one of the most important advantages former state legislators have over their colleagues who lack state legislative experience is their previously-developed skillset relating to being effective lawmakers. Put simply, they have engaged in lawmaking before. Of these former state legislators, though, not all outperform their colleagues who come to Congress without legislative experience. If not all legislative experience translates into being an effective Member, then what explains the variation? Current literature considers professionalism of the state from which the Member hails to be the most relevant factor in determining which former state legislators will succeed in a federal law-making capacity. This suggests both that institutional factors of the state legislatures matter more than individual experience and that expertise gained and that Members from certain states (the most professionalized) are to be the most effective. Surely we cannot have Members from only the most professionalized state legislatures, and we cannot understate the importance of individually-obtained skillsets. I seek to expand the scope of factors believed to influence former state legislators' performance in Congress. Here, I will justify the call for a set of individually-shaped determinants with the discussion and analysis of one factor: committee leadership experience.

INTRODUCTION

Since 2004, the number of Members of Congress who previously served in state legislatures has hovered around 50% and has not dropped below 48%. Given these at or near majority figures, it is natural to ponder how—and if—these individuals who arrive in Washington D.C. already having served in their states' capitols differ from their colleagues whose résumés do not have a line reading state legislator. While many former state legislators serve in the United States Senate, the focus of my inquiry is former state legislators, hailing from both upper and lower chambers within their respective states, in the House of Representatives. To understand how individual Members of Congress and groups of members differ from one another, a starting baseline is helpful, and one could argue the playing field is most even upon entering Congress. Internal driving factors, abilities, and experiences vary greatly; however, a

freshman cohort of members has one common denominator: none have served in Congress before.

Derek Kilmer, a Democrat from Washington state, Alan Lowenthal, a Democrat from California, and Mark Veasey, a Democrat from Texas, were all members of the freshman cohort in the United States House of Representatives at the commencement of the 113th Congress, and each legislator's immediate previous post was that of a state legislator. Of the freshmen Representatives in the 113th Congress, Derek Kilmer was one of the most effective, and Alan Lowenthal and Mark Veasey were the two least effective legislators. All three representatives began their tenures under similar conditions, so what can explain the different outcomes?

Representative Kilmer served in the Washington State Senate from 2007 until his term in the House of Representatives began in January 2013. Before serving in the Washington State Senate, he held a seat in the Washington House of Representatives from 2005-2007. After the 2010 election in Washington, Senate Democrats controlled twenty-seven of the forty-nine total seats. This seat margin around 55% may have prepared him for operating in a Congress with objectively similar partisan conditions, as Republicans controlled just over half the seats in the House of Representatives in the 113th Congress. In the Washington Senate, Representative Kilmer was the chair of the Capital Budget Committee and the vice chair of the Ways and Means committee, both of which can be thought of as relatively high-profile posts in a state legislative context. Today, Representative Kilmer sits as a member of the ever-important House Committee on Appropriations. His performance in his first session of Congress is a function of him introducing twenty bills and seeing two through the legislative process of becoming laws. One was titled, "To make technical corrections to public law 110-229 to reflect the renaming of the Bainbridge Island Japanese American Exclusion Memorial, and for other purposes." The bill itself is one section with three short clauses. Kilmer's other bill was titled "American Savings Promotion Act." His effectiveness does not seem coincidental, especially upon considering the parallel conditions between his state legislature experience and his first years in Congress.

Representatives Veasey and Lowenthal, too, served in their respective state legislatures. Representative Lowenthal was the least effective of the freshmen entering the 113th Congress after a post in a state legislature. The Representative from California served in both the California State Assembly and then the California State Senate for more than a decade. Representative Lowenthal chaired the Senate Committee on Education; however, he did not hold

posts on any other notable standing committees in either chamber. As of 2019, the Representative holds committee membership on the House Committee on Transportation and Infrastructure and the Committee on Natural Resources. Representative Veasey served in the Texas House of Representatives from 2005-2012 and did not hold a minority party leadership position in any committee. As of 2019, Representative Veasey sits on the both the Armed Services Committee and the Committee on Science, Space, and Technology.

Current political science literature indicates that the best determinant of legislative effectiveness in the United States Congress for Representatives and Senators who held previous posts in state legislators is the legislative professionalism of the state legislature from which they hail. Legislative professionalism is an institutional measure of how closely a state's legislative chambers the salary, staff, and days in session match the conditions in Congress. A highly professionalized legislature would meet year-round, each legislator would have ample staff, and they would earn a salary that allows them to legislative full-time.

While this is intuitive, it does not explain the anecdote above. The conditions in the states, and the representatives' operations within the states, differ greatly here. On one hand, we have Washington, a semi-professionalized state, where the majority party has held fewer than 60% of the seats in recent history. On the other hand, you have California and Texas, two states that consistently rank in the top three state legislatures in terms of professionalism. I seek to explore other experiences and factors, namely individually-shaped ones, can explain better or worse performance in a lawmaker's first term in Congress following time in a state legislature. The cases above serve the broad purpose of illustrating how professionalism is not encompassing of the full narrative.

If half of all the individuals who serve in our nation's highest legislative chambers hold posts as state legislators before they are elected to Congress, we ought to know which experiences in state legislatures produce the most effective lawmakers. State legislative professionalism may tell us which state legislatures' institutional conditions mirror those in Congress, but former state legislators are elected to Congress even in the states with the lowest professionalism. Are there skills future Members of Congress—coming from any state—can cultivate that will make them the most effective lawmaker they can be?

In expanding the scope of factors that affect legislative effectiveness from legislative professionalism as the sole determinant to a **set of individual experience-based indicators**, I

will more fully capture the variety of experiences in state legislatures and make them meaningful. Here, one determinant—previous state leadership and/or committee experience—will be discussed the most in order to motivate the call for the creation of a set of indicators of effectiveness for former state legislators. The focus of this inquiry is the House of Representatives because it is more unusual for Senators to have come directly from state legislators, as many individuals follow the path of state legislator to representative to senator.

LEGISLATIVE EFFECTIVENESS

In *Legislative Effectiveness in the United States Congress: The Lawmakers*, political scientists Craig Volden and Alan Wiseman pursue the question why some members of Congress are more successful navigators of the legislative process. If Members of Congress are elected to a body whose principal purpose is to make laws, it follows that their effectiveness should be a function of their ability to introduce legislation that is eventually signed into law. The quantification of legislative effectiveness into a tangible Legislative Effectiveness Score is the sum of fifteen indicators, with the five major stages in the legislative process (introduction, action in committee, action beyond committee, passing the House of Representatives, and signed into law) repeated for three categories of legislation: commemorative, substantive, and substantive and significant. All bills are not equal in the calculation of Legislative Effectiveness Scores; each milestone along the legislative process is increasingly weighted, with substantive and significant bills defined as more valuable than legislation falling into the two other categories. In quantifying these scores, Volden and Wiseman are able to create a rank order of Members of Congress in terms of their lawmaking effectiveness. In the creation of these scores, conversation begins as to what factors explain the observed variation in legislative effectiveness.¹

These Legislative Effectiveness Scores and their implications have moved beyond the academic realm and seeped into public discussion. Members of Congress and their offices, congressional campaigns, and news and media sources have cited the scores. For instance, Senator Amy Klobuchar of Minnesota cited the scores, and her position at the top of the “most

¹ Wiseman, Alan E., and Craig Volden. *Legislative Effectiveness in the United States Congress: The Lawmakers*.

effective senators” list, in a 2019 news release.² On the website for Vanderbilt University and the University of Virginia’s *Center for Effective Lawmaking*, there is even an interactive tool where constituents can easily find both their House Representative and Senators and see their Legislative Effectiveness Scores, where their effectiveness falls within the entire Congress as well as their party, and an indication of whether they exceed, fall below, or meet baseline expectations for legislative effectiveness.³

Legislative Effectiveness Scores are the product of a multitude of factors, some individually-based and other institutionally rooted. In terms of state legislative tenure, experience paired with the measured legislative professionalism of the legislative bodies in the member’s state is a positive determinant of legislative effectiveness.⁴ This makes logical sense; after all, if a Member of Congress arrives to Congress having previously served as a state legislator—whether that position was lower chamber representative or/and upper chamber senator—and their state bodies rank high in terms of state legislative professionalism, they should be more familiar with the legislative process and need less time to acclimate to the arena. The professionalism of a state legislature is the combination of its members’ salary and benefits, average number of days the legislature is in session, and the average number of staff members employed by each legislator.⁵ The highest-ranking states come closest to paralleling the institutional structures and functioning mechanisms of Congress.⁶

While it is practical, this basic operationalization of the professionalism of state legislatures, when paired with experience in a state legislature, is not a preferred tool with which to predict, explain, or interpret general dexterity in navigating the lawmaking process of any given Member of Congress. Having been a member operating within a more highly professionalized state legislature may, as acknowledged above, help a Member of Congress more quickly adapt to the institutional norms and procedures; the start-up time needed before they can actually begin building legislative effectiveness by sponsoring legislation and seeing it through the legislative process may be shorter. However, how deep is the relationship between being

² “Study: Klobuchar Most Effective Democratic Senator in Congress.” U.S. Senator Amy Klobuchar.

³ “Center for Effective Lawmaking: Find Legislators” Center for Effective Lawmaking.

⁴ Wiseman, Alan E., and Craig Volden. *Legislative Effectiveness in the United States Congress: The Lawmakers*.

⁵ Squire, Peverill. “Legislative Professionalization and Membership Diversity in State Legislatures.” *Legislative Studies Quarterly* 17, no. 1 (1992).

⁶ Squire, Peverill. “Measuring State Legislative Professionalism: The Squire Index Revisited.” *State Politics & Policy Quarterly* 7, no. 2 (2007): 211–27.

more acclimated to a series of structural, institutional norms of a legislature and its processes and smoothly drafting legislation and navigating it to becoming law? The benefits of having been a state legislator in a more highly professionalized legislature max out a certain point, and perhaps at a very early point.

In using only state legislative professionalism as a determinant of legislative effectiveness for former state legislator, what is being captured is simply the institutional structure. If a majority of members of Congress are coming through the pipeline from state legislature, I think it important to understand determinants of success beyond state legislative professionalism. In thinking about determinants of success in Congress, should we not know more than those from professionalized states perform better? While it is something to consider that service in a professionalized state legislature is a positive determinate of legislative effectiveness, we cannot have members of Congress from *only* the most highly professionalized legislatures (and we, indeed, get members of Congress transitioning from state legislatures in every state). Are there other factors, namely ones that the individual member had some control in shaping, that give us a richer view of which state-level variables are meaningful determinants of success in Congress?

Just as institutional structures differ by state, experiences across state legislative bodies are not created equal, and it is far from pragmatic to assume that all former state legislators arriving to the United States House of Representatives arrive with the same skills, experience, and inclination to understanding legislative norms. To illustrate this point, imagine a hypothetical situation about two freshmen members of Congress, both of whom served in the same state and same chamber, and now, both have been elected to the United States House of Representatives: one served as the chair of a high-profile committee and held a party leadership position and the other new Member of Congress, hailing from the same state legislative chamber, was a rank-and-file member holding no substantively impressive committee memberships and no party leadership positions upon being elected to her first term in the House of Representatives. Fundamentally, in holding leadership positions, a state legislator gains expertise and experience in a different manner than her rank-and-file colleague. Additionally, experience gained serving in a state legislature is not dependent upon the state's legislative professionalism; it is a personalized, individually-shaped concept, similar to legislative effectiveness.

One solution to the problem presented above is to compile a set of additional determinants to be presented as an alternative to state legislative professionalism alone. The creation of an experience-based set of variables, unique for each former state legislator plays a part in creating a pathway for a theory of experience-based effectiveness. In moving toward a fuller set of determinants for former state legislators there are a variety of options that may be appropriate to choose: how closely the conditions of the state legislature from which a member comes to mirror the conditions of the Congress they enter and operate within (as in, chamber composition, partisan control), legislative organization in the state legislature, agenda control in the state legislature, a legislator's committee membership and whether they held a leadership position (chair, vice chair, or ranking member) within the committee, the types of committees and subcommittees on which they served, partisan leadership positions held in the state legislature, and vote share in the state legislator's last state legislative election. While all of these determinates affect how former state legislators act in Congress, I argue that previous leadership experience, understood broadly, is chief among them, especially previous committee leadership experience. Committee leadership experience, specifically, should be a key indicator in a set of experience-based determinants on account of two main factors: first, while there are institutional bounds on how much control each party is afforded, having chaired, co-chaired, vice chaired, or occupied the position of ranking member within a committee is a direct proxy for having developed experience and expertise in understanding how to navigate the legislative process; second, committee experience is a more individual-centric factor than legislative professionalism of a state legislature.

Moreover, there is a distinction to be made in thinking about how state legislative experience affects success in Congress. Having been a state legislator decades in the past, with the Member of Congress having had a long tenure in the House of Representatives since holding their seat in a state legislature or having pursued other careers between their time as a state legislature and being elected as a Member of Congress, surely must have a different impact on lawmaking ability than transitioning directly from a state legislature to the House of Representatives in Congress in mere months. An obvious, and maybe the only logical, group to look toward is freshmen members of any given incoming cohort whose immediate past post was in a state legislature. The returns of state legislative experience decrease as the number of years since a former state legislator left their respective state legislature increases.

The call for a quantification of legislative effectiveness rests upon the idea that if Members of Congress are fundamentally lawmakers, their ability to make laws should be a criteria—a main one at that—for a true evaluation of their abilities and performance.⁷ In motivating this quantification there are two questions: Why are some members of Congress more effective and successful in navigating drafted legislation through the legislative realm relative to other members? What implications does this inherent variance have on organization within Congress and the creation of policy today?

MEASURING SUCCESS

By Volden and Wiseman's metric outlined in *Legislative Effectiveness in the United States Congress: The Lawmakers*, the four characterizing components of legislative effectiveness are: proven or actualized ability as opposed to potential ability of Members of Congress, measurement of positive legislative power, which looks like advancing one's proposals through the process instead of blocking other Members' proposals, members' own legislative agendas, not agendas as dictated by a Member's party, president, or constituents in their respective districts, and an emphasis on a member's ability to move legislation through the process as opposed to simply looking at how many of their bills were signed into law.

State legislative professionalism is just as its name states. Functionally, it is the measure of institutional legislative professionalism of both chambers of state legislative bodies, meaning it is neither a measure of professionalism of one body nor is it the measure of professionalism of an individual. In considering *only* state legislative professionalism as a determinant of legislative effectiveness for former state legislators in Congress, a complete understanding of state legislative experience is not captured. While possessing the characteristic of being a former state legislator from a highly professionalized state is indicative of higher legislative effectiveness, there is more to be understood regarding what experiences predate success in the United States Congress.

Members of Congress, specifically members of the House of Representatives, who were once state legislators should arrive on the job with a mastery of legislative institutions: “a broad understanding, aptitude, and appreciation for legislative life, norms, and politics, along with the

⁷ Wiseman, Alan E., and Craig Volden. *Legislative Effectiveness in the United States Congress: The Lawmakers*.

skills to be an effective legislator.”⁸ Here, one can see that a former state legislator arrives to the House of Representatives with more than the weight of her state’s legislative professionalism. Furthermore, the toolkit with which she arrives is a function of many factors not explicitly limited by institutional constraints, especially ones that were most likely determined far before she entered into the institution.

DATA

Analysis of the relationships between state legislative experience and other variables is made simpler via a data set made publicly available by the *Center for Effective Lawmaking* that contains entries for each Member of Congress beginning with the 93rd Congress and continuing to the 115th Congress.⁹ The variables in the data set include, but are not limited to, state name, congressional district, party identification, majority party, vote percentage in the Member’s last congressional election, whether they hold leadership or committee chair positions, legislative effectiveness, tenure in Congress, and tenure as a former state legislature. For those Representatives who are former state legislatures, the legislative professionalism of their state in the year they were elected is calculated using Squire’s aforementioned measure of state legislative professionalism. For the purposes of this paper, I have extended this dataset for the 114th and 115th Congresses to include variables on state leadership experiences that indicate whether a Members who were once state legislators held a committee position (chair, vice chair, ranking member) or a party leadership position at any point over their state legislative career.

ANALYSIS

When statistical results are adjusted for factors including partisanship, seniority, and demographic characteristics, to name a few, previous literature finds there is a negative relationship between state legislative experience and legislative effectiveness.¹⁰ However, the

⁸ Berkman, Michael B. “State Legislators in Congress: Strategic Politicians, Professional Legislatures, and the Party Nexus.” *American Journal of Political Science* 38, no. 4 (1994).

⁹ “Center for Effective Lawmaking.” Center for Effective Lawmaking.

¹⁰ Wiseman, Alan E., and Craig Volden. *Legislative Effectiveness in the United States Congress: The Lawmakers*.

relationship between state legislative experience and legislative effectiveness is positive when state legislative experience is interacted with legislative professionalism.¹¹

For the former state legislators who were elected to the 115th Congress, no clear pattern emerges between legislative effectiveness and legislative professionalism, as illustrated in Figure 1 below. Each point represents one of the Members of Congress who served as a state legislator before being elected to the House of Representatives. Even when taking into account whether the Member held a committee leadership and/or party leadership position, there is no prevailing story to be told. We know that effectiveness in Congress is not random, especially for those who are coming into the arena with years—and, in a number of cases, decades—of experience. This indicates to me that a collection of individual-level variables is needed in order to fully capture the experience of having been a former state legislator who moves on to Congress.

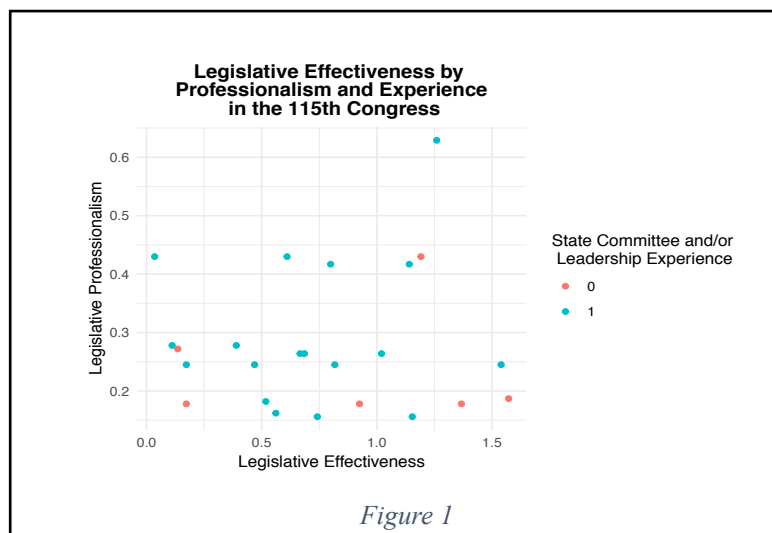


Figure 1

DISCUSSION & CONCLUSION

At the aggregate, being a former state legislator from a more professionalized state legislature whose institutional confines emulate those in Congress is indicative of being a more effective legislator. I do not contest that this is an intuitive relationship, but the creation of a **set of indicators** of legislative effectiveness of former state legislators who go to Congress would undoubtedly deepen our understanding of the positive, negative, and insignificant determinants

¹¹ Ibid.

of legislative effectiveness. Neither leadership experience nor professionalism alone help us to explain the variance in legislative effectiveness scores.

Looking forward, I hypothesize that coming from a state legislature in which the majority party has stricter agenda control, having served in a leadership position, having a near 50% party control split, and having more serious committee assignments will be positive determinants of legislative effectiveness. If it so happens that none of a set of individually-based determinants are positive determinants of legislative effectiveness, then that calls into question the nature of selection processes into congressional service.

Despite some Members of Congress focusing on other tasks than introducing legislation and navigating their sponsored legislation through the legislative process, lawmaking is a fundamental and easily observed task. There are many metrics on which one can judge the performance of a Member of Congress; though, in utilizing legislative effectiveness, there is a clear measure of direct lawmaking capabilities. Current political science literature asserts that although state legislative experience itself is not a positive determinant of legislative effectiveness, state legislative experience in a professionalized state legislature is, indeed, a positive determinant of legislative effectiveness. This makes sense: people from the most professionalized state legislatures may be more accustomed to institutional norms similar to the ones in Congress. However, institutional variation does not capture state legislative experience as a whole.

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AUTHORITY AND CHAOS: THE ROLE OF THE SPEAKER OF THE HOUSE DURING TIMES OF CRISIS

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Disorder and disruption are the current norms across the United States and in the highest levels of the federal government. A quick examination of American history books will reveal that most historians focus on the sitting president's reaction to times of international, domestic, and political crises. These past studies overlook another player in the federal government for addressing a crisis: the speaker of the House. This paper will hypothesize that the speaker of the House, as a constitutional officer, transitions from the leader of the House and its members, into a national figure representing the entire legislative branch during a crisis. This paper will examine this assertion by analyzing the actions of Speaker Tom Foley during the Persian Gulf War, Speaker Newt Gingrich during the Clinton Impeachment, and Speaker Dennis Hastert during the September 11th attacks. This paper will conclude that the speaker acts to protect the institution of Congress, becomes a representative of the entire Congress, and holds public responsibility for the government in times of crisis.

INTRODUCTION

When I was four years old, I looked out from the observation deck on the 107th floor of Two World Trade Center. The Manhattan skyline glistened in the late summer sun as I looked down on millions of Americans relaxing and living like it was any other Sunday. Two hundred miles to the north, five Al-Queda members sat in a Days Inn in Boston, waiting for their Tuesday flight on United Airlines 175. Two days later, they would board that flight, slit the throats of the pilots, and drive a Boeing 757 jetliner just twenty floors below where I had been standing. Just as the attacks of September 11, 2001 would shape my childhood imagination, they also led to a change in public discourse and a near universal recognition that normal government operations must accommodate this new threat. A crisis had shifted the shape of Washington's political landscape, and the nation demanded leadership.

The traditional viewpoint of international, political, domestic, and economic crises is that national leadership will come from the president, and the legislative and judicial branches will yield to their authority. But the president is one of four officers named by the Constitution, and while the president plays the key role in executive leadership, the legislative branch holds several

constitutional powers that take effect during national crises. The speaker of the House is another enumerated officer of the Constitution that holds a critical role as the leader of the only popularly elected chamber in the federal government.

This paper will analyze past research on the speaker's leadership responsibilities and find a need for more study on their role in leadership during crises. Furthermore, this essay will assert that the speaker transitions from the leader of the House and its members into a national figure representing the entire legislative branch during times of crisis. To prove this hypothesis, this paper will use case studies of Speaker Tom Foley during the Persian Gulf War, Speaker Newt Gingrich during the Clinton Impeachment, and Speaker Dennis Hastert during the attacks of September 11th. This paper will conclude that the speaker acts to protect the institution of Congress, becomes a representative of the entire Congress, and holds public responsibility for the government's in times of crisis.

LITERATURE REVIEW

Current literature on the role of the speaker of the House focuses on defining the role, understanding the election to the position, developing theories on how they lead, and describing the various kinds of speaker leadership. Political scientist Matthew Green of the Catholic University of America points out that the speakership derived from the House of Commons, which at times was a partisan position and, at other times, was not.¹ He asserts that "the speaker of the United States House thus became a position with a hybrid of both partisan and non-partisan responsibilities."² Brian Posler notes that the speaker is one of only four officers named in the Constitution and that their role makes them a representative of the House to the president, the Senate, the public, and the media.³ Also, Posler explains the speaker holds numerous institutional responsibilities, including setting rules, keeping order, sending bills to the committee, and promoting house action.⁴ These past studies have depicted some of the basic understandings of whom the speaker is supposed to represent and the roles they must play.

¹ Matthew Green, *The Speaker of the House: A Study of Leadership*, (Yale University Press, 2010), 3

² *Ibid.*, 3

³ Brian Posler, *Speaker of the House of Representatives*, (New York, Dictionary of American History, 2003)

⁴ *Ibid.*

Another aspect of recent research on the leadership of speakers of the House focuses on the election of speakers and their devotion to their party. Posler explains that the speakership election involves a vote that requires the majority support of individual house members, but, in reality, the majority leadership selects the speaker and the House simply ratifies their choice.⁵ Green asserts that despite this partisan election process, the institution of the speakership places pressure on holders of the office to support interests outside of their party.⁶ Green acknowledges that the speaker does face pressure from the majority party after their election but he also believes that the office is unique because of the competing interests the speaker must balance, including “the president, the legislature as a whole, constituents in the speaker’s congressional district, or even the speaker themselves.”⁷ Speaker Tom Foley exemplified this balanced leadership approach as he navigated the congressional response to the Persian Gulf War.

Political scientist John Owens of the University of Virginia takes a different view on the role of the speaker, arguing that the majoritarian aspect of the selection process leaves the speakership in the control of the leading party in the House.⁸ Scholar Barbra Sinclair, a former congressional expert at UCLA, agrees with this viewpoint, further asserting that principle-agency theory plays the primary role in determining how speakers will lead their respective Congress.⁹ These divided opinions on how the election of the speaker affects their leadership leave room for a more in-depth study on this topic.

Another aspect of past research on the speaker and leadership focuses on developing different theories that describe the speaker’s behavior in leading the legislative process. Green presents several prevalent theories, including institutional context theory, which argues that a party with a unified ideology will select a stronger and more assertive speaker.¹⁰ Newt Gingrich’s ability to unify the Republican Party under a “Contract for America” fits this style. Another theory, legislative cartels, asserts that parties pick leaders in the House to resolve collective action problems.¹¹ Dennis Hastert’s election to the speakership to moderate the

⁵ Posler, *Speaker of the House of Representatives*

⁶ Matthew N. Green, *Presidents and Personal Goals: The Speaker of the House as a Nonmajoritarian*, (Taylor & Francis Group, 2007), 3

⁷ Green, *Presidents and Personal Goals*, 3

⁸ John E. Owens, *Late twentieth-century congressional leaders as shapers of and hostages to political context: Gingrich, Hastert, and Lott*, (2002), 21

⁹ Barbra Sinclair, *Transformational leader or faithful agent? Principal-agent theory and house majority party leadership*, (Legislative Studies Quarterly, 1999), 446

¹⁰ Green, *Presidents and Personal Goals*, 3

¹¹ *Ibid.*, 3

appearance of the Republican Party shows a strong resemblance to this theory. Parties with multiple goals is a theory that the speaker selection process dictates how a speaker will lead when the House selects them.¹² Sinclair agrees with much of these party focused theories arguing that political scientists see congressional leaders as agents of their members.¹³ Owen uses these views to apply James MacGregor Burns's transactional and transformational leadership theories to the speaker, arguing that speakers take on their role based on the kind of ideology their members hold.¹⁴ While many legislative leaders choose to be transactional, some choose to embrace transformationalism.¹⁵ Burns argues that “the transforming leader ‘recognizes and exploits an existing need or demand of a potential follower.’”¹⁶ Green stands out as a political scientist who sees part of the speaker’s leadership role as independent from their party. He asserts that speakers have additional responsibilities, including the speaker’s interest, the institutional presidency, the presidential party, and the prestige of Congress.¹⁷ These theories focus on the speaker’s role as a legislative leader but spend little time examining their role as an officer of the Constitution or a national figure. This gap demands a more in-depth analysis of the speaker's role in times of national crisis.

Finally, some literature exists on how speakers embrace their personal leadership role. Green asserts that the institutional context and the relationship with the president allow them to make decisions outside the scope of their party.¹⁸ Political scientist Ronald Peters of the University of Oklahoma agrees that it is not always legislators that define how the speaker will act. In the case of Speaker Gingrich, he argues, “it was not simply member expectations that enabled [Gingrich] to govern; it was that combined with or shaped by the culture of the Republican Conference and his attitude and approach to leadership.”¹⁹ Sinclair uses this idea to theorize how speakers lead in two different ways based on the ideological makeup of their legislators. She argues that speakers with party members that have a more homogenous ideology have less discretion on policy but more discretion on ways to achieve it.²⁰ She also asserts that

¹² Ibid., 3

¹³ Sinclair, *Transformational leader or faithful agent*, 421-422

¹⁴ Owens, *Late twentieth-century congressional leaders*, 239

¹⁵ Ibid., 239

¹⁶ Ibid., 239

¹⁷ Green, *Presidents and Personal Goals*, 5

¹⁸ Ibid., 6

¹⁹ Sinclair, *Transformational leader or faithful agent*, 422

²⁰ Ibid., 447

speakers with party members that hold a more heterogeneous ideology have more discretion on policy but less leeway in finding ways to enact it.²¹ All of these leadership models describe ways speakers try to accomplish objectives within the usual political environment, but the speaker's role as a national figure in times of crisis remains unexamined. This research will fill a significant hole in understanding the responsibility of the speaker outside of legislative norms.

CRISIS: A POLITICAL CONCEPT

Former President Obama once defined crisis as “a sapping of confidence across our land – a nagging fear that America’s decline is inevitable, and that the next generation must lower its sights.”²² This description of a crisis fits well for the economic recession President Obama inherited when he became president of the United States. However, he also recognized that a “crisis” is not a statistical analysis of socioeconomic conditions, but the American people’s “experience of crisis.”²³ Political theorist Laura Henderson describes this moment as a rupture in some norm that is accepted by a large group of people that changes the public discourse.²⁴ Political scientist Reinhard Koselleck built upon that idea, theorizing that a crisis is history itself because it signifies a need for change.²⁵

These theories point this essay to conclude that a crisis is an event that is nearly universally recognized as urgent and leads to a change from an established norm. Political actors can establish and even fabricate these moments as tools to overthrow or weaken a competing hegemonic group.²⁶ The Persian Gulf War was an international crisis in that it mobilized the United States to change public discourse and engage in conflict away from the norm of peace. President Clinton’s impeachment was a political crisis that demonstrated both moral claims about the president's actions and a hegemonic struggle between competing political factions. Roitman asserts that “crisis evokes a moral demand for a difference between the past and the future,” which this essay will demonstrate.²⁷ The attacks of September 11th impacted public perception about American security and led to a change of discourse that placed the United

²¹ Ibid., 447

²² Janet Roitman, *Crisis*, (Political Concepts)

²³ Ibid.

²⁴ Laura Henderson, *What It Means to Say ‘Crisis’ in Politics and Law*, (E-International Relations)

²⁵ Roitman, *Crisis*

²⁶ Henderson, *What It Means to Say ‘Crisis’*

²⁷ Roitman, *Crisis*

States in its most protracted conflict, the War on Terror. These three events meet the definition of a crisis because of their power to arouse public fear, mobilize political action to shift away from accepted “norms,” and to change discourse in American homes as well as in the highest levels of the federal government.

CASE STUDIES: FOLEY, GINGRICH, HASTERT, AND PELOSI

Speaker Thomas Foley (D) entered the House of Representatives as a Johnson Liberal in 1964.²⁸ His election overturned a long-standing Republican district, although the race is noted as being cordial and friendly.²⁹ Speaker Foley gained power as the Chairman of the Agriculture Committee, where he earned a reputation for mediating partisan conflicts and influencing fellow members through loyalty and compromise.³⁰ This record helped to propel Foley to House leadership, where he was chosen as the House Majority Whip in 1980 and subsequently the House Majority Leader in 1987.³¹ Foley was known in the House as a “calming influence” during partisan debates and White House conflict.³² Foley took over as House speaker in 1989 after Speaker Jim Wright was challenged by Representative Newt Gingrich for a political scandal involving Speaker Wright’s use of funding.³³ Foley's reputation before taking the speakership role was based on a long record of amiability, compromise, and understanding.

In the summer of 1990, a crisis swept Washington with the news that Iraqi Forces under the direction of the country’s leader, Saddam Hussein, had invaded its neighbor, Kuwait. President George H.W. Bush geared up for conflict and began a careful game of negotiations and threats to the Iraqi government in order to free the Kuwaiti people.³⁴ As the year 1991 came to an end, President Bush and the intelligence community realized that offensive military action would likely have to take place.³⁵ President Bush was hesitant, however, to allow a congressional vote on the matter, as he feared that a rejection of engagement from Congress would stifle diplomatic

²⁸ *Tom Foley*, (Encyclopedia of World Biography Online, 1998)

²⁹ *Tom Foley* 1

³⁰ *Ibid.*, 2

³¹ *Ibid.*, 2

³² *Ibid.*, 2

³³ *Ibid.*, 2

³⁴ Sarah Fritz, *Congressmen See Slim Vote for War: Gulf Crisis: Speaker Foley and Sens. Dole and Lugar Predict Authorization of Force against Iraq. The Prospect of Negotiated Peace Seems to Grow Even Dimmer* (Los Angeles Times, 1991)

³⁵ Sarah Fritz, *Congressmen See Slim Vote for War*

negotiations.³⁶ Speaker Foley, as the legislator's sole constitutional officer, responded to the president saying, "There [would be] great concern if a decision is made unilaterally by you as president."³⁷ Speaker Foley chose to appear on Sunday talk shows to say that the House would narrowly authorize the use of force in Iraq.³⁸ He added that the margin of majority support did not matter as long as the majority authorizes engagement.³⁹ Secretary of State James Baker responded to these appearances by offering the first executive support in favor of a vote.⁴⁰ Therefore, Speaker Foley's strategic public statements enticed the president to agree to at least formally yield to congressional authority.

Speaker Foley recognized the importance of exercising his constitutional role as the leader of the House during the crisis in the Persian Gulf. Foley took an unusual approach of not supporting the war while encouraging congressional involvement through public promises of congressional approval. The speaker, during deliberations over the authorization, made clear that he would vote no but that he did not want to influence other votes.⁴¹ He stated that "I do not ask you to follow me" and "I honor and respect the President."⁴² He went on to argue that the executive branch is prone to war and that the legislature must share the burden of taking action to be fair to the president, the people, and the institution of Congress.⁴³ Speaker Foley also refused to use the majority whip for what he considered "a vote of conscience."⁴⁴ The vote on the bill took place on January 12th, 1991, with 250 yeas, 183 nays, and two not voting.⁴⁵ President Bush signed the bill into law two days later on January 14th, 1991, making it Public Law No. 102-1.⁴⁶

It is common knowledge that the United States led an international coalition that liberated Kuwait and accepted Saddam Hussein's retreat within a matter of weeks. The impact that Speaker Foley had in keeping Congress a part of the conversation, however, is not well understood. Data from Bennet shows that Tom Foley became a household name after the

³⁶ Ibid.

³⁷ Kate Keller, *An Unlikely Hardliner, George H. W. Bush Was Ready to Push Presidential Powers*, (Smithsonian Magazine, 2018)

³⁸ Sarah Fritz, *Congressmen See Slim Vote for War*

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *C-SPAN*, (1991)

⁴² *C-SPAN*

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ H.J. Res. 77 (1991)

⁴⁶ H. J. Res. 77

conflict.⁴⁷ Before the war, 71% of respondents asked to give an opinion on Foley's performance as the speaker stated they could not identify him. After the war, only 48% of respondents failed to recognize Speaker Foley.⁴⁸ This increase in public awareness of his position shows that the speaker did play a role in leading the nation through the conflict. Foley also praised President Bush's leadership during the president's joint congressional speech, during which Foley said: "I wish to depart from tradition tonight and express to you on behalf of the Congress and the country and through you to the members of our armed forces our warmest congratulations on a brilliant victory."⁴⁹ The international crisis of the Iraqi invasion of Kuwait showcased the critical role the speaker plays as the sole constitutional officer within the legislative branch.

While Speaker Foley led Congress throughout the Persian Gulf crisis, a vocal and controversial representative from Georgia was planning his rise to the chair. Newt Gingrich was first elected to Congress in 1978 and quickly gained a reputation for his combative style and leadership of "young, aggressive, conservative House Republicans."⁵⁰ Gingrich led the fight over the financial scandal that caused the resignation of Democratic speaker Jim Wright in 1989. In 1994, Newt Gingrich launched the now-famous House Republican campaign that argued for a "Contract with America."⁵¹ His leadership in regaining Republican control of the House for the first time in forty years earned him the speakership in 1995.⁵² Newt Gingrich led negotiations with the White House that limited federal spending. He also had a reputation for investigating ethics violations within the House, namely among Democrats in the opposing party.⁵³ However, an investigation by the House Ethics Committee into Gingrich's own financial practices, specifically a \$4.5 million book deal and his use of funds from GOPAC, a political action committee, led to a \$300,000 fine for the Speaker. The ethics investigation hurt Gingrich's reputation within his party as conservative Republicans became more disillusioned with his interactions with President Clinton.⁵⁴ The combative reputation of Speaker Gingrich and the

⁴⁷ Stephen E. Bennett, *The Persian Gulf War's impact on Americans' political information*, (Political Behavior, 1994), 187

⁴⁸ Bennet, *The Persian Gulf*, 188

⁴⁹ *Transcript of President Bush's Address on End of the Gulf War*, (New York Times, 1991)

⁵⁰ *Newt Gingrich*, (Detroit, Encyclopedia of World Biography Online, 1998)

⁵¹ *Newt Gingrich*.

⁵² *Ibid.*

⁵³ *Gingrich, Newt 1943-* (Detroit, American Decades, 2001)

⁵⁴ *Newt Gingrich*

partisan nature of his leadership placed him in a unique and controversial position as a political scandal at the highest levels of government began to unfold.

The scandal surrounding President Clinton and his relationship with Monica Lewinsky is common knowledge. The uniqueness of this political crisis, however, was Speaker Gingrich's determination not only to lead the crisis but to fuel it. In January 1998, President Clinton lied under oath and concealed evidence of his relationship during the proceedings of *Jones v. Clinton* and in subsequent investigations.⁵⁵ The Starr Report was released on September 11th, 1998, and named eleven possible grounds for impeachment surrounding President Clinton lying under oath.⁵⁶ The report and Clinton's subsequent confession emboldened Republicans and upset Democrats. There was sizeable bi-partisan support to release the report and confession to the public.⁵⁷ Under Gingrich's leadership, the House Judiciary Committee began investigations that attempted to link Clinton's crimes to those committed by non-government officials whom prosecutors charged in similar cases.⁵⁸ The opportunity for Gingrich to seize on the crisis began to falter, however, as it became clear no cases existed where the government prosecuted a person for lying under oath about facts that were not pertinent to the case at hand.⁵⁹ As the 1998 elections approached, however, Gingrich was the sole constitutional officer who had the power to influence and lead the country through the scandal, whether the nation wanted to be led or not.

Speaker Gingrich stepped up his attacks on President Clinton as the elections drew nearer. The speaker approved attack ads that alluded to the scandal, which became known as the "politics of personal destruction."⁶⁰ While Gingrich hoped these ads would promote the public perception that Congress was the country's last hope for moral servitude, the polls indicated opinion shifted against the Republican Party and Starr Report.⁶¹ Research indicated that the American people were not outraged at the report because most of the public already believed the President had lied before his confession.⁶² Also, the American public was happy with the state of

⁵⁵ *The Starr Report: The Findings of Independent Counsel Kenneth W. Starr on President Clinton and the Lewinsky Affair*, (American Decades Primary Sources, 2004)

⁵⁶ *The Starr Report*

⁵⁷ Gary C. Jacobson, *Impeachment politics in the 1998 congressional elections*, (Political Science Quarterly, 1999), 45-46

⁵⁸ Paul J. Quirk, *Scandal time: The Clinton impeachment and the distraction of American politics*, (2000), 121

⁵⁹ Quirk, *Scandal time*, 121-122

⁶⁰ Michael Janofsky, *Democrats Fault Gingrich For His Role in Attack Ads*, (New York Times, 1998)

⁶¹ Jacobson, *Impeachment politics*, 50

⁶² *Ibid.*, 44

the country as represented in high approval ratings for both the president and Congress.⁶³ Speaker Gingrich refused to back down, however, and stated the scandal was “the most systematic, deliberate obstruction of justice, cover-up, and effort to avoid the truth we have ever seen in American history.”⁶⁴ Gingrich’s leadership and partisan rhetoric created expectations among Republican House members that they would gain seats in the upcoming 1998 election cycle.⁶⁵ The election, however, turned out to be a win for Democrats after they turned over five seats.⁶⁶ Within hours, the Republican Party turned on Gingrich and forced the speaker to resign, making him the main victim of the much-reported political crisis.

Dennis J. Hastert was elected speaker of the House after six terms in Congress. Although a far-right voter, he was elected with the intent to moderate views of the Republic Party after the era of the "republican revolution" led by Speaker Gingrich.⁶⁷ This paper will note that Dennis Hastert was sentenced to thirteen months in prison in 2016 due to his lies to federal authorities surrounding bribes to cover up his abuse of high school boys during his former coaching and teaching career.⁶⁸ At the time of his rise to power, however, he was seen as a conservative social leader who was able to compromise with Democrats on a variety of fiscal issues.⁶⁹ It was this man who led Congress through a domestic security crisis that would change the political rhetoric of the United States for years to come.

Speaker Hastert was in his office on September 11th, 2001, when he saw the reports of the attack on the World Trade Center. After attempts to get in contact with Vice President Dick Cheney, he canceled the session of Congress after allowing the chaplain to say a prayer.⁷⁰ Hastert recalls his thought process in his autobiography, speaking of the tens of thousands of people in the capitol building, “All of these people were my responsibility.”⁷¹ Speaker Hastert was rushed to a secure location and was later joined by other senior members of the House and the Senate.⁷² It was Hastert, however, who gave the order to return to Washington D.C. to “show

⁶³ Ibid., 44

⁶⁴ Ibid., 44

⁶⁵ *Gingrich, Newt 1943*

⁶⁶ Ibid.

⁶⁷ *Dennis Hastert*, (Detroit, Newsmakers, 1999)

⁶⁸ Denise Crosby, *Dennis Hastert Is out of Prison, but He Will Never Be Free*, (Chicago Tribune)

⁶⁹ *Dennis Hastert*

⁷⁰ *Can I Actually Close Down Congress?*, (U.S. House of Representatives: History, Art & Archives, 2013)

⁷¹ Dennis Hastert, *Speaker: Lessons from Forty Years in Coaching and Politics*, (D.C., Regnery, 2004)F

⁷² Hastert, *Speaker*, 8

face” as the evening began to approach.⁷³ In the immediate days following the attacks of September 11th and the crisis took its toll on the morale of the nation, Speaker Hastert insisted President George W. Bush come speak to a joint session of Congress to assure the nation that all branches of government were united.⁷⁴ Despite the hesitation of President Bush's staff, Hastert successfully convinced the president to give his now-famous speech on September 30th, 2001 to a grieving nation.⁷⁵ The nation recognized speaker Hastert's leadership in the months following the attacks. In a study conducted by Marcus Prior, Dennis Hastert rose from 51% public recognizability to 68% in January 2002.⁷⁶ In comparison, Vice President Cheney only went from 61% to 68% recognizability in the same time frame.⁷⁷ While perhaps less prevalent in the subsequent years of the Middle Eastern wars, Speaker Hastert demonstrated his role as a constitutional officer during an immediate and sudden security crisis in which he made significant decisions for the Congress as a whole.

ANALYSIS

The three case studies presented in this research depict three speakers with different ideologies, personalities, and backgrounds. Each speaker experienced a crisis, however, and careful analysis depicts three common themes: the speaker acts to ensure Congress has a role during a crisis, the speaker acts as the public spokesman for the legislature during a crisis, and the speaker takes responsibility, good or bad, for the overall government response to the crisis.

The case studies have shown that one of the speaker’s chief concerns during a crisis is to keep Congress relevant. During the Persian Gulf Crisis, Speaker Foley's immediate concern was ensuring Congress voted before action was taken against Saddam Hussein to protect the institution. Speaker Gingrich, on the other hand, had a more partisan goal during the political crisis of the Monica Lewinsky scandal. Nonetheless, Speaker Gingrich acted to make Congress the moral authority and leader of the scandal, leading Congress to investigate and ultimately impeach President Clinton. Speaker Hastert faced a domestic security crisis not seen since Pearl Harbor, and he subsequently convinced President Bush to come speak to a joint session of

⁷³ Ibid., 8

⁷⁴ Ibid., Loc 3027

⁷⁵ Ibid., Loc 3027

⁷⁶ Markus Prior, *Political knowledge after September 11th*, (P.S.: Political Science & Politics, 2002), 527.

⁷⁷ Prior, *Political knowledge*, 527

Congress in response to the attacks. Of course, Speaker Tom Foley and Dennis Hastert acted in this matter to ensure a unified response, while Speaker Gingrich did so to save his flailing support. Even so, all three men felt a need to keep Congress involved during and following their respective crises.

Another theme seen in these three case studies is the role the speaker holds as a public spokesperson for the legislator during a crisis. Speaker Foley led the charge on Sunday talk shows to convince the president and the American people that Congress would vote in favor of authorizing military force. Foley nobly took this role despite his opposition to the use of force. He further created a congressional environment through his floor speech that allowed any member of the House, regardless of party, to vote for or against the war. Speaker Gingrich also acted as a speaker for Congress during the Clinton impeachment crisis. Despite his partisan reasoning, Speaker Gingrich became the most visible spokesman against Clinton's actions and attempted to use his role as a constitutional officer to sway public opinion away from Democrats in the 1998 elections. Finally, Speaker Hastert, although quiet by nature, used his authority to direct other congressional leaders back to the Capitol building on September 11th, 2001, to speak publicly to the American people. Both Speaker Foley and Speaker Hastert saw their public recognizability increase after their crisis, further demonstrating their public roles as representatives of Congress. These case studies demonstrate the role of the speaker as a spokesman of Congress during times of crisis.

The final theme that is apparent in the three case studies is that responsibility for the entire government response to the crisis falls on the speaker, regardless of its positive or adverse effects. Speaker Foley did not directly support the military action in Kuwait, but his subtle political maneuvering and overall support of the president earned him a large amount of credit for the United States' success. The president showed his appreciation to Speaker Foley during his speech to a joint session of Congress, where he thanked Speaker Foley for his support. In contrast, Speaker Gingrich attempted to keep a political crisis alive for political advantage. The American public, happy with the status quo, rejected notions of impeachment in the 1998 midterm elections. Speaker Gingrich paid the price for his miscalculation after a Republican revolt cost him his speakership. In comparison, Speaker Hastert led during a crisis which created a sense of national unity and support for the government. The speaker's increase in recognizability and the overwhelming approval Congress received following the attacks show

the importance of the government's response to a crisis and its effects on public opinion. Overall, these three crises demonstrate the critical role the speaker plays in responding to a crisis, if not from a sense of duty, then from a sense of winning public support.

CONCLUSION

The speaker of the House is one of only four officers named in the Constitution. This position gives its holder a role in responding to a variety of scenarios that fall outside of typical congressional responsibilities, especially during crises. The role of the speaker during international, political, and domestic crises fluctuates based on the political landscape, the public perception of the situation, and the ideology of the speaker. The case studies demonstrate common themes, however, of a need to protect Congress as an institution, a leadership role that leads the speaker to act as a public representative of the entire Congress, and the speaker's accountability to the overall response of the federal government. The Persian Gulf crisis demonstrates the need for the speaker to act against his or her ideology to ensure Congress stays relevant, to promote national unity, and to support the president in times of potential conflict. The Clinton crisis depicts the dangers a response to a crisis can have on a speaker's reputation and power, and the importance of maintaining public support to use a crisis for political gain. Finally, the domestic security crisis of September 11th shows the power a speaker gains during threats to the homeland and the importance of the speaker's role as the only constitutional officer serving in Congress.

This research outlines the importance of understanding the speaker's role during times of crisis. The speaker takes on significant responsibility in ensuring congressional relevance, publicly representing the legislative branch, and ensuring a sound federal response occurs that maintains public support. House Representatives should understand the vital role a speaker plays during a crisis during the partisan vote each cycle. While a speaker might be a great partisan negotiator, when a crisis occurs, a large portion of Congress' public perception and relevance relies on the speaker's ability to lead the nation. Future studies should focus on the speaker's role in passing legislation and how partisanship affects the immediate aftermath of a crisis. The government will never be able to predict when an event will escalate into a full-scale crisis, but the speaker, as a constitutional officer, will remain one of the most influential figures in the federal government when it occurs.

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“TURNING OURSELVES INTO THE HOUSE OF LORDS”: WHAT MEMBERS, STAFFERS, AND SCHOLARS SAY ABOUT THE STATE OF LEGISLATIVE CAPACITY IN THE U.S. CONGRESS

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Fewer than one in twenty-five Americans have a great deal of confidence in the branch of government designed to be most responsive to their concerns. Congress faces a legitimacy crisis largely of its own making. While scholars have promulgated a number of explanations for what might lie at its core, few have spent significant time asking institutionally-minded members and staffers what they see as constraining the institution’s capacity to engage in its core function of legislating. This research does just that. Through extended, semi-structured interviews, I identify crippling risk-aversion, overwhelming partisanship, and confused political incentives as core explanations for why Congress is so apt to delegate large swaths of authority to the executive branch when it legislates as all. Interviewees were less emphatic about structural features of diminished institutional capacity such as staffing levels. Overall, these findings support a body of quantitative—and now qualitative—evidence that suggests incentives for members of Congress to engage in the hard work of legislating simply do not exist. These findings have important implications for citizens and scholars interested in reinvigorating what the founders conceptualized as America’s core governance process.

A 2019 Gallup survey found that only four percent of Americans have a great deal of confidence in Congress, while forty-eight percent have very little.¹ Americans have lost confidence in a range of public institutions, but Congress—the branch of government designed to be closest to the people, where they send representatives to make laws on the issues of the day—has won a race to the bottom of the institutions that Gallup has tracked for nearly five decades. This lack of confidence seems well earned as the chamber routinely careens from budgetary crisis to budgetary crisis, delegates an array of its institutional prerogatives to the executive branch, and fails to seize the initiative in public policymaking. As people disengage from the process, candidate selection is increasingly left to a cadre of party activists whose interests tend not to be consistent with average voters’.² Members of Congress therefore face a set of choices that incentivize delegating authority to

¹ “Confidence in Institutions | Gallup Historical Trends,” Gallup, accessed January 27, 2020, <https://news.gallup.com/poll/1597/confidence-institutions.aspx>.

² Marc Hetherington, “Putting Polarization in Perspective,” *British Journal of Political Science* 39, no. 2 (2009): 423; Emma Green, “Why Americans Don’t Vote in the Midterm Elections,” *The Atlantic*, November 6, 2018,

the executive branch, claiming credit for legislation of marginal consequence, and blaming the institutions of the federal government when things go awry. These choices also disincentivize compromise, making hard decisions, and taking political risks in public policymaking. As members follow these incentives, Americans' lack of faith in the institution spirals in a self-reinforcing cycle wherein more and more people remove themselves from the electoral process.³ This is expressly at odds with how the Founders conceptualized Congress, and it poses grave danger to the endurance of the American political experiment. Fundamentally, the institution of Congress is increasingly a performative body where policymaking is left to the executive branch and the administrative state, exacerbating a negative feedback loop that erodes Americans' faith in public institutions.

WHAT LIES AT THE CORE OF CONGRESSIONAL DYSFUNCTION?

In each of the past several election cycles, retiring members of Congress have made the rounds in the media to bemoan a lack of bipartisanship and, more broadly, a lack of institutional capacity to engage in lawmaking.⁴ These retiring lawmakers, often moderates in an institution that increasingly appears to tack to the extremes, report feeling increasingly not at home in their party and finding decreasing utility in congressional service as polarization and a hyper-charged media environment amplify the piecemeal procedures of lawmaking in a way that institutional insurgents can portray as distasteful to the American public as they seek to get elected by "running against" the institution of Congress as outsiders.⁵ While retiring members often expressed their disenchantment as the fruit of recent phenomena, political science research has traced many of their grievances back decades. In 1978, Fenno followed members of Congress around their districts and concluded that citizens tend to like their member but dislike the broader institution, a perception that many members

<https://www.theatlantic.com/politics/archive/2018/11/americans-dont-vote-midterms-arizona/575002/>; Lyn Ragsdale and Jerrold Rusk, *The American Nonvoter* (Oxford: Oxford University Press, 2017).

³ According to the U.S. Census Bureau, in 2018, the highest turnout midterm election in four decades, 53.4% of eligible voters turned out, a spike that came after eight consecutive midterms with turnout below half.

⁴ See, for example, Michael Tomasky, "Moderate's Retirement Another 'Dent' in GOP Sanity," *The Daily Beast*, September 10, 2017; Tim Alberta, "John Boehner Unchained," *Politico Magazine*, November/December 2017, <https://www.politico.com/magazine/story/2017/10/29/john-boehner-trump-house-republican-party-retirement-profile-feature-215741>; Rosalind Helderman, "In Retirement, GOP Moderate LaTourette Bemoans Rise of Extremes," *Washington Post*, July 31, 2012; Mark Preston, Gloria Borger, John King, Paul Steinhauser, Alan Silverleib, and Candy Crowley, "Bayh Announces Retirement from U.S. Senate," *CNN Politics*, February 15, 2010.

⁵ Michael Barber and Nolan McCarty, "Causes and Consequences of Polarization," In *Solutions to Political Polarization in America*, ed. Nathaniel Persily (Cambridge: Cambridge University Press, 2015), 15-58; Danielle Thomsen, "Ideological Moderates Won't Run: How Party Fit Matters for Partisan Polarization in Congress," *Journal of Politics* 76, no. 3 (2014): 786-797.

intentionally reinforced in how they campaigned.⁶ This finding complements that of Mayhew (1974), who argued that members of Congress find much greater utility advertising, credit claiming, and position taking in their endeavors to position themselves for re-election than engaging in the weeds of the legislative process.⁷ In tandem, these findings suggest that members of Congress have long had priorities other than “Schoolhouse Rock”-style engagement with the legislative process. However, retiring members and other commentators have suggested that the past ten years represent a nadir in Congress’s institutional capacity (and interest) in completing its core functions such as passing budgets, appropriating money, and conducting oversight.⁸

Overall, scholars have traced an ebb and flow in Congress’s ability and interest in asserting its institutional prerogatives vis a vis the executive branch in public policymaking. For example, after Watergate, the Impoundment Control Act represented a strong assertion of the appropriation power and represented one of several reforms that Congress passed to claw back power from an executive branch whose power had reached its zenith.⁹ However, in the subsequent years, the executive branch has—in many cases out of the public eye—operationalized broad theories of executive power in the Constitution to seize the initiative in both domestic and foreign policy, just as Sundquist predicted in his 1981 book on the rise and fall of executive power.¹⁰ This expansion in the executive branch’s willingness to assert power immediately preceded Congress’s entrance into an era when a hypercharged media environment, a new campaign finance regime, gerrymandering, an increasingly polarized primary electorate, and significant turnover of institutionalist members of Congress increasingly disincentivized members from engaging in the hard, politically fraught work of passing meaningful legislation.

Consistent with Mayhew’s observation that voters value action taking more than lawmaking, members of Congress have taken an increasingly performative role in the policymaking process.¹¹ Over the past several decades, this has manifested itself in Congress’s proclivity to delegate large swaths of power to the executive branch. As Postell (2019) argues, while more parsimonious

⁶ Richard Fenno, *Home Style: House Members in their Districts* (Boston: Little, Brown, 1978).

⁷ David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

⁸ Center for the Study of the Presidency and Congress, “Political Reform: Fixing a Deadlocked System,” (Washington, D.C.: CSPC, January 2019).

⁹ James Sundquist, *The Decline and Resurgence of Congress* (Washington, D.C.: Brookings Institution Press, 1981).

¹⁰ Andrew Rudalevige, *The New Imperial Presidency: Renewing Presidential Power after Watergate* (Ann Arbor: University of Michigan Press, 2006); Shirley Anne Warshaw, *The Co-Presidency of Bush and Cheney* (Stanford: Stanford University Press, 2009); Eric Posner and Adrian Vermeule, *The Executive Unbound: After the Madisonian Republic* (Oxford: Oxford University Press, 2010).

¹¹ David Mayhew, *America’s Congress: Actions in the National Sphere* (New Haven: Yale University Press, 2000).

explanations for delegation such as members seeking to realize political benefit for accomplishing vague goals while punting the responsibility for any failures to the bureaucracy as well as a more general deficiency in staff and expert capacity to develop complicated legislation have some utility in explaining the rise of delegation, a fuller picture emerges when considering the broader political context in which delegation occurs.¹² For example, transaction costs matter, and to whom power is being delegated matters (e.g. Democrats are more apt to delegate to an agency whose leadership is more insulated from presidential control when there is a Republican administration). In that context, insofar as legislating is difficult, preserving the status quo rather than engaging in “arduous legislative work that may prove fruitless” becomes a fairly obvious choice for members whose chances at re-election increasingly hinge on satisfying a narrowly-focused primary electorate.¹³ Fundamentally, all that delegation requires is for Congress to articulate an “intelligible principle” for the executive branch to pursue; the Supreme Court has not struck down a principle as unintelligible since *Schechter Poultry* in 1935 and has agreed that even opaque goals such as serving the “public interest” are specific enough to fulfill Congress’s obligation to serve as the lawmakers.¹⁴ Schoenbrod (2019) argues that, at its core, delegation allows members of Congress to duck hard choices, which, he says, explains the broad bipartisan support for the environmental movement in the latter half of the 20th century—major legislation of the time left most of the difficult choices to the executive branch while allowing members of Congress to engage in Mayhewian credit claiming.¹⁵ All of this is to say that delegation is not itself a new phenomenon. What is new, however, is that the political incentives members of Congress and their parties face have shifted beneath their feet in a way that reinforces polarization and corrodes trust in Washington as members can shirk responsibility for even the most basic functions of government as they seek politically safe ground.

For most of the latter half of the 20th century, Democrats held a sizable majority in Congress while Republicans represented something of a loyal opposition. However, since the Republican

¹² Joseph Postell, “The Legislative Politics of Legislative Delegation,” In *Congress and the Administrative State: Delegation, Nondelegation, and Undelegation*, Center for the Study of the Administrative State at Antonin Scalia Law School, February 22, 2019, CSAS Working Paper 19-03, 2-3.

¹³ Ibid 24.

¹⁴ Cary Coglianese, “Dimensions of Delegation: Constitutional Limits on the Administrative State.” In *Congress and the Administrative State: Delegation, Nondelegation, and Undelegation*, Center for the Study of the Administrative State at Antonin Scalia Law School, February 22, 2019, CSAS Working Paper 19-01, 6-7; *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

¹⁵ David Schoenbrod, “Consent of the Governed: An Underenforced Constitutional Norm.” In *Congress and the Administrative State: Delegation, Nondelegation, and Undelegation*, Center for the Study of the Administrative State at Antonin Scalia Law School, February 22, 2019, CSAS Working Paper 19-04, 6-7, 13.

Revolution in 1994, in all but four Congresses, each party has held at least 200 seats in the House, a chamber in which control has shifted four times, and, in all but two Congresses, each party has held at least forty-five seats in the Senate, a chamber in which control has shifted five times. By contrast, over the preceding twelve Congresses, Republicans never held more than 192 seats in the House, and, though they held the Senate majority for six years in the 1980s, found themselves with forty-five votes or fewer in each of the remaining nine Congresses between 1971 and 1995.¹⁶ In other words, congressional majorities that once were secure are now volatile. Lee (2016) argues that this creates incentives for minority parties to bide their time in hopes of winning a majority in the next election rather than compromise and risk giving the existing majority a political win.¹⁷ The legislative process has numerous veto points, which makes it difficult to pass legislation with slim majorities, so bipartisanship tends to be required for major legislation.¹⁸ The incentives for such bipartisanship, though, have waned as the possibility of majority control has ripened.

Meanwhile, even majorities have struggled to muster the capacity to get their own troops in order to pass major legislation. Grossman and Hopkins (2015) argue that the Republican Party is an ideologically motivated group of small government conservatives while the Democratic Party is a non-ideological coalition of group interests.¹⁹ Both phenomena make lawmaking a challenging endeavor. That manifested itself in the unwillingness of members of the conservative Tea Party and the Freedom Caucus to pass government funding bills (much to the angst of Republican leaders such as Speaker of the House John Boehner) and in the challenge that Democrats faced in uniting a “big tent party” around the contours of a healthcare plan early in the Obama administration. Party leaders, facing headwinds including an increasingly consequential campaign finance regime, an increasingly polarized primary electorate, and a decreasingly disciplined party rank-and-file, were often unable to galvanize majorities to support even basic legislation like government funding bills or, in the case of Obamacare, ended up delegating large amounts of authority to the executive branch.²⁰

¹⁶ “Party Divisions of the House of Representatives, 1789 to Present,” U.S. House of Representatives, accessed January 30, 2020, <https://history.house.gov/Institution/Party-Divisions/Party-Divisions/>; “Party Division,” U.S. Senate, accessed January 30, 2020, <https://www.senate.gov/history/partydiv.htm>.

¹⁷ Frances Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago: University of Chicago Press, 2016).

¹⁸ James Curry and Frances Lee, “Non-Party Government: Bipartisan Lawmaking and Party Power in Congress,” *Perspectives on Politics* 17, no. 1 (2019): 47-65.

¹⁹ Matt Grossman and David Hopkins, “Ideological Republicans and Group Interest Democrats: The Asymmetry of American Party Politics,” *Perspectives on Politics* 13, no. 1 (2015): 119-139.

²⁰ Alberta, “John Boehner Unchained”; Eric Heberlig and Bruce Larson, *Congressional Parties, Institutional Ambition, and the Financing of Majority Control* (Ann Arbor: University of Michigan Press, 2012); Joseph Bafumi

The upshot of the existing research is that Congress is a polarized institution that is dysfunctional in foundational ways and that, while claims that Congress “does nothing” are overstated, members have decreasing incentives and thus decreasing interest in spending their days focused on public policy making. This research, though, largely flows from quantitative analyses, many of which analyze roll call votes to draw conclusions about how Congress functions, often pointing towards polarization as a leading explanation. As Wallach and Wallner (2018) argue, though, party leaders have seized almost complete control of the floor agenda in each chamber, so the votes that come to the floor tend to be those on which the majority party agrees. This gives the appearance of polarization, but it may instead reflect party leaders’ control of the legislative process.²¹ Is this leadership control of the agenda crippling? Does polarization manifest itself in different meaningful ways? Which incentives matter most to legislators? Are legislators actually spending time legislating? How do members of Congress and other operators view the policy process if they actually do want to try to get something done? Each of these questions has important implications for a study of why Congress appears not to be working. While each can be assessed empirically, such assessments mostly require talking to the players rather than combing through quantitative datasets; with a few notable exceptions, such qualitative work is absent from much of the literature. That gap, fundamentally, is what this paper endeavors to fill.

LEGISLATIVE INCAPACITY: AT ODDS WITH THE INSTITUTION’S DESIGN

The founders conceived of the legislative branch—specifically the House of Representatives—as the avenue through which the people would express their political views. The Constitution, then, represented a contract between the people and the state wherein the people were represented in Congress, their agents. It was thus the province of the legislative branch to pass laws consistent with the Constitution, a principle upheld early in the history of the republic.²² Madison articulated in Federalist 51 that lawmaking was meant to be difficult—ambition would necessarily

and Michael Herron, “Leapfrog Representation and Extremism: A Study of American Voters and Their Members in Congress,” *American Political Science Review* 104, no. 3 (2010): 519-542.

²¹ Philip Wallach and James Wallner, “Congress Is Broken. But Don’t Blame Polarization,” *RealClearPolicy*, June 8, 2018
https://www.realclearpolicy.com/articles/2018/06/08/congress_is_broken_but_dont_blame_polarization_110662.html.

²² See e.g., *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176-177 (1803); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 136 (1810).

counter ambition, which would, for example, protect minority rights—but it was clear from the beginning, as the Supreme Court held in *Fletcher v. Peck* (1810), that it “is the peculiar province of the legislature” to make rules for society and again in *Gibbons v. Ogden* (1824) that, for example, the regulation of commerce requires prescribing rules by which commerce is to be governed.²³ In other words, Congress must decide how to effectuate its duties consistent with the Constitution’s framing. Moreover, the Constitution was designed to ensure that Congress could fulfill its responsibilities effectively. In Federalist 45, Madison argued that enabling the effective discharge of legislative duties lay at the heart of the need for this new Constitution; the Articles of Confederation did not allow for the legislative institution to discharge its duties in a way that inspired public trust, a principle that lies at the heart of a government deriving its power from the consent of the governed.²⁴ In that context, an effective Congress that faithfully discharges its lawmaking duties in a way that inspires public trust in the institution is stitched into the fabric of the American experiment. If Congress abdicates or otherwise is unable to fulfill that ideal, that fabric frays as the republic necessarily drifts further from the accountability—and, thus, the legitimacy—ostensibly imbued in a democratic republic.

RESEARCH DESIGN

Because a significant portion of research on institutional performance in Congress comes through quantitative analyses of roll call votes and other institutional output measures, I chose to focus on how those who engage in the institution regularly view its performance to compare those findings to principal conclusions from the quantitative academic literature. Fenno (1966, 1978) provided an example of the value in talking directly with political officials involved in institutions that scholars examine.²⁵ Bates (2007) argues that engaging directly with those involved in the objects of research provides a “bullshit meter” that helps researchers overcome convenient theories that miss what actually is in play and can provide “a sense of authority from having ‘been there.’”²⁶ As such, I conducted nine interviews with former members of Congress, current and former senior legislative

²³ Ibid; *Gibbons v. Ogden* 22 U.S. (9 Wheat) 1, 196 (1824).

²⁴ Federalist 45, see “The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them.”; Schoenbrod, “Consent of the Governed,” 6.

²⁵ Fenno, *Home Style*; Richard Fenno, *The Power of the Purse: Appropriations Politics in Congress* (Boston: Little, Brown, 1966).

²⁶ Robert Bates, “From Case Studies to Social Science: A Strategy for Political Research,” In *The Oxford Handbook of Comparative Politics*, eds. Carles Boix and Susan Stokes (Oxford: Oxford University Press, 2007), 174.

staffers, a former executive branch official and current lobbyist, and legislative scholars. The semi-structured interviews occurred in December 2019 and January 2020. Each took place by phone and lasted between twenty-five and sixty-five minutes (with most lasting between thirty-five and forty-five). I used convenience sampling until reaching relative saturation.²⁷ Interviewees currently serving in government were granted anonymity to discuss their observations more freely, while the remainder of the interviewees spoke entirely on the record.

In each interview, I probed the interviewee’s reaction to several prominent academic hypotheses including the concentration of power in leadership offices, insecure majorities, party fit, and institutional capacity issues such as staffing levels.²⁸ I also asked broader questions about the state of the legislative process and institutional incentives as well as specific questions about the interviewee’s experience in an effort to understand the extent to which Congress is equipped and able to fulfill a primary role in public policymaking. After letting each interview “sit” for several weeks, I fully transcribed each interview recording, reviewed my contemporaneous notes to construct the most prominent takeaways from the research, and applied an open and then worked towards an axial coding methodology to identify core themes.²⁹

List of Interviewees

Interviewee	Position
The Honorable Charlie Dent	Former U.S. Congressman (R-PA15, 2005-2018)
The Honorable Glenn Nye	Former U.S. Congressman (D-VA2, 2009-2011); CEO, Center for the Study of the Presidency & Congress
The Honorable Tom Rooney	Former U.S. Congressman (R-FL17, 2009-2019)
The Honorable Jack Howard	Former Deputy Assistant to the President for Legislative Affairs (Bush I and Bush II); Senior Vice President of Congressional & Public Affairs, U.S. Chamber of Commerce
Dr. Philip Wallach	Senior Fellow, Governance for the R Street Institute
Dr. Danielle Thomsen	Assistant Professor of Political Science, University of California, Irvine

²⁷ Stéphanie Gaudet and Dominique Robert, *A Journey Through Qualitative Research: From Design to Reporting* (Newbury Park, CA: SAGE, 2018).

²⁸ Paul Kane and Derek Willis, “Laws and Disorder,” *Washington Post*, November 5, 2018, <https://www.washingtonpost.com/graphics/2018/politics/laws-and-disorder/>; Lee, *Insecure Majorities*. Thomsen, “Ideological Moderates Won’t Run,” 786-797; Paul Kane and Derek Willis, “Laws and Disorder,” *Washington Post*, November 5, 2018, <https://www.washingtonpost.com/graphics/2018/politics/laws-and-disorder/>.

²⁹ Cliff Scott and Melissa Medaugh, “Axial Coding,” In *The International Encyclopedia of Communication Research Methods* (2017): 1-2.

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(Name withheld)	Committee Policy Expert, U.S. House of Representatives

RESULTS

It would be difficult to assert that saturation was achieved given a sample of nine, but several consistent themes emerged across the sample frame (i.e. former members, staffers, and scholars), suggesting that, at a minimum, these themes could reasonably form the foundation for ongoing research.³⁰ Each interview opened by asking the interviewee if they agreed with the general premise that, over the past X years (and interviewees were asked to identify X, though few had a definitive answer), Congress has gradually abdicated power to an executive branch ever-willing to assume it in agencies that are increasingly detached from the public, and that, underpinning this trend, is a general lack of institutional effectiveness. Each interviewee agreed with that general premise, though some added a few qualifiers such as Philip Wallach, who noted that this is a trend that goes beyond a few years and cast the current situation as part of a broader ebb and flow of legislative initiative in public policy making. From there, the interviews sought to probe the causes and manifestations of that trend.

One manifestation that arose repeatedly was Congress’s 2011 decision to end earmarks after embarrassing scandals in the mid-2000s.³¹ The effect of the earmark ban, though, has been to restrict Congress’s ability to direct the funding it appropriates, which leaves that responsibility to the executive branch. “Congress got rid of earmarks because they are politically contentious,” Glenn Nye said. “Why did they voluntarily do that? Because, politically, they were seen as evil ... and the American voter assumed that by Congress not using earmarks, they had somehow just sort of gotten rid of wasteful spending. The actual truth is they simply transferred the authority.” Tom Rooney added that members were afraid to be cast as in favor of pork barrel spending in the next election, so, rather than try to explain to voters why earmarks could help control spending (as he says he was able to do in “five minutes”), they simply punted the authority to the executive branch. To Rooney, it represented one in a long line of examples of Congress ceding its authority to avoid the possibility of blame and make sure

³⁰ Erik Bleich and Robert Pekkanen, “How to Report Interview Data,” In *Interview Research in Political Science*, ed. Layna Mosley (Ithaca: Cornell University Press, 2013), 97, 102.

³¹ Kate Ackley, “The Dead Earmarks Society,” *Roll Call*, February 15, 2019, <https://www.rollcall.com/news/congress/pork-earmarks-making-comeback>.

that no controversial legislative decisions would stand in the way of re-election. “The money is still getting spent, but we have surrendered that legislative power of the purse to the executive branch to basically decide how since then,” Rooney said.³² “Honestly, we are turning ourselves into the House of Lords that just has to get reelected every two years.” The decreasing ability to influence policy making was one reason that Rooney said he retired from congressional service. Relatedly, Wallach said that it is “not a silly exercise” to contemplate the ways that we are living in a political system that is much more plebiscitary and executive-focused than the Founders envisioned. “Congress is weak because it chooses to be weak,” he said, noting that, for example, in addition to eschewing earmarks, Congress has lost the habit of withholding funds from intransigent federal agencies.

Both Nye and Rooney pointed to a broader idea that emerged in several interviews: Congress is a risk-averse institution, and, whether or not it is becoming more risk-averse, structural factors create more risks that members weigh as they decide how to engage the policy process. Nye noted that the trend of increasing power in the leadership offices to set the agenda is not so much a nefarious power grab at the expense of the rank-and-file members, but it is a way to protect those members from taking tough votes. Though that notion is, to some extent, belied by the work of the Problem Solvers Caucus, which pressured Speaker of the House Nancy Pelosi in 2018 to launch a committee on the Modernization of Congress that ostensibly sought to reinvigorate regular order, even that effort was more pro forma than anything, a committee policy expert who asked not to be named told me. A Senior Democratic Staffer was more upbeat about the work of that committee and the Speaker’s office more generally, noting that the Speaker has agreed to some reforms, but this staffer conceded that the committee was probably not a game changer.

In addition to the agenda-setting reforms promulgated by the Problem Solvers Caucus, the House Select Committee on the Modernization of Congress also considered issues of institutional capacity, which some have argued hamstringing the ability of the legislative branch to pass complicated legislation.³³ Interviewees had mixed views as to whether staff capacity, in particular, was an issue that constrained the chamber’s ability to make laws rather than delegate. The Senior Democratic Staffer said that, before the Gingrich takeover in 1994, each party had legislative service organizations that were staffed by policy experts who churned out daily policy briefs to inform

³² Discretionary spending in fiscal year 2010 totaled \$1.37 trillion, 2011 totaled \$1.3 trillion, and 2012 totaled \$1.29 trillion. Kimberly Amadeo, “Current US Discretionary Federal Budget and Spending,” *The Balance*, February 13, 2020, <https://www.thebalance.com/current-us-discretionary-federal-budget-and-spending-3306308>.

³³ See, for example, Postell, “The Legislative Politics of Legislative Delegation,” 2-3.

lawmaking and that the erosion of such organizations as well as the stagnant size of the legislative staff (set in place since the 1970s when members, on average, represented several hundred thousand fewer citizens than they do today) have constrained policy capacity. Sequestration cuts to organizations like the Congressional Research Service have compounded that phenomenon, the staffer argued. Jack Howard, who was a staffer to the House Republican leadership in the 1990s, said that legislative service organizations were bloated and had unclear objectives when Gingrich, acting on a mandate from the American people, trimmed their size. Howard did note, though, that the salaries of congressional staffers prevent talented people from staying in their positions long enough to gain the requisite experience that would enable a “fair fight” with policy experts from the executive branch. “It’s more a question of quality rather than quantity,” Howard said. Rooney said that, during his tenure, he never felt that he had insufficient staff support, though he noted that some members focused more on political skills than policy acumen in hiring, which might limit the extent to which those members could influence policy. “It’s their own fault,” Rooney said. Wallach added that there are “incredible siloes” between chambers, and the type of experienced staffers who can coordinate between chambers are “few and far between,” which may help point to why fewer laws are being passed. One explanation that did not carry much currency with interviewees was the idea that members spend their days fundraising, known as “dialing for dollars,” and thus just do not have time to focus on legislating. Rooney said that, in his experience, most fundraising happened at evening events, and neither Dent nor Nye could point to a time when either they or someone they knew being on the phones fundraising prevented them from participating in the legislative process. Nye did note that he occasionally missed committee hearings because he was fundraising.

Without exception, though, interviewees placed institutional capacity factors as subordinate to environmental factors that affect members’ incentives. Charlie Dent ranked polarization and siloes in how people consume media as among the most important reasons that Congress struggles to legislate. “People get news from sources that reinforce your bias,” he said. Nye added that the way media covers politics matters too. “[They] put a hyper focus on all the things people don’t like about politics or all the ways that parties compete with each other,” Nye said, arguing that such coverage amplifies institutional distrust and contributes to a negative feedback loop wherein ordinary people are often disinclined to engage with the institution. Those who do stay engaged tend to be those with strong opinions who are often at the fringes, which exacerbates polarization. Dent said that people used to expect their members to get things done, but now those who vote—especially in primary

elections—expect ideological purity, which puts the political safeguard at the fringes. Many members, Dent said, also ran “against” the institution such that, when they arrive, they lack the capacity to “get to yes” on the nuts and bolts of governing such as passing budgets. Such legislating, then, tends to be rushed and to reinforce the status quo. Passing continuing resolutions at current spending levels without doing the hard work of appropriations analysis, Dent said, constrains Congress’s ability to conduct oversight. Paradoxically, this hinders the ability of the members who ran promising governing reform because, in their refusal to engage the process, they ensure that the status quo will endure because there will not be time to engage in meaningful reforms.

In that vein, Rooney pointed to the practice of issue- or member-driven political action committees and think tanks issuing scorecards of members’ voting records as yet another incentive that makes members reluctant to engage in the legislative process to try to get things into bills that they otherwise might not support. In his case, representing an agricultural district, he worked to affect the farm bill in ways that would help his district, but, because the food stamps program would be attached to the bill, conservative groups would score him negatively for having voted for the bill. He said that, early in his tenure, that worried (but did not stop) him, but that, as time went on, he found he could explain to voters in town halls and other meetings what was in play and that they were receptive (and appreciative) of his decision to engage in the legislative process rather than take positions from the sidelines. He won re-election comfortably in each race and faced only one primary challenge during his ten years in Congress. He conceded, though, that members from tougher districts faced tougher choices, but he noted that tougher districts tended to be more moderate such that brokering deals likely would have been electorally rewarded even though many of those members were loathe to do so. Nye characterized the political landscape differently, noting that, right now, there is no political constituency for compromise and that closed primaries and polarized primary electorates force even those who might be more ideologically moderate to tack to the fringes rather than to the point of constructive engagement in the center. This is consistent with the argument of Danielle Thomsen, who said that moderates have decreasingly felt “at home” in either party and that, as they have been less able to broker compromises near their ideological home in the center, they have left Congress either by choice or by losing re-election. In other words, the theoretical desirability of being at the center of the chamber hinges on a functioning institution that does not currently exist. In that vein, the Democratic staffer argued that the ground has shifted beneath the design of the institution of Congress. Compromise is challenging in the era of a 24-hour news cycle.

Perhaps more important, though, this staffer argued, is that Americans have geographically sorted themselves such that, in the Senate, a majority of the population is represented by just eighteen Senators and that gerrymandering in the House (which, at present, generally favors Republicans) hinders the ability of the institution to fulfill its Madisonian role as being responsive to the general populace.³⁴

Such partisan sorting has led to an atmosphere that Howard characterized as “shirts versus skins,” noting that the partisanship extends beyond the institution and has led members to prioritize their partisan objectives over any institutional objectives. “It’s kind of like, the facts be damned, we’re with our guy,” Howard said in reference to members of Congress supporting the president’s assertions of executive power even if they infringe on a legislative responsibility. Dent characterized the same phenomenon in more fundamental terms: “We no longer have separation of powers. We have separation of parties,” he said. Wallach suggested that, to some extent, this may just reflect the preferences of voters who care more about what gets done than how. “You have to look at voters’ revealed preferences,” he said. Nye said that voters, writ large, want basic functionality in government: on time budgets, no government shutdowns, and legislation on issues where there is broad consensus such as immigration. That Congress cannot accomplish those goals suggests an institutional weakness.

Legislative dysfunction also affects how people engage with the institution. Howard said that, from his perspective as a lobbyist, he knows that the probability Congress is going to move on any significant legislation when there is not an urgent deadline is almost zero and that, ultimately, the legislation is likely to get written in a single weekend such that he focuses his efforts on being ready to move quickly when the moment is nigh (something probably beyond the capacity of less sophisticated lobbying operations). Howard also said that Americans seem to have less institutional affinity than they once did, so they are more inclined to elect ideological insurgents such as Alexandria Ocasio-Cortez than pragmatic institutionalists like Joe Crowley (and he noted that other examples exist on the other side of the aisle).

³⁴ Parker Richards, “The People vs. the U.S. Senate,” *The Atlantic*, October 10, 2018, <https://www.theatlantic.com/politics/archive/2018/10/senators-kavanaugh-represented-44-percent-us/572623/>.

LIMITATIONS & FUTURE RESEARCH DIRECTIONS

The relatively small sample size of the interview pool and its concentration on the House at the expense of the Senate constrains the broad explanatory potential of the findings, but qualitative research of this nature is crucial to directing future quantitative research. For example, while Hirano et al. (2010) did not find statistically significant support for the idea that primary elections contribute to polarization based on their analysis of roll call votes, insights from this research suggest that—in this particular moment in the House of Representatives—what makes it to the floor for a roll call vote is not representative of how polarization and the threat of primary challenges manifest themselves (i.e. often at pre-vote veto points such as in closed-door negotiations when members threaten to stonewall a particular proposal or when vulnerable members ask legislative leaders to protect them from a difficult vote, in both cases causing legislative leaders not to bring a bill or controversial provision to the floor).³⁵ In other words, in a legislative atmosphere marked by what the institution seems *not* able to do, quantitative research that focuses on what the institution *does* do can miss important trends that qualitative research such as this paper are able to identify. As such, future research would do well to continue to interview members and former members of Congress as well as current and former senior staffers to identify why the legislative process continues to break down and work towards identifying possible solutions to change the incentives that members face.

CONCLUSION: REINFORCING AMERICANS' LACK OF INSTITUTIONAL FAITH

A 2018 *Washington Post* and ProPublica analysis of congressional dysfunction suggested most of the breakdown has happened since Barack Obama's election in 2008. "During that time," the analysis said, "as the political center has largely evaporated, party leaders have adhered to the demands of their bases, while rules and traditions that long encouraged deliberative dealmaking have given way to partisan gridlock." The interviews I conducted support the conclusion that the *Washington Post* reached, but they suggest that the seeds were planted over decades before they germinated in the dysfunction we currently see. However, because, for example, a broader legal understanding of executive power evolved out of the limelight and the dawn of the twenty-four-hour news cycle

³⁵ Shigeo Hirano, James M. Snyder Jr., Stephen Daniel Ansolabehere, and John Mark Hansen, "Primary Elections and Partisan Polarization in the U.S. Congress," *Quarterly Journal of Political Science* 5, no. 2 (2010): 169-191; Wallach and Wallner, "Congress Is Broken. But Don't Blame Polarization."

preceded the echo chambers that social media now allows, it is trickier to draw a clear line from those underlying causes to the effects that now serve to direct such disdain towards Congress. Thus, Americans see a surface level gridlock in Congress that—not illogically—they think can only be fixed by sending people inclined to shake things up. In effect, though, this stymies the possibility for institutional reform, which serves only to exacerbate lack of faith in institutions because, without institutionalists, institutions cannot succeed. Congress is not the only institution in which Americans have lost faith, but it may well be the most conspicuous example. Moreover, its failure as an institution imbues in American society a broader lack of faith in the capacity of our system of government to serve the citizens who lay at its heart. Changing the incentives of the politicians at its core matters, but, ultimately, true reform will require political courage. Fortunately, should American legislators need an example of that courage, they need look only to those who founded the institution in which they sit.

Democracy survives only when its institutions are deemed legitimate, and Congress faces a crisis in that domain. The story of America is one in which a tyrannical executive and his lackeys in Parliament pushed a colony over the edge by prescribing its future without representing its interests (at least as the colony saw it). That America's Congress today seems inclined, in the words of a recently retired member, to turn itself into the House of Lords ought to galvanize significant introspection on the part of citizens and scholars interested in the ongoing success of the American experiment. Americans do not need to understand the root of the problem to know that they do not like its manifestations and want to see change. Making that change is the job of the people they send to Washington to serve their interests in "the people's House."

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SOVEREIGNTY AND HEALTH OUTCOMES IN AMERICAN INDIAN AND ALASKAN NATIVE COMMUNITIES

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To this day, American Indian and Alaskan Native (AI/AN) populations continue to suffer from disproportionately poor health outcomes. These health outcomes are inextricably linked to the social determinants of health and health policies of the federal government, who has a trust responsibility to provide health services to AI/AN communities. This paper serves to explore the complex relationship between the United States Congress, acknowledgement of AI/AN sovereignty, and the consequent health outcomes in AI/AN communities.

INTRODUCTION

According to the 2010 Census, 5.2 million people in the United States identify as American Indian and Alaskan Native (AI/AN), constituting approximately 1.7% of the overall population.¹ The AI/AN population refers to persons “having origins in any of the original peoples of North and South America (including Central America) who maintains tribal affiliation or community attachment.”² The diversity of peoples collectively referred to with the AI/AN identifier cannot be understated—they are not a homogeneous group. Across the United States, there are currently 567 federally recognized tribes and 326 reservations, in addition to a further 200 state-recognized tribes.³ Each AI/AN tribe—and indeed, each individual member of the communities – is unique with cultural variations grounded in differing histories, beliefs, and geographies.⁴

Yet, despite representing a relatively small proportion of the total American population and referring to diverse communities, the AI/AN population collectively suffers disproportionately from poor health outcomes. The AI/AN population has an inordinate rate of disease compared to the general American population and suffers from some of the highest

¹ Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, *The American Indian and Alaskan Native Population: 2010* (Washington, DC: United States Census Bureau, 2012), 1.

² Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, *The American Indian and Alaskan Native Population*, 2.

³ Donalee Unal, “Sovereignty and Social Justice: How the Concepts Affect Federal American Indian Policy and American Indian Health,” *Social Work in Public Health* 33, no. 4 (2018): 259.

⁴ Janelle F. Palacios and Carmen J. Portillo, “Understanding Native Women’s Health,” *Journal of Transcultural Nursing* 20, no. 1 (January 2009): 15.

mortality rates of any group in the United States for alcoholism (548% higher), diabetes mellitus (182% higher), pneumonia and influenza (37% higher), and suicide (74% higher).⁵ It is difficult to dissociate these statistics from the unfortunate reality that AI/AN peoples have the lowest income, least education, and highest poverty rate of any group in the United States.⁶ The poor health outcomes of AI/AN populations can not only be directly correlated to these lamentable circumstances, but connections can be drawn to greater issues of sovereignty and self-governance.

AI/AN SOVEREIGNTY

Pre-existing the United States were over 600 hundred AI/AN nations, each with established and defining characteristics including a bounded land base, economic systems, governance structures, and sociocultural identity.⁷ AI/AN tribes operated in a diplomatic framework as if politically-independent foreign nations and were accustomed to handling their relations with other groups.⁸ Consequently, with the arrival of European settlers, AI/AN sovereign nations began negotiating treaties, political compacts, trading partnerships, and alliances across the territory that is now referred to as the United States.⁹ The process of treaty-making, in particular, reflects the nation-to-nation relationship between the AI/AN tribes and the settlers and highlights the unique position of AI/AN nations within the American settler state; no other resident American population has signed treaty documents and even states are inhibited from negotiating treaties.¹⁰ Over five hundred treaties were enacted between AI/AN tribes and the American settler state and continue to serve as a foundation for the political relationship between the parties.¹¹ However, it is imperative to recognize that the treaty-making process did not grant AI/AN nations rights: treaties merely recognized the existing sovereignty of AI/AN

⁵ Indian Health Service, *Regional Differences in Indian Health: 2012 Edition*, (Rockville, MD: U.S. Department of Health and Human Services, 2012), 15.

⁶ Donalee Unal, "Sovereignty and Social Justice: How the Concepts Affect Federal American Indian Policy and American Indian Health," 259.

⁷ David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 3rd ed. (Lanham, MD: Rowman & Littlefield Publishers, 2011), 34.

⁸ Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (Chicago, IL: University of Chicago Press, 1982), 167.

⁹ Stephen L. Pevar, *The Rights of Indians and Tribes*, 2nd ed. (Washington, DC: American Civil Liberties Union, 1992), 2.

¹⁰ David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 34.

¹¹ *Ibid.*

nations as the undisputed original inhabitants of the territory and served as an agreement between sovereign entities for peaceful coexistence.¹²

AI/AN nations hold a unique status within the federal intergovernmental framework as a result of their inherent sovereignty. The sovereignty of AI/AN nations refers to their inextinguishable political independence and authority in acknowledgment of the fact that they do not derive their existing powers from the settler government.¹³ Given the extraconstitutional relation of AI/AN nations, Article 6 of the United States Constitution almost paradoxically states that, “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby.”¹⁴ Therefore, at least in constitutional theory, the sovereignty of AI/AN nations is comprehensive and absolute.¹⁵ However, as the United States Constitution came into effect in 1789, Henry Knox, a veteran of the Revolutionary War, proposed the concept of American “general sovereignty” to reconcile the converging diplomatic and domestic relations with AI/AN tribes.¹⁶ He suggested a hierarchal array of powers with the United States at the top, but with recognition of the independence of AI/AN tribes as “resident ‘foreign’ nations.”¹⁷ This concept of jurisdictional multiplicity conflicts with American claims to jurisdictional monopoly and motivates governments to treat AI/AN nations paternalistically as dependents.¹⁸

THE DOCTRINE OF TRUST RESPONSIBILITY

The treaties signed with AI/AN nations are regarded as the basis for the federal provision of health care to AI/AN populations.¹⁹ The colonization and assimilation of AI/AN populations dramatically affected their health, all while hindering their ability to benefit from traditional

¹² Anne F. Boxberger Flaherty, *States, American Indian Nations, and Intergovernmental Politics: Sovereignty, Conflict, and the Uncertainty of Taxes* (New York: Routledge, 2018), 8.

¹³ David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 34.

¹⁴ David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 36.

¹⁵ *Ibid.*

¹⁶ Dorothy V. Jones, *License for Empire*, 168.

¹⁷ Dorothy V. Jones, *License for Empire*, 169.

¹⁸ Indian Health Service, *The First 50 Years of the Indian Health Service: Caring & Curing* (Rockville, MD: U.S. Department of Health and Human Services, 2008), 13.

¹⁹ Donalee Unal, “Sovereignty and Social Justice: How the Concepts Affect Federal American Indian Policy and American Indian Health,” 264.

medical knowledge and practices.²⁰ Treaties negotiated between the United States government and tribes often promised that the federal government would provide economic and social programs to raise the AI/AN standard of living, which was generally understood to include support for housing, education, and health care.²¹ However, health care is not explicitly addressed in many of the treaties to justify AI/AN persons as the only population in the United States born with a legal right to health care services.²² Rather, court rulings based on the legal doctrine of the “trust responsibility” have clarified the obligation of the federal government.

The concept of trust responsibility is fundamental to interactions between AI/AN nations and the federal government and the acknowledgment of AI/AN sovereignty. The doctrine recognizes the “undisputed existence of a general trust relationship” that morally and legally obligates the federal government to uphold its commitments to AI/AN communities.²³ It constitutes a special body of law that “replaces the constitutional protections granted to other members of American society,” in recognition of the extraconstitutional status of AI/AN people.²⁴ In 1977, a Senate commission explained that “the purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people.”²⁵ In a modern context, the trust responsibility is often interpreted to advance self-government and sovereignty to the maximum extent possible.²⁶ However, implementation of the trust responsibility also has unintended consequences for AI/AN health policy and sovereignty.

CONGRESSIONAL PLENARY POWER

In practice, the doctrine of trust responsibility is enacted via congressional plenary power. Firstly, this concept refers to the exclusive authority of Congress to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes,” as per Article 1 of the United States Constitution.²⁷ In effect, this restricted state governments from enacting treaties

²⁰ The Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions Under U.S. Policies of Self-Determination* (New York: Oxford University Press, 2008), 220.

²¹ Donalee Unal, “Sovereignty and Social Justice: How the Concepts Affect Federal American Indian Policy and American Indian Health,” 264.

²² *Ibid.*

²³ Stephen L. Pevar, *The Rights of Indians and Tribes*, 26.

²⁴ David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 36.

²⁵ Stephen L. Pevar, *The Rights of Indians and Tribes*, 27.

²⁶ Stephen L. Pevar, *The Rights of Indians and Tribes*, 27.

²⁷ David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 37.

with AI/AN nations in their proximity and limited treaty making to the legislative branch. However, more controversially, “plenary” has also been judicially constructed to signify “absolute” or “unlimited.”²⁸ As a result, “the Congress has vested in itself, without a constitutional mooring, virtually boundless governmental authority and jurisdiction over tribal nations, their lands, and their resources.”²⁹ In fact, in *United States v. Lara* in 2004, the Supreme Court held that “Congress, with this Court’s approval, has interpreted the Constitution’s ‘plenary’ grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority.”³⁰ Consequently, AI/AN persons are the only ethnic population in the United States for which Congress can unilaterally assert power and legislative authority.

For AI/AN populations, congressional plenary power is truly a double-edged sword. On one hand, it grants Congress the authority to enact legislation that yields AI/AN populations unique services unavailable to other American citizens, including medical care, educational benefits, housing aid, and tax exemptions.³¹ While the onus to provide these services is derived from the trust responsibility to honour the treaties and extraconstitutional status of AI/AN populations, the congressional plenary power provides the mechanism for the necessary legislation to be enacted. However, on the other hand, congressional power plenary effectively limits the recognized and inherent sovereignty of AI/AN nations. The challenge of the federal government maintaining individual nation-to-nation relationships with over 500 federally recognized tribes has gradually resulted in Congress unilaterally granting itself more authority to govern AI/AN nations.³² As a result, AI/AN nations are not necessarily consulted with, asked for consent, or involved otherwise with the establishment of legislation specific to their livelihood, territories, and activities.³³ The mixed blessing of congressional plenary power has been exemplified by AI/AN health policy.

²⁸ Ibid.

²⁹ Ibid.

³⁰ *United States v. Lara*, 124 U.S. S. Ct. 1634 (2004).

³¹ David E. Wilkins and Heidi Kiiwetinepinesiiik Stark, *American Indian Politics and the American Political System*, 37.

³² Anne F. Boxberger Flaherty, *States, American Indian Nations, and Intergovernmental Politics*, 9.

³³ Ibid.

AI/AN HEALTH POLICY

The provision of health services to AI/AN populations by the United States government has been gradually developed with legislation creating new programs and defining federal responsibilities. In 1921, Congress passed the Snyder Act that serves as the basic authorization for the federal government to administer health services to federally recognized tribes.³⁴ The act specifically identifies the “relief of distress and conservation of health of Indians” as a function of the federal government.³⁵ This created a unique framework that emphasizes health promotion and wellness in a broad, community-based health program.³⁶ The Indian Health Service (IHS) assumed these responsibilities with its creation in 1955 as an agency within the U.S. Department of Health and Human Services.³⁷ The IHS is now the primary agency providing comprehensive health care to approximately 2.2 million AI/AN persons across the United States.³⁸ On July 8, 1970, President Richard Nixon delivered his Indian Policy Statement that marked a new era of AI/AN relations with the federal government.³⁹ Nixon committed the United States government to advancing the concept of “tribal self-determination” and recognizing the sovereign status of AI/AN nations.⁴⁰ This posed a challenge for the IHS who struggled to reconcile the paternalistic delivery of health services and trust responsibility to care for AI/AN health needs with the competing trust responsibility of the federal government to recognize tribal autonomy and self-determination.⁴¹

This quandary would be addressed with landmark legislation in the 1970s to dramatically change the federal provision of health services. The Indian Self-Determination and Education Assistance Act (ISDEAA) was passed by Congress in 1975 and allows any federally recognized tribe to assume, on request, any function of the Bureau of Indian Affairs (BIA) or IHS.⁴² The act shifted the role of the IHS from service delivery to working as a partner agency that provides

³⁴ The Harvard Project on American Indian Economic Development, *The State of the Native Nations*, 229.

³⁵ Indian Health Service, *The First 50 Years of the Indian Health Service*, 8.

³⁶ Donalee Unal, “Sovereignty and Social Justice: How the Concepts Affect Federal American Indian Policy and American Indian Health,” 266.

³⁷ The Harvard Project on American Indian Economic Development, *The State of the Native Nations*, 220.

³⁸ Indian Health Service, “Quick Look,” Indian Health Service, U.S. Department of Health and Human Services, last revised April 2017, <https://www.ihs.gov/newsroom/factsheets/quicklook/>.

³⁹ Indian Health Service, *The First 50 Years of the Indian Health Service*, 9.

⁴⁰ *Ibid.*

⁴¹ David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 46.

⁴² Indian Health Service, *The First 50 Years of the Indian Health Service*, 10.

technical assistance and consultative services to AI/AN nations.⁴³ The passage of the Indian Health Care Improvement Act (IHCA) in 1976 clarified national goals specific to AI/AN health policy: (1) “to ensure the health status of Indian people is elevated to the highest possible level” and (2) “to achieve the maximum participation of Indian people in the Indian health programs.”⁴⁴ These policy developments have helped to advance AI/AN sovereignty by restoring their self-determination of health programs and services.

SELF-DETERMINATION IN AI/AN HEALTH CARE

The ability for federally recognized tribes to operate medical facilities through contracts and compacts with the IHS represents a significant development in the federal acknowledgement of AI/AN sovereignty. As of October 2012, the IHS reported that 36% of hospitals, 79% of health centres, 69% of health stations, and 100% of Alaska village clinics were operated by federally recognized tribes.⁴⁵ AI/AN nations involved in the operation of medical facilities report that the approach “reduces regulation, increases financial flexibility, allows the consolidation and redesign of programs, and increases access to new programs and funds.”⁴⁶ Self-determination allows federally recognized tribes to deliver health care specific to the demographic, social, cultural, and institutional needs of their community.⁴⁷ As a result, a survey conducted by the National Indian Health Board found that community satisfaction with health care programs was significantly higher where AI/AN nations had discretion over the service delivery.⁴⁸ Overall, the opportunity for self-determination in health programs garnered a positive public reception in AI/AN communities.

However, the impact of self-determination programs on the health outcomes of AI/AN communities is not as positive. Generally speaking, the gradual increase in the number of health facilities operated by federally recognized tribes since the passage of ISDEAA in 1975 has been accompanied by a decline in infectious diseases, but a rise in chronic diseases and so-called

⁴³ The Harvard Project on American Indian Economic Development, *The State of the Native Nations*, 55.

⁴⁴ Indian Health Service, *The First 50 Years of the Indian Health Service*, 10.

⁴⁵ Indian Health Service, *Regional Differences in Indian Health: 2012 Edition*, 15.

⁴⁶ The Harvard Project on American Indian Economic Development, *The State of the Native Nations*, 225.

⁴⁷ Indian Health Service, *The First 50 Years of the Indian Health Service*, 15.

⁴⁸ The Harvard Project on American Indian Economic Development, *The State of the Native Nations*, 224.

“social pathologies,” such as alcoholism, violence, and unintentional injuries.⁴⁹ This is evidenced by a marked change in the leading causes of death in the AI/AN population, as shown in Table 1.

Table 1: Leading Causes of Death in AI/AN Population ⁵⁰

1951 – 1952	1996 – 1998
1. Heart Disease	1. Heart Disease
2. Accidents	2. Cancer
3. Influenza and Pneumonia	3. Accidents
4. Tuberculosis	4. Diabetes

In large part, the decrease in the mortality of infectious diseases, such as influenza and pneumonia, can be attributed to improved access to health care and improved infrastructure through IHS programs.⁵¹ However, the increase in chronic disease and social pathologies requires consideration of a larger scope of factors.

SOCIAL DETERMINANTS OF HEALTH

Over the past two decades, an extensive and compelling body of literature has accumulated that demonstrates the significant impact of social factors on the health outcomes of individuals across diverse settings and populations.⁵² Collectively, these factors are referred to as the social determinants of health, which the World Health Organization’s Commission on the Social Determinants of Health broadly defines as “the full set of societal conditions in which people live and work.”⁵³ Increasingly, research has found correlations between socioeconomic factors, such as income, wealth, and education, and health outcomes, such as incidence of disease and mortality rates.⁵⁴ While the causal chains are often complex, governments have been

⁴⁹ T. Kue Young, “Recent Health Trends in the Native American Population,” in *Changing Numbers, Changing Needs: American Indian Demography and Public Health*, ed. Gary D. Sandefur, Ronald R. Rindfuss, and Barney Cohen (Washington, DC: National Academy Press, 1996), 53.

⁵⁰ Indian Health Service, *The First 50 Years of the Indian Health Service*, 20.

⁵¹ T. Kue Young, “Recent Health Trends in the Native American Population,” 53.

⁵² Paula Braveman and Laura Gottlieb, “The Social Determinants of Health: It’s Time to Consider the Causes of the Causes,” *Public Health Reports* 129, Supplement 2 (January/February 2014): 20.

⁵³ Commission on Social Determinants of Health, *A Conceptual Framework for Action on the Social Determinants of Health* (Geneva: World Health Organization, 2007), 4.

⁵⁴ Paula Braveman and Laura Gottlieb, “The Social Determinants of Health: It’s Time to Consider the Causes of the Causes,” 19.

forced to evaluate how policies and programs are affecting the health of communities, beyond just health infrastructure and access to medical care.

During the World Conference on Social Determinants of Health in October 2011, the United States was among 125 participating World Health Organization (WHO) Member States to adopt the ‘Rio Political Declaration on Social Determinants of Health.’⁵⁵ While the declaration is non-binding, it expresses a global commitment to reduce health inequalities through action in five core areas, based on the social determinants of health: “(i) to adopt better governance for health and development; (ii) promote participation in policy-making and implementation; (iii) to further reorient the health sector towards reducing health inequities; (iv) to strengthen global governance and collaboration; and (v) to monitor progress and increase accountability.”⁵⁶ The first two commitments are particularly relevant in discussions of AI/AN sovereignty and self-governance given their focus on how governance, policy-making, and program implementation affect the social determinants of health for a community.

While immediate action is necessary to improve current health outcomes in AI/AN communities, such initiatives often only provide temporary respite if the root causes of the health inequity are not effectively addressed. These underlying factors are often imbedded within economic, political, legal, cultural, and social circumstances that are referred to as the structural determinants of health.⁵⁷ WHO defines structural determinants of health as “those that generate or reinforce social stratification in the society and that define individual socioeconomic position,” which serves to “configure the health opportunities of social groups based on their placement within hierarchies of power, prestige, and access to resources.”⁵⁸ Resolving the structures that perpetuate such inequities often involves addressing community infrastructure, resources, capacities, and cohesion.⁵⁹

⁵⁵ World Health Organization, “Member States Adopt Political Declaration,” World Conference on Social Determinants of Health, last modified October 21, 2011, https://www.who.int/sdhconference/background/news/Rio_political_declaration/en/.

⁵⁶ World Health Organization, *Rio Political Declaration on Social Determinants of Health* (Rio de Janeiro: World Health Organization, 2011).

⁵⁷ Canadian Council on Social Determinants of Health, *Roots of Resilience: Overcoming Inequities in Aboriginal Communities* (Ottawa: Canadian Council on Social Determinants of Health, 2013), 1.

⁵⁸ Commission on Social Determinants of Health, *A Conceptual Framework*, 34.

⁵⁹ Canadian Council on Social Determinants of Health, *Roots of Resilience*, 1.

CONCLUSION

The AI/AN health policies of the federal government have “a long, complicated and often turbulent history.”⁶⁰ As this article has explored, the inherent sovereignty of AI/AN nations provides them a unique, extraconstitutional status within the American settler state with certain obligations for the federal government. These obligations are substantiated with the doctrine of trust responsibility and enacted by congressional plenary power. While the health policy enacted by Congress has increasingly recognized AI/AN sovereignty and provided opportunities for self-determination in program delivery, AI/AN populations throughout the United States continue to suffer from disproportionately poor health outcomes.

The IHS has demonstrated the capability to work with AI/AN on addressing factors specific to health care, but health outcomes will not improve without consideration of the complex web of economic, political, legal, cultural, and social circumstances within which AI/AN communities are confined. In this regard, effective policy to address AI/AN health disparities will require effective collaboration across government with a common commitment to decolonization. The United States Government has already committed to reducing health inequalities with greater consideration of the social determinants of health, the IHS should adopt a similar framework that better recognizes and addresses the multitude of other factors influencing AI/AN health outcomes.

⁶⁰ Donalee Unal, “Sovereignty and Social Justice: How the Concepts Affect Federal American Indian Policy and American Indian Health,” 267.

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Part 3

Domestic Policy

EXPLOITATION OR CONSERVATION: HOW THE IMPLEMENTATION OF ECOSYSTEM-BASED FISHERIES MANAGEMENT CAN LEAD THE UNITED STATES TOWARD FINDING THE RIGHT BALANCE

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Historically, the United States has based its fishery policies on the concept of Maximum Sustainable Yield (MSY) in order to fish as much as possible. During the cold war, the United States used fisheries science, and especially the MSY concept as a political tool to achieve its foreign policy objectives, instead of managing fisheries in a sustainable way. Later on, The Magnuson–Stevens Fishery Conservation and Management Act (1976), opened a new era of federal fishery management in the United States, still based on the MSY concept. Within the framework of the Act, eight regional councils were created, which are responsible for managing each fish species in isolation, without considering all the interactions within an ecosystem. All these factors have led to overexploitation of many fish stocks, degradation of habitats and negative consequences for too many ecosystems and fishing communities. This research paper explains why and how the United States' policy should consider marine ecosystems as part of its surrounding ecosystem. While ultimately the management of fisheries should move toward a more ecosystem based approach, specific reforms can produce some immediate improvements. Here, I provide both historical analysis and deeper legislative insights to promote resilient marine ecosystems and build sustainable fisheries while putting them in the broader context of ocean management.

RELATIONSHIP BETWEEN HUMANS AND FISH: HISTORICAL ANALYSIS & AMERICAN CHOICES

Over time, scientists have constructed an intelligible representation of the relationship between humans and marine ecosystems. It is a world of specialists in which I will not venture, but the functioning of the scientific models is quite simple. Here we will understand the basis of these models. These scientific elements are crucial to understand the dynamics affecting a marine ecosystem subject to fisheries.¹

Firstly, Malthus in 1798 writes the “Test on the principle of population.” According to him, if deaths outweigh births, then the population decreases to extinction. This model has never been applied to fish populations, but it allows us to explain many of the ideas that have shaped

¹ Gascuel, D., 2019. *Pour une révolution dans la mer, de la surpêche à la résilience*. 520p. Actes Sud. Collection Domaine du possible. ISBN : 2330119437

the historical management of fisheries. In this vision of the world, each year, every species is able to provide an amount of fish that can be fished. Concretely, this represents the dishes generously put on the table by nature, with its good and bad years. Then, humans just have to fish this amount, while being careful to not break the balance by fishing more fish than the ocean can produce. This is usually the vision we have: if a fishery is not sustainable, it is because humans have broken the natural balance.²

In 1838, Verhulst, a Belgian mathematician responded directly to the model of Malthus and postulated that fish populations grow toward a maximum value. His idea was simple: the amount of solar energy received by an ecosystem determines plant production (phytoplankton), and subsequently, the amount of prey available at each stage of the food chain. As a result, the abundance of a biological population is limited by the amount of food produced by nature. In this vision, as in the previous one, the abundance of a natural population tends toward a situation of equilibrium. Now, the natural balance is no longer determined by identical fertility and mortality rates, but results from the competition between individuals of the same species to appropriate part of the available food. This is a completely new idea: a species adapts to its environment.³

Based on this theory, after 1900, scientists put forward the idea that less intensive fishing would benefit fishermen. Indeed, increasing the number of boats reduces the size and age of the fish caught. As a result, there is an optimal fishing intensity that maximizes long-term capture. We can compare it to a meadow: if you harvest too much, the meadow remains young and the harvest is low. It is better to wait until the grass grows. However, we must be careful not to wait too long because after a while, the plants do not grow anymore. American biologist Milner Schaefer proposed to quantify this concept in 1954. He had to answer some concrete questions for the American government: how many boats must be accepted to obtain the optimal catch of a stock of tuna? What optimal catch can we expect from each stock?⁴

The Schaefer model includes a basic understanding of fisheries management: a natural population is able to adapt to different fishing intensities. So, there is not a single situation of equilibrium, but an infinity. A hundred boats in the water? Two hundred? Thousands? In all these situations, Schaefer's model proposes a situation of equilibrium. Of course, the number of fish

² Ibid.

³ Ibid.

⁴ Ibid.

surviving in the water is not the same from one case to another. But this drop in abundance also decreases competition between individuals: a new situation of equilibrium is established.⁵

As I have laid out, the different levels of equilibrium are not equivalent. The question is then, which equilibrium situation should we choose? Do we want a large number of boats exploiting a narrow resource, or a small number of boats exploiting an abundant resource? Do we want to maximize catch, or economic profitability? Do we want to limit fishing for ecological reasons, or to fish a lot in order to ensure an abundance of jobs? To the question “what balance do we want?” in 1935, the American Michael Graham gave a very simple answer: the goal is to produce as much as possible. This is called the “Maximum Sustainable Yield” (MSY). It requires a number of boats neither too low nor too high. When the number of boats is too low, we are in an under-exploitation situation: the catch remains limited, whereas the stock is abundant. When the number of boats is too large, the catch is also small, but for a diametrically opposite reason: it is the number of fish in the water which is the limiting factor. Contrary to what the general public believes, over-exploitation does not correspond to a loss of equilibrium, nor to an extinction of the stock (see figure below).⁶ Historically, the maximum sustainable yield has guided fisheries management strategies since the 1940s in the United States.

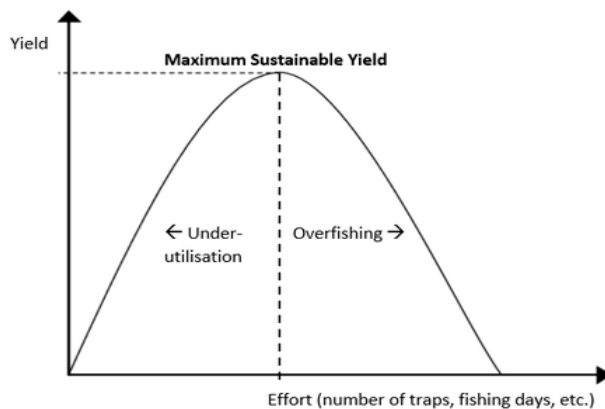


Figure 1: The Maximum Sustainable Yield : theoretical concept which has historically defined if a fish stock is underutilized or overfished.

⁵ Ibid.

⁶ Ibid.

THE MAXIMUM SUSTAINABLE YIELD: A POLICY DISGUISED AS SCIENCE

During the Cold War, the United States thought that if countries were allowed to restrict fishing in their waters, it might lead to restrictions on passage of military vessels. As a consequence, fisheries science became a tool of the State Department. Indeed, the United States enshrined the policy of “Maximum Sustainable Yield” as the goal of American fisheries management. In 1948, the United States and Mexico signed a fisheries treaty. Shortly thereafter, in January 1949, an agreement was forged to regulate the North Atlantic through the creation of the International North Atlantic Fisheries Commission (INCAP). A third treaty was signed in May 1949, with Costa Rica. Then, in 1951, MSY was essentially imposed on Japan.⁷

Two decades later, The Magnuson–Stevens Fishery Conservation and Management Act (MSA) opened a new era of federal fishery management in the United States based on the MSY concept. Through this act, The United States assumed exclusive authority for managing all fisheries within the Exclusive Economic Zone (EEZ), which stretches out to 200 nautical miles from the coast.

Passed into law in 1976, the Act was a direct answer to the increasing level of exploitation on the fish stocks of the United States coasts by foreign fishing fleets, which was perceived as a threat to both the U.S. fishing industry and the resource itself. In 1975, foreign fishing represented 91% of the catch from waters 12–200 miles off the United States coast.⁸ The main purpose of the Act was to exclude foreign fishing fleets within the United States EEZ, and it is widely recognized that the Act has accomplished this goal. The foreign catch in the EEZ for 1991 was insignificant, and in 1992 there were no foreign operations in the EEZ.⁹

Within the framework of the Act, eight Regional Fishery Management Councils (RFMCs) were created, which are responsible for preparing Fisheries Management Plans (FMPs) in federal waters under their jurisdiction. Each FMP must meet a series of National Standards (NSs) for conservation and management. Membership in each RFMC consists of a set size of voting and nonvoting members. The voting members are the principal state officials with marine fishery management responsibilities, the regional director of the NOAA National Marine Fisheries

⁷ Finley, C. et al., 2013. “Maximum sustained yield: a policy disguised as science.” *ICES Journal of Marine Science* 70: 245–250

⁸ Hollings, E., 1976. A legislative history of the fishery conservation and management act of 1976. Committee on Commerce, 94th Congress, Second session, 263 (Comm. Print 1976)

⁹ Cloutier, T.M et al., 1996. “Conflicts of interest on regional fishery management councils: corruption or cooperative management?” *Ocean & Coastal Law Journal* pp. 101-152

Service (NMFS), and up to seventeen “qualified members” that are appointed by the United States Secretary of Commerce from a list of individuals nominated by the governor of each state.¹⁰

The Act was reauthorized in 1996 with the passage of the Sustainable Fisheries Act (SFA), which aimed at fine tuning the fishery regulatory apparatus that was established under the original Act. This “fine tuning” involved increased attention to biological concerns, and removal of ambiguities within it. The Act was reauthorized again in 2007, mainly to provide for more clear directives and regulations to end overfishing, which is a notion totally based on the MSY concept explained above.

More than thirty years after the Act was passed into law, the debate among conservationists, commercial and recreational fishery representatives, and politicians on the effectiveness of the Act in achieving its purported goals continues. For example, many observers argue that the Act is an economic regulatory statute designed to promote the U.S. fishing industry at its most optimal level.¹¹

For instance, in the early 1980s, the North Pacific Fishery Management Council proposed a limited entry plan to prevent fleet overexpansion, which might further endanger the ability of managers to control harvests. The Secretary of Commerce, under the Reagan Administration, rejected the plan because it ran against free market principles and because it was contrary with basic economic liberties.¹² However, the main issue of such a policy is that it creates overcapitalization. The original Act avoided addressing the inevitability of overcapitalization, leaving the responsibility to the RFMCs, where political pressure, and sometimes an overtly evident presence of conflict of interests, results in fisheries with open access.

This brings us to the second issue, which is the lack of effective equitable sharing of decision-making power and diverse representation among the voting members in the RFMCs, which is a primary criticism of the fishery management under the Act. An analysis of appointed Council voting members representation between 1990 and 2001 found that commercial fishing interests made up 49% of the total members, recreational fishing interests made up 33%, and all

¹⁰ Dell'Apa, Andrea et al., 2012. “The Magnuson–Stevens act (1976) and its reauthorizations: Failure or success for the implementation of fishery sustainability and management in the US?” *Marine Policy, Elsevier*

¹¹ Ward, J.M et al., 2009. “Measuring management success: experience with United States fisheries.” *Marine Policy*, 33 : pp. 164-171

¹² Hsu, S.L et al., “Ecosystem management and the 1996 Sustainable Fisheries Act.” *Ecology Law Quarterly*, 24 (1997), pp. 799-811

“other” interests combined made up 17%. The “other,” according to NMFS categories for appointing voting members of the eight RFMCs, includes experts in “biological, economic, or social sciences; environmental or ecological matters; consumer affairs; and associated field.”¹³ The result of this “commercial interests” dominance is that the interests within this category are skewed towards larger corporate interests supporting larger-sized vessel, while the small-scale vessels fleets and many other sectors of fishing-dependent communities are poorly represented. It is clear that the present imbalance in representation within all RFMCs is a consequence of the historical drivers that led to the creation of the Act.

A symptomatic example of this lack of representation in the RFMC is fishery litigation. The RFMCs frequently made decisions that supported the fishermen by downplaying scientific advice and increasing catch limits. As a result, contention grew and the 1990s were characterized by a dramatic increase in litigation. This shows that decisions taken by the RFMC were not based on consensual discussions.¹⁴

WHAT IS ECOSYSTEM BASED FISHERIES MANAGEMENT (EBFM) ?

As I explained above, the traditional management strategy for fisheries and other living marine resources was to focus on one species, in isolation. On the contrary, ecosystem-based fisheries management is a holistic way of managing fisheries by taking into account the entire ecosystem of the species being managed, including social, economic and ecological aspects.

However, few stakeholders really understand what the concept covers and especially the applications it should have today, in terms of fisheries management and management of marine ecosystems. Everyone is in favor, but everyone thinks that it is a more or less meaningless concept, or at least beyond the reach of our actions, here and now.

This is not the case, and the ecosystem approach to fisheries can be a powerful lever for changing the modes of production and regulation of the sector. Everyone still needs to understand its meaning and implications.¹⁵

¹³ Okey, T.A et al., 2003. “Membership of the eight regional fishery management councils in the United States : are special interests over-represented? ” *Marine Policy*, 27 : pp. 193-206

¹⁴ Watkins, J., 2004. An ocean blueprint for the 21st century. *US Commission of Ocean Policy*. Final report, Washington, DC, USA

¹⁵ Gascuel, D., 2009. “L’approche écosystémique des pêches, une condition pour l’exploitation durable des océans. ” *Pour*, 2009/3 (N° 202-203) : p. 199-206. DOI : [10.3917/pour.202.0199](https://doi.org/10.3917/pour.202.0199)

THREE REASONS TO UNDERSTAND WHY MOVING FROM SINGLE SPECIES STOCK MANAGEMENT UNDER MSY TO ECOSYSTEM BASED FISHERIES MANAGEMENT IS A NECESSARY PARADIGM SHIFT

- 1) Beyond the ecological sustainability of natural resources, the objective of fisheries management is to ensure the long-term economic and social sustainability of the fisheries sector. In general, fishermen harvest a pool of species. Thus, the bioeconomic models of fisheries often refer, more or less explicitly, to geographical areas that ecologists will consider as ecosystems. From this point of view, ecological and economic approaches are convergent, and it seems relevant to combine them.
- 2) Of course, species interact with each other. Cod eat herring, which eats cod larvae. These relationships are strong and stocks should not be managed independently. More generally, the changes in abundance of the targeted species affect the abundance of their prey, competitors and predators. Ultimately, it is the global properties of the ecosystems that can be affected, including their productivity, biodiversity and stability, as shown on the figure below.¹⁶

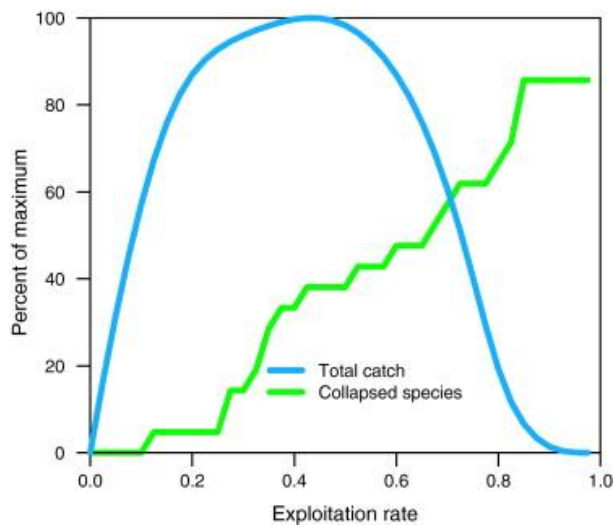


Figure 2: The sustainable yield, and number of stocks collapsed as consequences of different fishing mortality rates from an ecosystem model.

¹⁶ Hilborn, R., 2011. "Future directions in ecosystem based fisheries management: A personal perspective. " *Fisheries Research*. Volume 108, Issues 2–3 (2011) : pages 235-239

- 3) Beyond fisheries, other human impacts affect marine ecosystems and need to be taken into consideration. Particularly, habitat destruction (e.g. destruction of coastal zones, mangroves) have very significant effects on the dynamics of ecosystems. This aspect is important to consider. For example, fisheries resources dependent to the coastal zones represent 80% of species of commercial interest in the United States.¹⁷ Furthermore, climate change affects the marine environment with already significant changes in the distribution of many species and sometimes catastrophic impacts.

Two questions thus arise: does the United States have capable legal systems mandated to support cross-jurisdictional EBFM; and does the political will and institutional and technical capacity exist to take the necessary efforts and investments to implement EBFM?

WHAT HAS BEEN DONE IN THE UNITED STATES IN TERM OF EBFM IMPLEMENTATION?

In the United States, Fishery Ecosystem Plans (FEPs) have emerged as a means to implement EBFM. They were conceived as guidance documents for implementing ecological principles in U.S. fisheries management. United States law requires that regulations governing each fishery be set within Fishery Management Plans (FMPs). In contrast, FEPs are not mandated, and can be developed at the discretion of each Council to guide their efforts on EBFM. Four of eight Council regions have completed FEPs. The first generation of FEPs compiled information on interactions between fish stocks and the marine environment, but did not develop advice to incorporate the effects of those interactions into decisions. They also lacked detail on the social and economic dimensions of fisheries.¹⁸

Additionally, the FEP does not provide a way to evaluate the degree to which these objectives are being met (i.e. they are not operational). At the time, the dialogue that occurred as

¹⁷ Lellis-Dibble KA et al., 2008. “Estuarine fish and shellfish species in U.S. commercial and recreational fisheries: Economic value as an incentive to protect and restore estuarine habitat.” *National Oceanic and Atmospheric Administration. NOAA Technical Memorandum* no. NMFS-F/SPO-90

¹⁸ Marshall, K.N et al., 2018. “Ecosystem-Based Fisheries Management for Social–Ecological Systems: Renewing the Focus in the United States with Next Generation Fishery Ecosystem Plans.” *Conservation letters* 11: e12367. DOI: [10.1111/conl.12367](https://doi.org/10.1111/conl.12367)

the FEP was created was, itself, one of the major accomplishments of the FEP, not the implementation.¹⁹

PRECONDITIONS FOR IMPLEMENTATION OF EBFM APPROACH

Create a National Ocean Council to coordinate ocean management at a global scale

Ocean and coastal activities are conducted by many Federal departments (e.g. the United States Coast Guard is part of Department of Homeland Security, NMFS is part of Department of Commerce, United States Fish and Wildlife Service is part of the Interior Department). They have varying ocean and coastal responsibilities, including fisheries. Considering that EBFM should take into account the entire ecosystem of the species being managed, including social, economic, and ecological aspects, a structure which coordinates all these federal departments and agencies should be created to effectively manage oceans, including fisheries.²⁰

As fisheries and all other stakes related to the ocean need to be managed in a holistic way, Congress should establish a National Ocean Council (NOC) within the executive office of the President in order to provide coordination for ocean management. The NOC should be composed of cabinet secretaries of departments with appropriate ocean and coastal related responsibilities. Hence, the NOC should coordinate and integrate activities of ocean related departments. The NOC should coordinate the development of procedures for the practical application of the ecosystem-based management, which includes the Ecosystem Based Fisheries Management.

Reform the RFMC: effective equitable sharing of decision-making power and training of its members

There is uneven representation on RFMCs. Amendments are needed to ensure that RFMC membership is balanced among competing user groups and other interested parties, and that fishery management reflects a broad, long term view of the public's interest. Identifying the best mix will require knowledge of the federal fishery management process and understanding of

¹⁹ Dawson et al., 2019. "Moving the ecosystem-based fisheries management mountain begins by shifting small stones: A critical analysis of EBFM on the U.S. West Coast." *Marine policy*, volume 100 (2018) : Pages 58-65. DOI : <https://doi.org/10.1016/j.marpol.2018.11.005>

²⁰ Okey, T.A et al., 6

other factors affecting ocean ecosystems. This expertise resides in the NOAA administrators, not the Secretary of Commerce, who is currently responsible for appointing RFMC members.²¹

Congress should give the Administrator of NOAA responsibility for appointing RFMC members, with the goal of creating Councils that are knowledgeable, fair, and reflect a broad range of interests

Congress should develop an explicit formula that could be inserted in National Standard 4 requirements in order to ensure a broader and more balanced representation of interests with the objectives of preventing fishing industry interests to prevail, while still encouraging participatory co-management.

As seen above, fisheries management require an ecosystem-based management approach and demands expertise in biology, economics, and public policies. Currently, there is a lack of information for the people who come into the process. As an example, Julie Morris, a member of the Gulf of Mexico council said: “After six months [of work in marine fisheries], I am still struggling to understand the concept of maximum sustainable yield...”²²

Congress should amend the MSA to require all newly appointed RFMC members to complete a training course within six months of their appointment. Hence, council members would be able to make decisions affecting fishery resources, fishermen, fishing communities with an adequate understanding of all relevant scientific, economic and social information. With the policy recommendations below, a framework for deliberate, informed and transparent decision-making could support the implementation of new generation of FEPs.

PRACTICE IMPLEMENTATION OF EBFM THROUGH NEXT GENERATION OF FISHERIES ECOSYSTEM PLANS

Here, I emphasize the need for a new generation of FEPs that provide practical mechanisms for putting EBFM into practice in the United States. I argue that next-generation FEPs can balance environmental, economic, and social objectives to improve long-term planning for fishery systems.

Congress should amend the MSA to promote more comprehensive management by requiring RFMCs to develop “next generation FEPs” for all ecosystems under their jurisdiction.

²² Okey, T.A et al., 6, 10

These plans should be based on existing scientific data and should be based on the theoretical framework of the EBFM. Congress should assert that “next generation FEPs” should embrace fishery systems as linked, interacting biophysical and human systems. Briefly, the steps should be: (1) inventory the state of the social–ecological system, (2) set strategic objectives for management of the system and prioritize issues that will be addressed, (3) develop projects and evaluate management strategies to achieve objectives, (4) implement management strategies, and (5) monitor progress and evaluate impacts.²³

The EBFM challenge is an opportunity to increase trust in the fishery management process and improve public trust by addressing the ecological impacts of fishing in a credible and systematic fashion. Furthermore, it can improve public awareness of the economic and social benefits of well-managed fisheries, enhancing public support for fishing communities. Finally, the implementation of the EBFM in the United States will help put fishery management in the broader context of ocean and coastal management.

²³ Lellis-Dibble KA et al., 8

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EDUCATION POLICY FOR ENGLISH LANGUAGE LEARNERS

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In the United States, English language learner (ELL) students face significant barriers to academic success due to teacher shortages and under-qualification, inability to protest due to immigration status or language barriers, and general underinvestment by the education system. In light of the changing demographics of the American school-age population, the U.S. education system will need to adapt its approach to working with English learners in the near future. Lessons learned from states like Colorado provide models for appropriate education policy for non-native speakers of English, who are most often children of refugees or immigrants, but implementation is needed on a national level.

In the United States, English language learners (ELL) of schooling age face significant barriers to academic success due to scarce resources and protections. An English Language Learner is defined as “a student who speaks English either not at all or with enough limitations that he or she cannot fully participate in mainstream English instruction.”¹ Their academic experience leaves little to no margin for error. They either succeed in learning English quickly or miss out on their right to quality education due to the linguistic barrier. Numerous factors contribute to the lack of adequate education policy for non-native speakers of English, who are most often children of refugees or immigrants. The American education system’s failure to implement solutions to fix the process of teaching non-native speakers English will undoubtedly bear consequences on these students’ ability to attend college, overcome poverty, and participate in the non-manual labor-based economy.

There are a few commonly used educational interventions for English language learners: transitional bilingual, teaching English to speakers of other languages (TESOL), and dual-language immersion. TESOL is essentially remedial English instruction, transitional bilingual involves using native language and English simultaneously, and dual-language splits the school day by language.² English language learners are also sometimes referred to as English as a

¹ Claude Goldenberg, “Improving Achievement for English-Learners - Education Week,” *Education Week*, July 26, 2006, 10, <https://www.edweek.org/ew/articles/2006/07/26/43goldenberg.h25.html>.

² Claudio Sanchez, “English Language Learners: How Your State Is Doing,” NPR.org, accessed October 24, 2019, <https://www.npr.org/sections/ed/2017/02/23/512451228/5-million-english-language-learners-a-vast-pool-of-talent-at-risk>.

Second Language (ESL) and Limited English Proficient (LEP) students. Phrases with English as a Second Language in them are being phased out of formal use, as they inaccurately describe the English language learner population, for many of whom English is a third or fourth language.

Since 1980, the population of “language other than English” (LOTE) speakers in the United States has increased by over 150%, of which approximately two-thirds are Spanish speakers.³ The school-age population of English language learners has increased at the same rate in the past 30 years; the ELL population has grown exponentially from 2 million to 5 million.⁴ In the United States, ELL students make up nine percent of public school enrollment and attend 75 percent of public schools.⁵ Almost a third of ELLs live in California.⁶ The states besides California with the largest ELL populations are New York, Arizona, Florida, Texas, and Illinois.⁷ A majority of ELLs are United States born, but their parents are first-generation immigrants.⁸ Their guardians are educated at disproportionately lower rates compared to their native English peers.⁹ While eighty percent of this population are Spanish speakers, the remaining twenty percent speak Arabic, Chinese, Vietnamese, and other languages.¹⁰ According to a Grantmakers for Education report, sixty percent of ELLs live in homes with a household income below 185 percent of the federal poverty line.¹¹

The ELL population cannot simply be described by their nationality, native language, or socioeconomic status. Although difficult to quantify beyond test scores, they carry unique and diverse skill sets related to speech, reading comprehension, and vocabulary. Like native English speaking students, they have strengths and weaknesses that cannot be simplified to a grade level or categorical assessment of their language skills like beginner or intermediate. A one size fits all approach does not work for this incredibly diverse group.

³ Jennifer M Ortman, “Language Projections: 2010 to 2020,” 2011, 23.

⁴ Goldenberg, “Improving Achievement for English-Learners - Education Week,” 10.

⁵ Office of Civil Rights, “Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs” (U.S. Department of Education, n.d.).

⁶ Sanchez, “English Language Learners: How Your State Is Doing.”

⁷ Ibreiseth, “What You Need to Know About ELLs: Fast Facts,” Text, Colorín Colorado, September 17, 2015, <https://www.colorincolorado.org/article/what-you-need-know-about-ells-fast-facts>.

⁸ Jeanne Batalova and Jie Zong, “The Limited English Proficient Population in the United States,” migrationpolicy.org, July 7, 2015, <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>.

⁹ Jessica Chao and Jen Schenkel, “Educating English Language Learners” (Grantmakers for Education, April 2013), 7.

¹⁰ Sanchez, “English Language Learners: How Your State Is Doing.”

¹¹ Jessica Chao and Jen Schenkel, “Educating English Language Learners,” 7.

There is some variation with respect to types of programs offered to ELLs. Twelve percent of ELLs receive no programmatic language support, fifty percent are in all-English programs, and forty percent are in bilingual programs.¹² Numerous studies suggest that two-language programs increase academic achievement for both English language learners and native speakers.¹³ Yet, educational language policy has proven controversial and essentially nonexistent at the congressional and presidential level. Cultural notions of bilingual education in the United States are mixed.

In the U.S., there were generally positive attitudes towards the use of European languages prior to World War I with a key exception: slaves were not allowed to use their native languages. Prior to the first World War, German-English bilingual schools were accepted. After World War II, a wave of anti-foreign language sentiment spread across the US. By 1919, 34 states restricted teaching foreign languages in schools.¹⁴ Ironically, Spanish is taught as a ‘foreign language’ in the United States, despite the fact that it was spoken before English.¹⁵ It is generally seen as positive for students of high socioeconomic status to learn via bilingual education, particularly in immersion school contexts, but negative for poorer ELL students.¹⁶

In this paper, I will be using ELLs and English learners to refer to the target population of many of these education language policies. This paper provides an overview of the various studies, policies and practices relevant to ELLs education in the United States as well as potential policy responses to current shortfalls in the education system.

¹² Claude Goldenberg, “Improving Achievement for English-Learners - Education Week,” *Education Week*, July 26, 2006, <https://www.edweek.org/ew/articles/2006/07/26/43goldenberg.h25.html>.

¹³ Andrew Myers, “Two-Language Instruction Best for English-Language Learners, Stanford Research Suggests,” Stanford Graduate School of Education, March 24, 2014, <https://ed.stanford.edu/news/students-learning-english-benefit-more-two-language-programs-english-immersion-stanford> and Wayne P. Thomas and Virginia Collier, “English Learners in North Carolina Dual Language Programs: Year 3 of This Study: School Year 2009-2010,” 2014, 3.

¹⁴ Wiley, Terrence G., and Ofelia García. “Language Policy and Planning in Language Education: Legacies, Consequences, and Possibilities.” *The Modern Language Journal* 100, no. S1 (January 2016): 48–63. <https://doi.org/10.1111/modl.12303>.

¹⁵ Terrence G. Wiley and Ofelia García, “Language Policy and Planning in Language Education: Legacies, Consequences, and Possibilities,” *The Modern Language Journal* 100, no. S1 (January 2016): 48–63, <https://doi.org/10.1111/modl.12303>.

¹⁶ Valerie Strauss, “Why Is Bilingual Education ‘Good’ for Rich Kids but ‘Bad’ for Poor, Immigrant Students?,” Washington Post, accessed October 24, 2019, <https://www.washingtonpost.com/news/answer-sheet/wp/2014/10/24/why-is-bilingual-education-good-for-rich-kids-but-bad-for-poor-immigrant-students/>.

DEFINING EDUCATION LANGUAGE POLICY

Language policy serves as a gatekeeper in our society and determines who has access to information, social services, citizenship, the job market, and more. It serves to exclude some and include others. Education language policy falls at the intersection of a number of political, social, and economic considerations in both national and international settings. Education language policy, also known as language-in-education policy, language education policy, and language policy in education, is a subset of this area of study that involves policies which determine the use of language in the educational sphere, particularly schools. While one would hope that language education policy is grounded in pedagogical considerations backed by research regarding language acquisition, it most often is shaped by frequently changing political motives.¹⁷ Kaplan and Baldauf define language policy as policies that are “intended to achieve a planned change (or to stop change from happening) in the language use in one or more communities.”¹⁸ Language policy relies upon language planning, which can be either positive or negative. Positive language planning expands the number of linguistic options, while negative language planning limits the number of linguistic options.¹⁹

FEDERAL POLICY

The United States is one of just a few countries globally with no official national language policy, although many states have laws claiming English as the official language.²⁰ On the federal level, a few pieces of legislation have passed. Title VI of the Civil Rights Act of 1964 states that any program receiving federal funding cannot discriminate on the basis of race, color, or national origin. A 1970 Department of Health, Education, and Welfare Memo Regarding Language Minority Children made clear that school districts were responsible for providing ESL and contacting parents in a language they can understand. School Districts were also prohibited

¹⁷ Elana Goldberg Shohamy, *Language Policy: Hidden Agendas and New Approaches* (London ; New York: Routledge, 2006), 92.

¹⁸ Robert B. Kaplan and Richard B. Baldauf, *Language Planning from Practice to Theory*, Multilingual Matters 108 (Clevedon, [Eng.] ; Philadelphia: Multilingual Matters, 1997), 3.

¹⁹ John E. Petrovic, *A Post-Liberal Approach to Language Policy in Education*, New Perspectives on Language and Education 41 (Bristol ; Buffalo: Multilingual Matters, 2015), 2.

²⁰ Alfredo J. Artiles and Alba A. Ortiz, *English Language Learners With Special Education Needs* (Center for Applied Linguistics, 4646 40th Street, N, 2002), <https://eric.ed.gov/?id=ED482995>.

from assigning ELL students to special education classrooms strictly due to English based assessment and permanently tracking students as ESL.²¹

In 1974, the Supreme Court asserted in *Lau v. Nichols* that school districts would have to provide “appropriate relief” to ELL students who were not offered English language instruction in the San Francisco Unified School District.²² Lau was placed in a English speaking classroom with no intervention related to his English language proficiency and thus was essentially excluded from accessing the education to which he was entitled.

The Bilingual Education Act (BEA), passed by Congress and signed into law by Johnson in 1968, provided federal grants to establish English language learner (ELL) programs.²³ After 34 years, the law expired with the passing of George Bush’s 2002 No Child Left Behind program, replaced with the English Language Acquisition Act (ELAA).²⁴ ELAA cut the budget for ELL learners by half and established English only instruction. In the 1982 Supreme Court case *Plyler v. Doe*, the Court held that undocumented students in the United States have claim to free public education. This case determined that Texas law prohibiting educational funds to be spent on undocumented persons was unconstitutional.²⁵

In 1994, Congress conducted a study prior to renewing the BEA which established the link between education language policies and immigration, barriers to participating in American society for ELL students, and the importance of bilingual programs in an increasingly globalized world.²⁶ Obama signed the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act and replaced the No Child Left Behind Program (ESEA), in 2015.²⁷ ESSA’s Title I describes how funds to improve academic outcomes for students in high poverty schools should be allocated and spent. Title III states that fifteen percent of funds must go toward language instruction for English learners and immigrant children.

²¹ J. Stanley Pottinger, “DHEW Memo Regarding Language Minority Children,” Federal Register Notices; Policy Guidance, September 26, 2018, <https://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html>.

²² *Lau v Nichols*, No. 414 U.S. 563 (United States Supreme Court 1974).

²³ Gloria Stewner-Manzanares, “The Bilingual Education Act...,” *The National Clearinghouse for Bilingual Education*, 1988, 1–10.

²⁴ James Crawford, “The Bilingual Education Act, 1968–2002: An Obituary,” in *Advocating for English Learners: Select Essays*, 2008, 125–27.

²⁵ *Plyler v. Doe*, No. 80–1538 (United States Supreme Court 1982).

²⁶ Crawford, “The Bilingual Education Act, 1968–2002: An Obituary,” 125–27.

²⁷ U.S. Department of Education, “Educational Services for Immigrant Children and Those Recently Arrived to the United States,” Pamphlets, September 19, 2014, <https://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>.

The Office of Civil Rights (OCR) under the Department of Education is responsible for enforcing both Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964.²⁸ Thus, formal complaints of compliance failure go to the OCR.

STATE POLICY

States have their own laws related to language education policy. The variation seen among states with respect to ELL policy is dramatic. Since the federal government contributes only 11 percent of what local school districts spend, states have flexibility in the education policy making process.²⁹ The diversity of policy, funding, and populations makes it difficult for researchers to assess what is effective for ELLs on a national scale. Just four should-cost studies specifically focused on ELLs have been conducted since 1990 and they all reached similar conclusions that programs require more funding, but it is uncertain exactly where said funding be spent.³⁰

California, Massachusetts, and Arizona ban the use of non-English instruction in the public classroom. Arizona requires ELLs to undergo Structured English Immersion (SEI) until reclassified as proficient based on scores from the Arizona English Language Learner Assessment (AZELLA) test.³¹ Only 15% of ELL students were ultimately reclassified, highlighting the failure of the program. In May of 2019, Governor Ducey signed into Arizona law Senate Bill 1014, which relaxes requirements for proficiency and time spent in SEI in hopes of improving abhorrent outcomes for the students.³²

In the 1992 case *Flores v Arizona*, the plaintiffs charged the state with allowing for an unequal distribution of funds and resources for low income schools populated with students of color as compared to wealthier, whiter schools.³³ The court ruled in favor of the plaintiffs, in

²⁸ Department of Health and Human Services, “Laws and Regulations Enforced by OCR,” Text, HHS.gov, August 22, 2007, <https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html>.

²⁹ Lauren Musu-Gillette and Stephen Cornman, “Financing Education: National, State, and Local Funding and Spending for Public Schools in 2013,” *National Center for Education Statistics* (blog), accessed December 12, 2019, <https://nces.ed.gov/blogs/nces/post/financing-education-national-state-and-local-funding-and-spending-for-public-schools-in-2013>.

³⁰ Sonya Douglass Horsford and Carrie Sampson, “High-ELL-Growth States: Expanding Funding Equity and Opportunity for English Language Learners.”

³¹ “Arizona English Language Learner Program” (Office of the Auditor General, June 2011).

³² Kelsey Mo, “New Law Changes How English Language Learners Are Taught.,” *Cronkite News - Arizona PBS* (blog), May 14, 2019, <https://cronkitenews.azpbs.org/2019/05/14/english-immersion-changes-ell/>.

³³ *Flores v. Arizona* (U.S. District Court for the District of Arizona 2000).

accordance with *Lau v Nichols*, in 2000. Despite the case's outcome, Arizona has continually been criticized for segregating English learners from the rest of the school age population.

Colorado, on the other hand, has rejected English-only education policies. Outlined in the English Language Proficiency Act, the state provides over 21 million dollars a year to local programs aimed at ELLs, distributing funds according to the proportion of ELL students in “evidence-based English proficiency programs. Additionally, the Professional Development and Student Support Program allocates 27 million dollars towards offsetting professional development costs, such as Spanish classes, teachers incur associated with working with ELLs.

RELEVANT STUDIES AND RESEARCH

Numerous studies suggest that two language programs increase academic achievement for both English language learners and native speakers. A recent Harvard Graduate School of Education Study suggested that native English and ELL English speakers achieve similar or better reading levels with proper and timely “intervention.” The consequences of ineffective (or lack of) intervention, however, are catastrophic for these students' futures. David Murphy writes in his article *The Academic Achievement of English Language Learners*: “The achievement gap between ELL and non-ELL students—about 40 percentage points in both fourth grade reading and eighth grade math—has been essentially unchanged from 2000 to 2013. However, the achievement of former ELL students shows greater progress.”³⁴ For English learners, every test is an English test. Despite the fact that a student may know how to complete the word problems on a math test, their inability to read the instructions or the problem means they will fail.

Learning to read in native language translates to higher reading scores in English. Certain skills, including literacy and knowledge, transfer across languages, even those with different alphabets.³⁵ Students who receive first and additional language instruction ultimately score 12 to 15 percentile points higher on reading tests than those who solely receive English instruction.³⁶ These findings point to the fact that non-native English speakers do not have to choose between their native language and English. Additionally, students in some level of bilingual education

³⁴ David Murphey, “The Academic Achievement of English Language Learners;,” *Child Trends*, Research Brief, no. 62 (December 2014): 9.

³⁵ Claude Goldenberg, “Teaching English Language Learners: What the Research Does - and Does Not - Say,” *American Educator*, Summer 2008, 15.

³⁶Ibid, 16.

were more likely to become bilingual and biliterate which ultimately provides them a substantial competitive advantage in a globalized job market that rewards employees for knowledge of secondary languages. English Language Learners respond to best practice instruction techniques applicable to all students backed by research such as clear learning goals, frequent feedback, and group learning.³⁷

Scholars distinguish BICS (Basic Interpersonal Communication Skills) from Cognitive/Academic Language Proficiency (CALP). BICS is easier to acquire; it is the social language that is used in hallway conversations with friends. CALP, on the other hand, is crucial for academic success in schools. Oftentimes, schools push ELLs out of TESOL or bilingual programs as soon as they gain proficiency in BICS. This is the case despite the fact that commonly, the stated purpose of English programs is to both help students achieve English proficiency and academic success.³⁸

ELLs have to deal with the structurally racist and xenophobic elements in the education system in addition to learning a new language. In elementary school, ELLs and native English speakers are suspended at similar rates. By the time they get into high school and middle school, the difference is drastic. ELLs are suspended at a higher rate at the high school (13.8 percent versus 7.6 percent) and middle school (18.4 percent versus 10.4 percent) levels compared to their non-English learner peers.³⁹ Students who are regularly suspended have lesser academic achievement and significantly lower graduation rate. If an ELL student has a learning disability, they are even further disadvantaged by an unsuccessful child-find process that often inaccurately identifies students. Ultimately, English learners have a graduation rate of 63%, while the non-ELL graduation rate is 82%.⁴⁰

What happens when things go wrong? The complaint process for school district compliance failure goes through the Office for Civil Rights. However, this procedure is completely inaccessible to the parents of ELL parents, most of whom are English learners new to the United States themselves.⁴¹ One can imagine a scenario where a child is an ELL, but the

³⁷ Ibid, 17.

³⁸ *Help! They Don't Speak English: Starter Kit*, 3rd ed. (Oneonta, New York: Eastern Stream Center on Resources and Training, 1998), 60.

³⁹ Arthur Burke, "Regional Educational Laboratory Program (REL)," Indexes; Offices (Education Northwest), accessed October 24, 2019, <https://ies.ed.gov/ncee/edlabs/projects/project.asp?projectID=429>.

⁴⁰ Sanchez, "English Language Learners: How Your State Is Doing."

⁴¹ Goldenberg, "Improving Achievement for English-Learners - Education Week."

most proficient in their household, and is still the only member of the household who can effectively advocate for their educational rights. However, they do not have the ability to do that because the parents hold the rights to their child's education, not the child themselves.

FUNDING AS A CRUCIAL FIRST STEP

Although there is federal funding for ELLs, it is not enough. ELL provisions are disastrously underperforming and underfunded. Some states, like Nevada and South Carolina, provide no funding at all.⁴²

Patricia Gandara and Russell Rumberger studied the California education system and suggest that funding to support English learners be funneled in five areas:

1. A high-quality preschool program
2. A comprehensive instructional program that addresses both English language development and the core curriculum
3. Sufficient and appropriate student and family support
4. Ongoing professional support for teachers with a significant focus on the teaching of ELL students
5. A safe, welcoming school climate.

While 2, 3, and 5 are fairly general points, investment in preschools and professional support programs are fairly straightforward. Preschools are less available and less accessible financially to Latino communities. The per head cost of preschool subsidies for English learners would be approximately \$5,000. When students arrive at preschool or kindergarten, teachers should be prepared to help them succeed. Professional support programs may include continual TESOL or additional language training, depending on the staff or faculty member and their needs. Only one percent of teachers are professionally qualified to work with ELLs.⁴³

The parents of ELLs, particularly those who are refugees and undocumented immigrants, feel unwelcome and unhelpful in the school environment due to language, political, and social

⁴² Sonya Douglass Horsford and Carrie Sampson, "High-ELL-Growth States: Expanding Funding Equity and Opportunity for English Language Learners."

⁴³ "Limited-English Students Test Public Schools," Face the Facts USA, 2013, <http://www.facethefactsusa.org/facts/limited-english-students-test-public-schools>.

barriers. The financial and accountability burden cannot be placed on the parents of the English learner, who are statistically low income and English learners themselves.⁴⁴ Google Translate provides free translation services that are comprehensible for major languages, particularly Spanish. ELL parents have the right via federal law to receive all official school notices that an English speaking one does in a language they understand.⁴⁵ Additionally, school districts should have internal enforcement measures and audits conducted by independent bodies to account for the challenges ELL students and their families have in fighting for their right to education.

Part of the solution for English learners may be to put the parents' in their student's shoes. This way, parents and children can learn English together. The Carlos Rosario School in Washington, DC partners with local public schools to provide tuition-free English classes to parents of ELLs. The curriculum not only teaches parents English, but essentially information and norms related to navigating the American education system and advocating for their child.

There are, however, funds that can and should be reallocated. The federal government currently has 225 million dollars allocated for Community Oriented Policing Services (COPS). Usually, those funds cover 75% of the officer's salary and benefits; schools are expected to match the remaining 25%.⁴⁶ Chongmin Na's study on police officers in schools found that their increased placement results in increased referrals of misdemeanors to law enforcement that would historically be handled by an administrator.⁴⁷ The money that is used to subsidize the cost of a "school resource officer" by 75% could be reallocated as a federal subsidy to train current teachers how to communicate or hire a faculty member to work specifically with ELLs. Alternatively, schools could invest those funds into getting a counselor to provide support to all students, but especially those, including ELLs, coming from vulnerable home situations.

Staff in schools who can effectively communicate with ELLs can serve as a bridge between them and the school community. These professionals may be bilingual or trained to communicate with ELLs, but they certainly can advocate for students in disciplinary and

⁴⁴ Patricia Gándara and Russell W. Rumberger, "Resource Needs for California's English Learners" (University of California Linguistic Minority Research Institute, 2006).

⁴⁵ J. Stanley Pottinger, "DHEW Memo Regarding Language Minority Children," Federal Register Notices; Policy Guidance, September 26, 2018, <https://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html>.

⁴⁶ Andrew Ujifusa, "House Lawmakers Seek Federal Money for More School Police Officers," Education Week - Politics K-12, accessed December 12, 2019, <http://blogs.edweek.org/edweek/campaign-k-12/2018/12/house-republicans-school-police-officers-legislation.html?cmp=SOC-SHR-FB>.

⁴⁷ Chongmin Na and Denise C. Gottfredson, "Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors," *Justice Quarterly* 30, no. 4 (August 2013): 619–50, <https://doi.org/10.1080/07418825.2011.615754>.

academic contexts. If a bilingual student is being punished for breaking the rules, they sometimes do not have the words to explain or defend themselves. While a majority of public school teachers instruct ELLs, less than a third had basic training to work with English learners. The federal government offers few incentives to encourage teachers to gain TESOL certification. Programs like TEACH Grants are largely ineffective due to restrictive eligibility requirements.⁴⁸ Programs modelled after the Colorado Professional Development and Student Support Program could enable and incentivize teachers to receive training to better serve ELLs. What makes this issue even more complicated, however, is that many schools with high ELL populations also face significant teacher shortages.⁴⁹ Thus, increasing eligibility requirements for employment would be impossible. However, schools could offer financial incentives for those with ELL certification.

There are also certain measures that cost no money. Understandably, some recommendations for programming are impossible to implement in an already failing school. The responsibility to educate ELLs falls on the entire education system, not just schools that have the highest proportions of ELLs students. In 2016, 32 states did not have the teachers for ELLs.⁵⁰ Although English learners are present in 75% of all United States schools, 70% of English learners attend just 10% of public schools.⁵¹ Most often, these schools have significantly higher than average rates of free and reduced lunch along with other economic indicators of vulnerability.⁵² In situations where schools are resource poor and can only provide all-English instruction, teachers and administrators can still make adjustments to support ELLs. These modifications are generally best practices that could improve comprehension for all children. For example, vocabulary lists would include visuals alongside definitions. The lesson plan makes use of multiple media forms. At the end of class, the most important points are summarized.⁵³

⁴⁸ Kreighbaum, "Report Finds Teachers Faced with Loan Payments after Failing to Meet Grant Requirements," accessed March 1, 2020, <https://www.insidehighered.com/news/2018/03/29/report-finds-teachers-faced-loan-payments-after-failing-meet-grant-requirements>.

⁴⁹ Sanchez, "English Language Learners: How Your State Is Doing."

⁵⁰ Ibid.

⁵¹ Goldenberg, "Improving Achievement for English-Learners - Education Week," 10.

⁵² Patricia Gándara and Russell W. Rumberger, "Resource Needs for California's English Learners" (University of California Linguistic Minority Research Institute, 2006).

⁵³ *Help! They Don't Speak English: Starter Kit*, 3rd ed. (Oneonta, New York: Eastern Stream Center on Resources and Training, 1998), 61.

CONCLUSION

When English learners do better, we all do better. The success of ELLs is not mutually exclusive with that of native English speakers. The research shows that multilingualism should be celebrated in the classroom. Yet, in practice students with knowledge of two or more languages are sanctioned socially by their peers and English-only school policies. If anything, native English speakers in the United States fall short when it comes to knowledge of other languages despite an increasingly globalized world where multilingualism is an economic advantage.

U.S. civil rights law honors the rights of all school-aged people to receive a free public education. New Americans come to the United States for a number of reasons including religious freedom, economic opportunity, and safety from conflict, but they most certainly do not bring their children across borders to be set up for failure in our education system. The current process takes advantage of ELL's lack of financial resources, time, and knowledge of formal institutions to continue perpetuating inequality in the classroom and by extension in our society.

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POLICY RETRENCHMENT AND LOW-INCOME RENTERS: THE FAILURE OF FEDERAL HOUSING POLICY

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The United States is currently witnessing a dramatic shortage of affordable housing for low-income renter households. 20.8 million renters spend more than 30 percent of their income on rent and 11 million renters spend more than 50 percent of their income on rent. Yet nationwide, only one in four eligible Americans receive housing assistance. Using Yale political-scientist Jacob Hacker's and University of California, Berkeley political-scientist Paul Pierson's notions of policy retrenchment, I will examine the contemporary history of federal housing policy retrenchment and its implications for our current housing climate and federal assistance to low-income renters.

INTRODUCTION

The recognition of the need for policy to mitigate the dearth of low-income housing spans back to the early 20th century. The Housing Act of 1937, which established the Public Housing program, sought “to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low-income.”¹ The Housing Act of 1949 followed up with the recognition that housing was essential to the health and living standards of the nation’s citizens, that there was a “serious housing shortage,” and that “a decent home and suitable living environment” ought to be reality for every American family.² The language of such early pieces of federal housing legislation set forth ambitious visions for ensuring safe, decent, and affordable housing for all Americans. Yet as a nation, we have consistently failed to do so, especially for low-income Americans.

Low-income renters across the United States face ever-increasing housing costs that not only amplify the threats of eviction and homelessness but contribute to the economic insecurity and psychological stress hindering the wellbeing and prosperity of millions of Americans. Given a homelessness crisis of over 550,000 individuals, inflating housing costs burdening greater numbers of households, and a near record shortage of low-income affordable housing, this paper will explore the failure of federal housing policy to provide for low-income renters that can, in

¹ The United States Housing Act of 1937, as Amended, 42 U.S.C. § 1437

² Housing Act of 1949, 42 U.S.C. § 1471

part, help explain how the United States got to where it is. In focusing on the major federal components of the American welfare state that serve, at least in theory, low-income renters in the United States, I seek to demonstrate the history of housing policy retrenchment and stagnation that have exacerbated the housing crisis afflicting the United States. Given the length limits of this paper, I will only focus on three federal rental assistance programs to low-income tenants: Public Housing, Section 8 Housing Choice Vouchers (HCVs), and Project-based Rental Assistance (PBRA).

Utilizing frameworks of welfare retrenchment developed by Yale political-scientist Jacob Hacker and University of California, Berkeley political-scientist Paul Pierson, I will show how federal rental assistance in its major forms has been subject to “policy drift”—the phenomenon of policy failing to change, or update, as social and economic conditions change and in spite of viable solutions. As economic and social contexts shift, the effects of social policy are corroded as it no longer meets the needs of vulnerable populations intended to receive protection from the policy. Moreover, policy fails to update or change even when presented with viable alternatives that could alleviate or address altered circumstances and the short comings of pre-existing policy. While drift provides a framework to understand active non-decisions to increase federal funding as problems have worsened, retrenchment can be pursued through many means such as overt reform, as in the case of welfare reform in 1996, and layering, such as the creation of housing choice vouchers in the 1970s. The underlying theme is that expanded and sufficient assistance to meet the growing needs of low-income renters, no matter its substantive form, has failed to materialize.

OVERVIEW OF MAJOR RENTAL ASSISTANCE PROGRAMS

The federal government has pursued three basic policy approaches when it comes to low-income rental housing assistance: government ownership and operation of housing built for low-income households; government contracts with private parties to build or rehabilitate, and operate housing for low-income households; and subsidies to eligible households to access housing in the private market.³ Throughout the history of federal housing policy, rental

³ Edgar O. Olsen, "Housing Programs for Low-Income Households," in *Means-Tested Transfer Programs in the United States*, ed. Robert A. Moffitt (Chicago, IL: University of Chicago Press, 2003), 366

assistance has never been an entitlement. An “entitlement program” entails that those who are eligible and apply for assistance are guaranteed such assistance, while the government is obliged to provide full funding for the program.⁴ A non-entitlement program creates a budget constraint that limits access to services. Consequently, even though there are many people who may be eligible and choose to receive services, the constrained supply makes them unavailable. In the case of rental assistance, most eligible people do not receive benefits because of such constraints. In its most recent overview of the three main housing assistance programs provided by the federal government—Public Housing, Housing Choice Vouchers (HCV), and Project-Based Rental Assistance (PBRA)—the Congressional Budget Office (CBO) found that *only one in four eligible, low-income households receive any sort of housing assistance*.⁵ The number of eligible renters receiving assistance, approximately 5 million households, has remained flat over the last decade and a half, despite the growing need.⁶ There are long waiting lists to receive housing assistance in all localities, and the length of the waiting list understates excess demand in many localities because housing authorities often close their lists when they get sufficiently long.⁷

Public Housing

Public Housing is the longest standing program of housing assistance to low-income households in the country. Created by The Housing Act of 1937, public housing was the federal government’s first major low-income housing program. Public housing developments are largely funded by the federal government but are owned and operated by public housing authorities (PHAs) established by state and local governments. There are now approximately 1.2 million households living in public housing units, managed by about 3,300 PHAs.⁸ This number is down from the program’s zenith of 1.4 million units in the early 1990s.⁹ The current program costs \$6 billion per year, allocated on a discretionary basis through two funds: the Capital Fund and the

⁴ Robert P. Stoker and Laura A. Wilson, *When Work Is Not Enough: State and Federal Policies to Support Needy Workers* (Washington, DC: Brookings Institution Press, 2005), [58]; United States Senate, "U.S. Senate: Glossary Term - Entitlement," United States Senate

⁵ Congressional Budget Office, *Federal Housing Assistance for Low-Income Households* (Washington, DC: Congressional Budget Office, 2015)

⁶ Will Fischer and Barbara Sard, "Chart Book: Federal Housing Spending Is Poorly Matched to Need," Center on Budget and Policy Priorities, last modified March 8, 2017

⁷ Olsen, *Means-Tested Transfer Programs*, 394

⁸ U.S. Department of Housing and Urban Development, "HUD'S Public Housing Program," U.S. Department of Housing and Urban Development.; Congressional Budget Office, *Federal Housing*

⁹ Collinson, Ellen, and Ludwig, *Low-income Housing*, 7

Operation Fund.¹⁰ Public Housing's status as a discretionary program means that funding relies on Congressional appropriations. Federal support for public housing fails to cover the annual accrual of new capital needs, and the program now faces an accumulated backlog that the Department of Housing and Urban Development (HUD) estimates to be over \$50 billion and which grows \$3.5 to 4 billion each year.¹¹ The historic and chronic underfunding of public housing and the move to eliminate public housing units will be discussed in more detail in relation to Hacker and Pierson's notions policy retrenchment.

Housing Choice Vouchers (HCVs)

The "Section 8" Housing Choice Vouchers (HCVs) program is now the federal government's largest rental assistance program.¹² The original concept, called the Section 8 Existing Housing Program or Certificate Program, was introduced in 1974. In 1983, the Section 8 Voucher program was introduced and operated simultaneously with the Certification Program until 1998, when Congress consolidated the two programs into the current Housing Choice Voucher program.¹³ The federal government currently spends \$22 billion to help 2 million households pay for housing in the private market.¹⁴ HUD distributes the money to local PHAs which provide vouchers to landlords who have agreed to take voucher-assisted households, or to tenants directly. Assisted households pay no more than 30% of their income for rent on units they find in the housing market and the vouchers cover the balance of their rent up to limits established by HUD.¹⁵ Vouchers typically cost less than new production, making them an efficient and effective form of housing assistance in areas with an abundant supply of vacant, physically adequate housing that low-income renters cannot afford without help. Yet, as I will demonstrate, few places have an abundant supply of vacant, physically adequate housing, and no state has an adequate supply of affordable rental housing for the lowest income renters.¹⁶

¹⁰ Congressional Budget Office, *Federal Housing*

¹¹ Hanlon, "The Origins," 612; U.S. Department of Housing and Urban Development Office of Public and Indian Housing, *Rental Assistance Demonstration – Final Implementation, Revision 2* (Washington, DC: U.S. Department of Housing and Urban Development, 2015)

¹² Hanlon, "The Origins," 614

¹³ Olsen, "Housing Programs," 374-75

¹⁴ U.S. Department of Housing and Urban Development, *Implementation of the Federal Fiscal Year (FFY) 2019 Funding Provisions for the Housing Choice Voucher Program*, April 18, 2019

¹⁵ Congressional Budget Office, *Federal Housing*

¹⁶ The National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, [13], March 2019

Project-Based Rental Assistance (PBRA)

Project-based Rental Assistance (PBRA) provides subsidies for the construction or rehabilitation of low-income rental units. PBRA is linked to particular units in specific locations, and the assistance for construction or rehabilitation is provided directly to the local entity that owns the unit or building, whether public, private, or non-profit.¹⁷ Such subsidies indirectly benefit low-income occupants by allowing the owners to charge below-market rents. PBRA has taken an even more salient role in federal housing assistance with the introduction and expansion of the Rental Assistance Demonstration (RAD) program launched by HUD in 2013. RAD attempts to reverse physical deterioration of public housing complexes and ever-burgeoning maintenance backlogs caused by chronic underfunding by converting public housing units to PBRA units. This makes the building eligible for mortgage financing, tax credits (including the Low-Income Housing Tax Credit [LIHTC]), and other sources of private capital to fund rehabilitation and development costs.¹⁸ The federal government currently spends \$12 billion on PBRA to assist 1.2 million households.¹⁹

THE CURRENT STATE FOR LOW-INCOME RENTERS AND RENTERS ASSISTANCE

The United States is currently witnessing a dramatic shortage of affordable housing for low-income renters while median rents have risen 20% faster than overall inflation between 1990-2016.²⁰ HUD defines affordable housing as that which consumes no more than 30% of a household's income. Rental housing is home to more than a third of U.S. households, or 43.3 million households. A substantial portion of renters are cost-burdened or severely cost-burdened, meaning that the household unit spends more than 30% or 50% of their income on rent, respectively.²¹ It is estimated that 20.8 million renters spend more than 30% of their income on

¹⁷ Stoker and Wilson, *When Work*, 57-8

¹⁸ Hanlon, "The Origins," 790

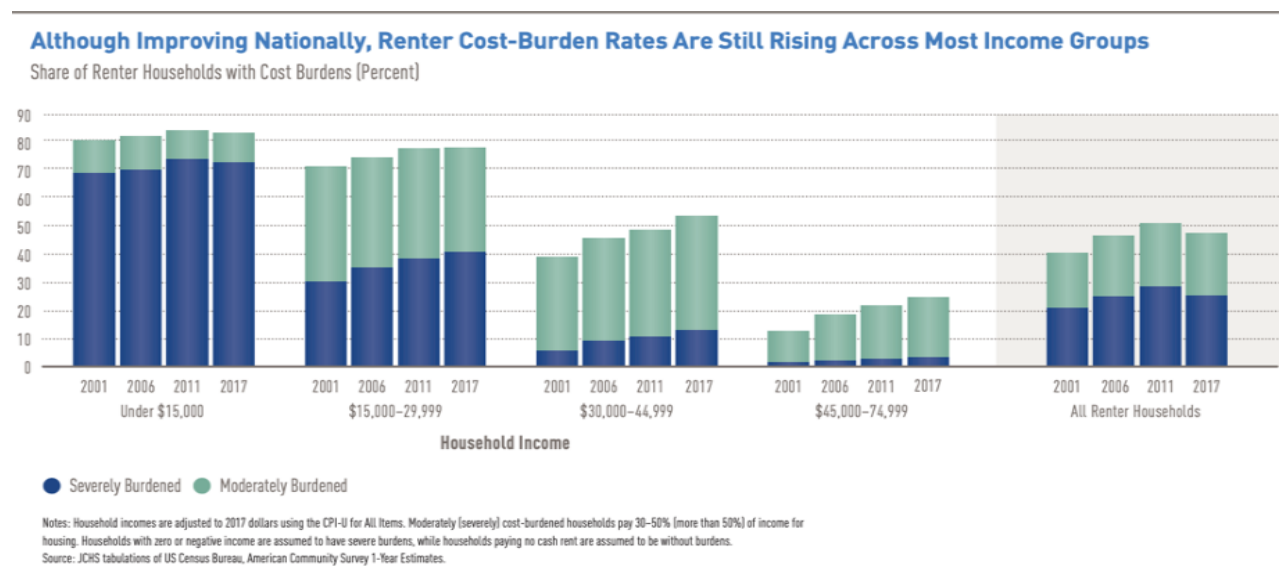
¹⁹ Congressional Budget Office, *Federal Housing*

²⁰ Schuetz, Jenny, and Jeff Larrimore. "Assessing the Severity of Rent Burden on Low-Income Families," Board of Governors of the Federal Reserve System, 2017

²¹ Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing*, 2019; U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Worst Case Housing Needs 2017 Report to Congress*, by Nicole Elsasser Watson, et al., report no. 16 (Washington, DC: U.S. Department of Housing and Urban Development, 2017)

rent (i.e. they are cost-burdened) while 11 million renters spend more than 50% of their income on rent (i.e. they are severely cost-burdened).²² This phenomenon has been increasing over time: the number of renters devoting more than 30% of their income on rent has consistently grown since the 1960s. This is disproportionately concentrated amongst the two lowest income quintiles: 55% of low-income households paid more than 30% of their income in rent in 1960; by 1990, that number had risen to 71%; by 2012, it reached 8%.²³ Nationwide, the typical renter in the bottom quintile of the income distribution spends more than half of their monthly income on rent and consequently has less than \$500 dollars for the rest of the month.²⁴

Figure 1



As **Figure 1** demonstrates, approximately 80 percent of renter households in the lowest income quintile (under \$15,000) are cost-burdened or severely cost-burdened.²⁵ *This number has not substantially changed over the last sixteen years.* Over this same time period, cost-burdens have increasingly impeded into the middle class, emphasizing how the major problem of unaffordable housing is not confined to low-income Americans. Yet the burden is still greatly disproportionate. 75-80% of extremely low-income households and 45% of very low-income

²² U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Worst Case*

²³ Robert Collinson, Ingrid Gould Ellen, and Jens Ludwig, *Low-income Housing Policy* (Cambridge, MA: National Bureau of Economic Research, 2015), 71

²⁴ Schuetz and Larrimore. "Assessing the Severity," 2017

²⁵ U.S. Department of Housing and Urban Development, "Defining Housing Affordability," The Edge; Joint Center for Housing Studies of Harvard University, *The State*

households are severely cost-burdened.²⁶ **Extremely low-income renters** are those with household income within 0-30% of the Area Median Income (AMI). **Very low-income renters** are those with household income within 30-50% of the AMI.

Table 1

Income Category	Rental Units per 100 Renters		
	Affordable	Affordable and Available	Affordable, Available, and Adequate
Extremely low-income renters (0–30% AMI)	66.0	37.7	33.0
Very low-income renters (0–50% AMI)	92.9	62.0	53.7
Low-income renters (0–80% AMI)	135.4	99.9	88.7

AMI = Area Median Income.
Source: HUD-PD&R tabulations of American Housing Survey data

Table 1 details the availability, affordability, and adequacy of rental units for extremely low-income, very low-income, and low-income renters. **Low-income renters** are those with household income within 0-80% of the AMI. As aforementioned, **affordability** refers to gross rents of less than 30% of stated household income. **Availability** refers to units

already occupied by households of the stated income or those that are vacant and available for rent at the stated income level. **Adequacy** refers to units being free of severe deficiencies.²⁷ HUD defines inadequate units as those having one or more serious physical problems related to heating, plumbing, and electrical systems or maintenance.²⁸ **Table 1** shows that there are only sixty-two available and affordable units per 100 very low-income renters. If adequacy is included, then there are only 53.7 units per 100 very low-income renters. For extremely low-income renters, there are only thirty-eight available and affordable units per 100 renters. If adequacy is included, then there are only thirty-three units per 100 extremely low-income renters.²⁹ This shortage creates acute, stressful housing instability amongst extremely and very low-income households. Oftentimes families will be forced to occupy ever-more expensive housing and forgo other necessities, such as medication. The risks of eviction and homelessness are ever-present.

²⁶ Joint Center for Housing Studies of Harvard University, *The State*

²⁷ U.S. Department of Housing and Urban Development: Office of Policy Development and Research, *Addressing Housing Affordability in High-Cost Metropolitan Areas in the United States*, [3], March 2019

²⁸ U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Worst Case*

²⁹ *Ibid.*

Table 2

	0-30% AMI	>30-50% AMI	Total
Number (thousands)	11,290	7,945	19,235
Number that are worst case needs renters (thousands)	5,821	2,482	8,303
Percent that are worst case needs renters	51.6	31.2	43.2

AMI = Area Median Income (HUD-adjusted)
Source: HUD-PD&R tabulations of American Housing Survey data

Perhaps the most salient manifestation of the United States' failure to provide affordable housing to low-income renters is the number of households with **worst case housing needs**. Households with worst case housing needs are defined by HUD as very low-income renters who do not receive government housing assistance and who pay more than one-half of their

income for rent, live in inadequate conditions, or both. In 2015, 8.30 million households had worst case housing needs, up from 7.72 million in 2013 and approaching the record high of 8.48 million in 2011.³⁰ As **Table 2** shows, extremely low-income and very low-income renters make up over 80 percent of the country's worst-case housing needs. Over 50% of extremely low-income renters are worst-case needs renters, meaning they receive no housing assistance and are severely cost-burdened and/or live in inadequate living conditions. Severe rent burdens constitute over 95% of worst case needs, a feature that has remained consistent over the last three decades.³¹

In its first comprehensive report to Congress concerning worst case housing needs in the United States, HUD estimated that in 1989, there were close to 5 million very-low income households with worst case housing needs.³² The number of worst case renters fell to 4.86 million between 1997 and 1999, primarily due to a reduction in the number of very low-income renters paying more than half of their income for rent and utilities.³³ In its 2003 report looking at worst case needs between 1978 and 1999, HUD notes that the reduction between 1997 and 1999 was not due to an increase in the number of affordable housing units but rather a bump in the

³⁰ U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Worst Case*, 2017

³¹ *Ibid.*

³² U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Priority Housing Problems And "Worst Case" Needs In 1989*, Affordable Housing & Worst Case Needs Reports to Congress (Washington, DC: U.S. Department of Housing and Urban Development, 1991), 2

³³ U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Trends in Worst Case Needs for Housing, 1978-1999*, Affordable Housing & Worst Case Housing Needs Report to Congress (Washington, DC: U.S. Department of Housing and Urban Development, 2003), [x]

incomes of very low-income households. In fact, between 1997 and 1999, the decline in the number of rental units affordable to extremely-low-income households accelerated.³⁴ Moreover, the slight dip in worst case housing needs was quickly reversed. By 2001, the number of worst case housing needs had risen to 5.07 million households.³⁵ In the years since, this number has consistently grown, with only minor decreases that constitute the exception, rather than the rule. *Worst case housing needs clearly demonstrate the consequences of policy drift, for the problem has only worsened over the last thirty years and federal policy has consistently failed to address it.*

HOUSING POLICY RETRENCHMENT

In the attempt to understand the consistent failure of federal housing assistance to adequately ensure safe, decent, and affordable housing to low-income renters, it is useful to apply Yale political-scientist Jacob Hacker's framework of social policy retrenchment to the housing policy space. Hacker, in "*Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States*," presents a new perspective on social policy reform that broadens the range of policies and forms of change that constitute policy retrenchment.³⁶ One key analytical framework is that of "policy drift." Policy drift is the phenomenon of policy failing to change, or update, as social and economic conditions change. Furthermore, policy fails to change even when presented with viable alternatives that could alleviate or address new circumstances that contradict the intended goal of policy. Drift is most likely when a policy is difficult to shift towards new ends and when the status-quo bias of the external political climate and political institutions make it hard to eliminate or supplant existing policies.³⁷ While drift may be inadvertent, it is also the result of active attempts by opponents to block adaptation of policies and institutions to changing circumstances.³⁸ This idea is further developed in collaboration with UC Berkeley political-scientist Paul Pierson in their book

³⁴ U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Trends in Worst*, 2003, ix

³⁵ Ibid.

³⁶ Jacob S. Hacker, "Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States," *American Political Science Review* 98, no. 2 (May 2004)

³⁷ Hacker, "Privatizing Risk," 248

³⁸ Ibid.

“*Winner-Take-All-Politics*.”³⁹ Drift is a valuable tool for policymakers because it allows policy change to occur through non-decisions that they are not generally held accountable for. It is much easier to hide, mask, and disguise the influence of groups who keep policies off the legislative agenda and take advantage of the key, and multitudinous, veto points sewn into U.S. political institutions.⁴⁰ The United States’ unique institutional composition is intended to build consensus across party lines and ensure policy is able to overcome multiple veto points. Yet this design has also served to increasingly facilitate policy drift and social policy retrenchment, especially in an age of polarized political parties. Powerful political minorities and key actors, such as committee chair-people and special interests who seek to influence the policy agenda, are able to prevent legislation from passing, or from even reaching the floor for a vote in the first place. In the realm of housing assistance, a history of tax cuts, budgetary constraints, and ideological conflict, and consensus, concerning the welfare state and the role of government have served to profoundly undermine housing assistance for low-income Americans.⁴¹

Surface-level observations regarding overall federal spending on low-income housing assistance fail to tell the overall story of housing policy retrenchment. Spending for major housing programs remains, at least in ways politicians can point to, high. Federal rental assistance spending, the bulk of which is composed of the HCV program, Section 8 PBRA, and public housing, totaled \$43.9 billion in 2018.⁴² Despite slight alterations on a year-to-year basis and a temporary increase in 2010 and 2011 due to the American Recovery and Reinvestment Act of 2009, funding for housing assistance has remained relatively flat since 2002.⁴³ Yet this is the problem. Policies have not adequately evolved, and have never been sufficiently funded upon conception, to cover the increasing risks faced by low-income renters burdened by the cost of housing. To Hacker’s point: it is not *necessarily* that social policies in the United States have been radically and dramatically scaled back through massive spending cuts. Spending cuts are but one facet of retrenchment. Simply looking at spending can be misleading in understanding the evolution of housing policy specifically. It is equally, if not more important, to consider

³⁹ Jacob S. Hacker and Paul Pierson, "Winner-Take-All Politics: Public Policy, Political Organization, and the Precipitous Rise of Top Incomes in the United States," *Politics & Society* 38, no. 2 (May 2010)

⁴⁰ See: Alfred Stepan and Juan J. Linz, "Comparative Perspectives on Inequality and the Quality of Democracy in the United States," *Perspectives on Politics* 9, no. 4 (December 2011)

⁴¹ Hacker, "Privatizing Risk," 251

⁴² Center on Budget and Policy Priorities, "United States Federal Rental Assistance Fact Sheet," Center on Budget and Policy Priorities

⁴³ Center on Budget and Policy Priorities, "United States Federal Rental".

structural reforms that relegate the welfare state to a more residual role in which government does less and less to shift the distribution of income and services in a progressive direction.⁴⁴ This is where policy drift serves as a key facet of overall retrenchment. Although U.S. housing programs have resisted radical retrenchment on the surface, rental assistance programs have offered increasingly incomplete protection against the social risks that low-income renters face. Focusing on spending numbers or the apparent “resiliency” of major assistance programs masks how social conditions have changed while policy has not (see section: Current State for Low-Income Renters and Rental Assistance).

Furthermore, the juxtaposition of federal support for low-income renters with support for middle- and upper-income households highlights where the United States currently focuses its housing assistance. In 2014, the mortgage interest and real estate tax deductions together cost the United States Treasury \$102.6 billion.⁴⁵ Nearly 82% of that benefitted those earning \$100,000 or more, and 41% benefitted those earning \$200,000 or more.⁴⁶ The CBO estimates that the top quintile receives almost three-quarters of the benefit of the mortgage interest deduction, while 15% of the benefit accrues to the top percentile.⁴⁷ The \$42 billion received by the latter group surpassed HUD’s FY15 combined budget for public housing, HCVs, and PBRA by \$6.3 billion.⁴⁸ The real estate industry, as a part of the overall rise of the Financial, Insurance, and Real Estate (FIRE) industries as described by Hacker and Pierson, has effectively induced drift and resisted efforts to close or reduce the mortgage interest deduction.⁴⁹

Clear consequences of drift and retrenchment can be seen in the evolution of public housing in the 1980s and 90s when Congress and PHAs attempted to eliminate properties through demolition.⁵⁰ While PHAs were required to demonstrate the obsolescence of the property or that removal of one part of the development was necessary for the preservation of the

⁴⁴ Hacker, "Privatizing Risk," 244

⁴⁵ Congressional Budget Office, *The Distribution of Major Tax Expenditures in the Individual Income Tax System* (Washington, DC: Congressional Budget Office, 2013)

⁴⁶ CBO, *The Distribution*

⁴⁷ Ibid.

⁴⁸ CBO, *Federal Housing Assistance*

⁴⁹ Hacker and Pierson, "Winner-Take-All Politics" [194-96]; Marketwired, "Realtors(R) Oppose Tax Plan to Limit Mortgage Interest Deduction, Real Estate Provisions," Yahoo! Finance, last modified February 26, 2014, accessed December 15, 2019 Suzanne Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy* (Chicago, IL: University of Chicago Press, 2011) 93-94

⁵⁰ Edward G. Goetz, "The Transformation of Public Housing Policy, 1985–2011," *Journal of the American Planning Association* 78, no. 4 (Fall 2012): 453

whole project, PHAs sometimes circumvented Congressional and HUD oversight through a process called “de facto demolition.” PHAs allowed properties to decline by neglecting upkeep, failing to re-rent vacant units, and refusing to spend HUD-allocated funds for modernization and improvement. It became a “PHA-induced downward spiral for a property.”⁵¹ In 1989, Congress authorized the National Commission on Severely Distressed Public Housing. The commission estimated that 86,000 units of public housing, or 6% of the total stock, were severely distressed. The conditions in these units constituted what the Commission called “a national disgrace.”⁵² Importantly, the Commission repeatedly reaffirmed the importance of public housing as a needed resource for low-income families, especially given the fact that they estimated 94% of public housing across the country was not severely distressed. Throughout the report, no recommendation was made to cut back on or dismantle public housing. Furthermore, while the commission called for a “major reconstruction” of distressed units, it also stated unequivocally that this ought to be done in addition to the construction of new public housing.⁵³ The main suggestions revolved around modernization, rehabilitation, or replacement of the worst of the public housing stock alongside preservation and expansion of public housing wherever possible.⁵⁴

In response, policymakers moved to completely dismantle public housing. Under pressure from Republicans in Congress who sought to eliminate HUD as a part of the welfare state retrenchment fervor that captured both political parties, President Clinton’s HUD Secretary, Henry Cisneros, created the Reinvention Blueprint.⁵⁵ In direct opposition to the recommendations of the National Commission, the document begins by stating, “the current system [of public housing] simply does not work for people or communities.”⁵⁶ The document called for a total restructuring of housing assistance programs and the elimination of all public housing.⁵⁷ The agency projected that all public housing units could be converted into market-rate

⁵¹ Goetz, “The Transformation,” 453

⁵² National Commission on Severely Distressed Public Housing, *The Final Report of the National Commission on Severely Distressed Public Housing: A Report to the Congress and the Secretary of Housing and Urban Development* (Washington, DC: National Commission on Severely Distressed Public Housing, 1992), 2

⁵³ National Commission on Severely Distressed Public Housing, 85

⁵⁴ National Commission on Severely Distressed Public Housing, 17

⁵⁵ Goetz, “The Transformation,” 458

⁵⁶ U.S. Department of Housing and Urban Development, *HUD Reinvention: From Blueprint to Action* (Washington, DC: U.S. Department of Housing and Urban Development, 1995): 3

⁵⁷ *Ibid.*, 3.

housing, where vouchers *could* be provided, by 2002.⁵⁸ Congress subsequently created the HOPE VI program with the intent of achieving many of the goals laid out in the blueprint document. Under HOPE VI, approximately fifty-five public housing units were rebuilt for every 100 that were demolished while another 30,600 were demolished through a demolition-only component of HOPE VI that operated until 2003.⁵⁹ In 1998, Congress suspended one-for-one replacement through the Quality Housing and Work Responsibility Act (QHWRA). This subsequently allowed demolition without replacement to become the centerpiece of the HOPE VI program. The QHWRA transformed the HOPE VI program from one aimed at the demolition of severely distressed public housing outlined in the National Commission's report to one that allowed potentially any public housing authority to demolish or sell developments with 250 units or more.⁶⁰ In the attempt to further cripple the program as a source of deeply affordable housing, Congress passed the Faircloth Amendment, Section 9(g)(3), to the Housing Act of 1937 in 1999. The "Faircloth limit" caps the number of public housing units at October 1, 1999 levels. To this day, HUD cannot fund the construction or operation of new public housing units if the construction of those units would result in a net increase in the number of units the PHA owned, assisted or operated as of October 1, 1999.⁶¹

Public housing is an example of how drift can facilitate further drift. As federal funding for public housing withered due to political opposition, and as conditions at *certain* complexes deteriorated, it became easier to justify further defunding of the program. Active decisions placed public housing in contexts of socioeconomic inequality and poverty, both far from job opportunities and without requisite investing in such communities to foster job opportunities and development.⁶² Herein lies another complexity of housing policy retrenchment: while drift was certainly a strong factor that facilitated the demise of public housing, it was not simply *non-decisions*, i.e. decisions to let the program flounder, that fed its growing unpopularity. In many ways, public housing was hindered by very active decisions to produce alternatives or to facilitate obsolescence that worked to undermine public housing as a source of affordable

⁵⁸ Ibid, 8-11.

⁵⁹ Hanlon, "The Origins," 619

⁶⁰ Vale and Freemark, "From Public," 381-2

⁶¹ U.S. Department of Housing and Urban Development, *Guidance on Complying With the Maximum Number of Units Eligible for Operating Subsidy Pursuant to Section 9(g)(3)(A) of the Housing Act of 1937 (aka the Faircloth Limit)* (Washington, DC: U.S. Department of Housing and Urban Development, 2000)

⁶² Christina Stacy et al., *Spatial Mismatch and Federally Supported Rental Housing* (Washington, DC: Urban Institute, 2020)

housing. Moreover, as with most social policy in the United States, the intersection of race and class created social conditions ripe for neglect and vilification.⁶³ Such dynamics afflict other federal housing assistance programs as well. For example, the federal government has not prohibited landlords from discriminating against renters based on their source of income. This means that landlords can refuse to rent to tenants who receive Housing Choice Vouchers, a phenomenon that has perpetuated inequality as voucher-holding families have been clustered into neighborhoods with fewer jobs, worse schools, and poor access to public transit.⁶⁴ While states and localities are beginning to pass Section 8 anti-discrimination bans, this is an area where the federal government could step in and create one standard preventing such discrimination nationally. The program that is supposed to give tenants “choice” in their housing options is also denying them that very choice.

CONCLUSION

Public housing, and federal housing assistance to low-income renters broadly, must be observed through a multifaceted lens of policy retrenchment. Public housing has been beset by a litany of problems over the years, but there are also many misconceptions and myths surrounding the program which in reality has experienced successes that were not covered or amplified in the political and media spaces.⁶⁵ The problems of public housing were not the result of a “culture of poverty” that often defined the narrative of public housing and its occupants; instead, it was the result of both active and inactive political decisions to undermine and hinder a program that is inherently embedded within contexts of inequality and poverty in the United States. While beyond the scope of this paper, it is important to note that the cost of housing and its burden on low-income renters is the result of complex systems. The conditions facing low-income renters are not solely the result of drift, for preexisting policies have been altered, or converted, and new policies have been created, or at least layered onto current policy. Retrenchment is mixture of active decisions and non-decisions. Moreover, it would be simplistic to argue that the cost of housing and the burdens it is placing on low-income, and increasingly middle-class, renters are

⁶³ Vale and Freemark, "From Public," 381-2

⁶⁴ Alicia Mazzara and Brian Knudsen, *Where Families With Children Use Housing Vouchers* (Washington, DC: Center on Budget and Policy Priorities, 2019).

⁶⁵ Hanlon, “The Origins” 630

solely the responsibility and failure of federal policies to adapt to or fundamentally alleviate social conditions. Yet the reality of such burdens, in addition to the federal government's consistent awareness of such realities (at least measured by reports completed by its agencies), only sheds further light on the powerful roles of drift and retrenchment in our political policymaking institutions.

The facets of retrenchment as outlined by Hacker and Pierson must then be looked at in relation to low-income rental assistance as a whole. From this perspective, it is clear that housing policy has failed to adapt to the changing and increasing needs amongst all renters, but especially our lowest-income community members. In fact, the evidence put forward in this paper shows that the norm, at least over the last three decades, has been for low-income households to lack decent, affordable housing *and* to be underserved by governmental policies. Moreover, the short comings of housing policy speak to broader systemic policy failures that have created and perpetuated pockets of poverty and socioeconomic inequality. While the mobility granted through HCVs allows residents to leave low-opportunity neighborhoods and move to areas with ample job-opportunities, better schools, and accessible transit (at least in theory), there is also an imperative to invest in low-opportunity neighborhoods to foster equitable development.

I may therefore conclude that the evolution, or lack thereof, of the three major federal housing assistance programs to low-income renters aligns with Hacker and Pierson's notions of policy drift and retrenchment. While public housing is a particularly salient permutation of policy retrenchment that has been subject to both outright neglect and active demolition, the story of housing assistance as a whole demonstrates an inert policy arena that has left many Americans without necessary assistance. Inadequate funding has been more than just public housing's undoing; it is symptomatic of underlying forces and policy choices, decades in the making, that have not prioritized affordable housing for low-income Americans. While funding for housing choice vouchers and PBRA have come to surpass that of public housing, constraints on housing assistance to low-income households in the face of heavy rental burdens remains, and has historically remained, a persistent feature across the United States. There is tremendous need for both deeply affordable housing production and low-income housing assistance on much larger scales than currently exists. Both will require increased spending in order to equitably alleviate our nation's housing crisis and to meet the demand for safe, decent, and affordable housing.

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DIGITAL FAULT LINES: AN EXAMINATION OF INTERNET INEQUALITY IN THE UNITED STATES

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The American urban-rural divide exemplifies modern political strife. Previous studies show that oligopolistic internet service providers and policy inaction on the part of the Federal Communications Commission influence determinants of socio-economic prosperity. As the role of digital technologies becomes increasingly ubiquitous in everyday life, to what extent do discrepancies in internet access between urban and rural communities affect quality of life and downstream political preferences? This paper posits that the domestic digital divide exacerbates rural vs. urban disenfranchisement, regardless of a district's congressional political representation. Using multivariate regression analysis, this essay correlates internet availability to the determinants of socio-economic prosperity across fourteen representative congressional districts from 2016 to 2018.

INTRODUCTION

Since the 1990s, digital advancements in the Information Age have driven modern communication, activism, and innovation. Guided by visions of a New Economy, wherein all Americans capitalized on the economic, educational, and scientific promise of new technologies, President Bill Clinton's administration made major efforts from 1993 to 2001 to expand the reach and use of the internet in the United States.¹ Nearly two decades after the original dotcom boom, the distribution of broadband internet access between urban and rural America remains markedly unequal.² A 2017 Brookings Institution report found that while rural communities account for only 14.6% of the American population, 57.2% of rural residents did not have access to highspeed broadband internet.³ As a catalyst for "macro- and microeconomic" growth in the private and public sectors, the internet encourages competition, creates global opportunity, and

¹ The White House, "President William J. Clinton: Eight Years of Peace, Progress, and Prosperity" (Washington, DC: The White House, January 2001), 87-90.

² Adie Tomer, Elizabeth Kneebone, and Ranjitha Shivaram, "Signs of Digital Distress: Mapping broadband availability and subscription in American neighborhoods" (Washington, DC: The Brookings Institution, September 2017), 15-16.

³ Ibid.

unleashes innovation.⁴ Thus, rural *have-nots* with limited internet access face disadvantages in accessing and contributing to digital knowledge banks and networks.⁵

As the role of digital technologies becomes increasingly ubiquitous in everyday life, to what extent do discrepancies in internet access between urban and rural communities affect quality of life and downstream political preferences? This paper posits that the domestic digital divide exacerbates rural vs. urban disenfranchisement, regardless of a district's congressional political representation. First, this essay provides an overview of the urban-rural digital divide. Second, it evaluates fourteen representative congressional districts (CDs) classified as either *rural-Republican*, *rural-Democrat*, *urban-Republican*, or *urban-Democrat*, to assess inter-district geographic and demographic differences. Third, this paper uses multivariate regression analysis to correlate internet availability to determinants of socio-economic prosperity from 2016 to 2018. Finally, this essay seeks to show that the digital divide affects both Republican and Democrat leaning districts in rural America.

AMERICA OFFLINE: AN OVERVIEW OF THE URBAN-RURAL DIGITAL DIVIDE

Coined by the National Telecommunications and Information Administration (NTIA), the term “digital divide” originally separated the technologically rich *haves* from the technologically poor *have-nots*.⁶ In 1995, NTIA surveyed American connectivity to the “National Information Infrastructure” to capture the gaps in “universal service.”⁷ It found that the *have-nots* concentrated in Western, Midwestern, and Southern rural areas and that the “information disadvantaged” disproportionately fell into lower education and lower income brackets.⁸ While the internet was an emerging technology for the time, the systemic lag between urban and rural Americans was not.

⁴ Ibid., 8-11.

⁵ Claire Elisabeth Huther, “The Digital Divide for Rural America: Decomposing Cost and Preferences” (Oxford, OH: Miami University, 2019), 1-3.

⁶ Ronald Baecker, *Computers and Society: Modern Perspectives* (New York, NY: Oxford University Press, 2019), 21, 23; National Telecommunications Information Administration (NTIA), “Falling Through the Net: A Survey of the ‘Have Nots’ in Rural and Urban America” (Washington, DC: United States Department of Commerce, July 1995).

⁷ Ibid.

⁸ Ibid.

The telephone is an illustrative example of a traditional, access-focused divide in the United States. Under the Communications Act of 1934, President Franklin Delano Roosevelt established the Federal Communications Commission (FCC) to oversee interstate rollout of the telephone.⁹ Echoing its forefathers, NTIA's continued goal of providing every American with "access to affordable telephone service" and "achieving ... "telephone penetration"" created a dichotomous *haves* and *have-nots* policy to address urban-rural divide.¹⁰ DiMaggio and Hargittai believe the internet's expansion will trickle from the most privileged to the less privileged members of society, stating:

Access to new technologies is ordinarily associated with advantaged positions with respect to a number of weakly or moderately correlated statuses or resources – for example, income, white-collar work, educational level, race, rural residence, and gender. When penetration is low, access is dominated by persons occupying privileged positions on all of these parameters. As penetration grows, access ... extend[s] to individuals who are privileged with respect to some parameters but disadvantaged with respect to another.¹¹

Over time, Compaine posits that internet availability will achieve universal access and include rural and low-income individuals currently disenfranchised through federal regulations and the market.¹² However, *access* is only the first-order of the modern digital divide: quality, familiarity and usability of the internet between urban and rural America adds levels of nuance to the issue.¹³

Over the years, the digital divide evolved to include inequality across one's "awareness, application, and access" to digital technologies.¹⁴ With regard to gaps in first-order awareness and access, Norris and Conceição emphasize that *have-nots* do not receive the option or opportunity to educate themselves on internet skills, disadvantaging their education and employment abilities.¹⁵ Moreover, Dewan and Riggins argue that second-order internet

⁹ Communications Act of 1934 47 U.S.C. § 151 et seq. (1934); Benjamin M. Compaine, "Paper 130: Re-Examining the Digital Divide" (Cambridge, MA: Center for eBusiness @MIT, July 2001), 4.

¹⁰ Paul DiMaggio and Eszter Hargittai, "From the 'Digital Divide' to 'Digital Inequality': Studying Internet Use As Penetration Increases," *Center for Arts and Cultural Policy Studies, Woodrow Wilson School, Princeton University* 4, no.1 (2001): 2.

¹¹ *Ibid.*, 5.

¹² Compaine, "Paper 130: Re-Examining the Digital Divide," 3-4.

¹³ Sanjeev Dewan and Frederick J. Riggins, "The Digital Divide: Current and Future Research Directions," *Journal of the Association for Information Systems* 6, no.12 (December 2005): 307-8, 310-1.

¹⁴ *Ibid.*

¹⁵ Daniel T. Norris and Simone Conceição, "Narrowing the Digital Divide in Low-Income, Urban Communities," *New Directions for Adult and Continuing Education* 2004, no.101 (2004): 69-71.

application positively correlates to computer literacy.¹⁶ Rice and Katz determined that older individuals with significantly less income (“\$25.5 K vs. \$45.2 K”) and less college education (“13% vs. 46%”) possessed less internet knowledge and usability.¹⁷ Hargittai found that younger individuals with more education and time to go online had better web search abilities.¹⁸ Mossberger, Tolbert, and Stansbury also suggest a “democratic divide”; those with access to internet used online communications to inform, rally, and engage in politics, showing a correlation between internet and civic engagement.¹⁹

Heralded as one of the “first angel investor[s]” of internet expansion, President Clinton introduced major telecommunications reform in his presidency.²⁰ Worried that the “American technological edge” was eroding, the New Economy harnessed the power of information technology to improve the lives of Americans.²¹ In 1994, 24% of households had a computer and 3% of classrooms had internet access; in 2000, the numbers grew to 51% and 63%, respectively.²² Similar to the telephone, President Clinton addressed the urban-rural digital divide by passing the High Performance Computing Act of 1991, a federal policy to increase broadband connectivity.²³ His “National Call to Action” facilitated private and public sector internet access strategies.²⁴ Additionally, his administration prioritized “educational technology” to augment children’s digital literacy and established “Community Technology Centers” in underserved areas.²⁵ Acknowledging the *democratic divide*, the Clinton administration brought the White House and other government agencies online to encourage civic engagement and e-government practices.²⁶ However, despite these advancements, a digital divide between income

¹⁶ Dewan and Riggins, “The Digital Divide: Current and Future Research Directions,” 310.

¹⁷ Ronald E. Rice and James E. Katz, “Comparing internet and mobile phone usage: digital divides of usage, adoption, and dropouts,” *Telecommunications Policy* 27 (2003): 600-1, 607-9, 618.

¹⁸ Eszter Hargittai, “Informed web surfing: The social context of user sophistication,” in *Society Online: The Internet in Context*, eds. Philip N. Howard and Steve Jones (Thousand Oaks, CA: SAGE Publications, 2004), 260-1, 267, 271-2.

¹⁹ Karen Mossberger, Caroline J. Tolbert, and Mary Stansbury, *Virtual Inequality: Beyond the Digital Divide* (Washington, DC: Georgetown University Press, 2003), 87-91.

²⁰ The White House, “President William J. Clinton,” 44, 88-90.

²¹ *Ibid.*, 87-90.

²² *Ibid.*, 37, 88.

²³ Baecker, *Computers and Society*, 21.

²⁴ The White House, “President William J. Clinton,” 90.

²⁵ *Ibid.*, 37-8, 57-8, 90-1.

²⁶ *Ibid.*, 92-3.

groups remained—in 2000, only 12.7% of low-income American households, compared to 77.7% of high-income households, had internet access.²⁷

Following President George W. Bush’s Presidency and the 2008 Great Recession, President Barack Obama’s plans for economic recovery included closing the digital divide and “building out Internet infrastructure.”²⁸ In line with traditional efforts to bridge the internet gap, the FCC’s National Broadband Plan received \$7.2 billion, with “\$2.5 billion allocated specifically for rural areas,” in funding for broadband infrastructure systems.²⁹ Noticing the same demographic gaps in internet use—older, low-income, less-educated, etc.— as previous administrations, President Obama emphasized second-order digital divide issues of application and inclusion.³⁰ In 2010, the Obama administration launched “DigitalLiteracy.gov,” an intergovernmental project that provided educational materials for the internet *have-nots* in order to close gaps in American digital inclusion and digital literacy.³¹ Furthermore, President Obama’s National Wireless Initiative reduced the “infrastructure requirements” for mobile devices to access the internet.³² While this policy did not enable digitally disenfranchised Americans to access the whole gamut of “Internet-enabled tasks,” it reduced some barriers of urban-rural digital availability.³³

In 2014, debates over internet connectivity guidelines fell along party lines.³⁴ Arguments for and against *net neutrality*, a policy that treats all internet traffic and charges all internet users equally, triggered a “microcosm of political battles in Congress.”³⁵ To champion net neutrality, the Obama-era FCC wanted to reclassify broadband internet from an “information service” to a “telecommunications service,” protecting it just like the telephone and better regulating antitrust

²⁷ Ibid, 90.

²⁸ The White House, “Vice President Biden launches initiative to bring broadband, jobs to more Americans,” *United States Department of Commerce*, July 1, 2009, <https://www.ntia.doc.gov/press-release/2009/vice-president-biden-launches-initiative-bring-broadband-jobs-more-americans> (accessed February 22, 2020).

²⁹ Ibid.

³⁰ Paul T. Jaeger et al., “The Intersection of Public Policy and Public Access: Digital Divides, Digital Literacy, Digital Inclusion, and Public Libraries,” *Public Library Quarterly* 31, no.1 (2012): 11.

³¹ Ibid., 10-11.

³² Ibid., 7-8.

³³ Ibid.

³⁴ Jeffrey A. Hart, “The Net Neutrality Debate in the United States,” *Journal of Information Technology & Politics* 8, no.4 (2011): 439-40.

³⁵ Baecker, *Computers and Society*, 21; Victor Glass and Timothy Tardiff, “A new direction for the net neutrality debate,” *Telecommunications Policy* 43, no.3 (2019): 199.

practices over internet service providers (ISPs).³⁶ Presidential “support for reclassification” sparked a media frenzy: Benkler et al. analyzed “over 16,000 stories” from January to November 2014 on net neutrality across various social media platforms to capture the real effects of digital activism on policy.³⁷ Mossberger, Tolbert, and Stansbury would have been proud of the results: propelled by the internet, millions of Americans contacted their congressional representatives to preserve open internet and free online speech, prevent ISP oligopolies, and protect digital innovation.³⁸ On February 26, 2015, the FCC upheld net neutrality.³⁹

Repealing net neutrality aligned with a majority Republican “deregulationist” stance on ISPs.⁴⁰ Under President Donald Trump, the new FCC stated that strong internet infrastructures and capacities required “appropriate remuneration” to ISPs, and that creating “paid prioritization” through fast or slow channels fueled digital lifeblood.⁴¹ Under this system, telecommunications superpowers like AT&T and Verizon could “block or throttle” competitors and favor preferred online services, increasing barriers to internet entry.⁴² Citing the trajectory towards “wireless services,” major ISPs argued that regulations for broadband internet would soon become obsolete, and therefore should not affect net neutrality.⁴³ Counterarguments noted that repeal would reduce first-order internet infrastructures by introducing pay-to-play access schemes that disenfranchised lower-income internet users.⁴⁴ Without federal oversight, powerful ISPs could retain their oligopolies and actively block free market access.⁴⁵ Alarming, the repeal would perpetuate disenfranchisement of rural and “marginalized groups” and widen the second-order digital divide that President Obama’s digital inclusion efforts worked to correct.⁴⁶

³⁶ Yochai Benkler et al., “Score Another One for the Internet? The Role of the Networked Public Sphere in the U.S. Net Neutrality Policy Debate,” *The Berkman Center for Internet & Society, Harvard University* 2015-4 (February 2015): 11-2; Hart, “The Net Neutrality Debate in the United States,” 419.

³⁷ Benkler et al., “Score Another One for the Internet?,” 5, 17-8, 21-31.

³⁸ *Ibid.*, 31-4.

³⁹ The White House, “Net Neutrality: President Obama’s Plan for a Free and Open Internet,” *The White House*, November 10, 2014, <https://obamawhitehouse.archives.gov/net-neutrality> (accessed February 16, 2020).

⁴⁰ Carlo Reggiani and Tommaso Valletti, “Net neutrality and innovation at the core and at the edge,” *International Journal of Industrial Organization* 45 (2016): 17.

⁴¹ *Ibid.*; Benkler et al., “Score Another One for the Internet?,” 15.

⁴² Glass and Tardiff, “A new direction for the net neutrality debate,” 201.

⁴³ Hart, “The Net Neutrality Debate in the United States,” 434-5.

⁴⁴ *Ibid.*, 419, 424.

⁴⁵ *Ibid.*

⁴⁶ Glass and Tardiff, “A new direction for the net neutrality debate,” 208-9.

Despite warnings of the “harm it may ... unleash on the internet ecosystem,” on June 11, 2018, the Trump-era FCC repealed net neutrality.⁴⁷

The net neutrality debacle exemplifies modern political strife. The “bitter, partisan” divide over equal internet access and the ability to connect Americans to the world wide web begs the question: *cui bono*?⁴⁸ Through ISP deregulation, DiMaggio and Hargittai’s trickle-down technology system stops at those with “privileged positions,” Norris and Conceição’s concerns on lack of internet access and digital opportunity for underserved communities continues into the 2020s, and Benkler et al.’s demonstration of the power of digital activism becomes the exception rather than the rule of contemporary politics.⁴⁹ Unlike visions of universal service, a New Economy, and DigitalLiteracy.gov, the repeal of net neutrality keeps low-income and rural Americans offline. From this continued digital divide, the *have-nots* become the *have-wonts*.

METHODS

I used the CD as the unit of analysis to assess if the domestic digital divide exacerbates rural vs. urban disenfranchisement. I chose CDs because they represent policy at a national level, with each of the nearly “equipopulous” 435 CDs electing a member of the House of Representatives.⁵⁰ To gauge the effect of federal policy on internet equity, I examined the CD data from a presidential election year (2016) and a congressional, midterm election year (2018) using information from the CityLab, Cook Political Report, Missouri Census Data Center, United States Census Bureau, and American Community Survey data.

I used the 2018 CityLab dataset to classify CDs by density rankings. On the assumption that higher population densities would provide better incentives for ISPs to provide a competitive marketplace, I weighted the four classifications—“Very Low Density,” “Low Density,” “Medium Density,” and “High Density”—as 0, 1/3, 1/3, and 1/3, respectively. I used the 2017 Cook Political Report to match the CityLab-sourced CDs with their corresponding congressional

⁴⁷ Ibid.

⁴⁸ Ibid., 201, 208-9.

⁴⁹ DiMaggio and Hargittai, “From the ‘Digital Divide’ to ‘Digital Inequality,’” 5; Norris and Conceição, “Narrowing the Digital Divide in Low-Income, Urban Communities,” 69; Benkler et al., “Score Another One for the Internet?,” 4.

⁵⁰ Richard K. Stavinski, “The Mandate of Equipopulous Congressional Districting: Karcher v. Daggett,” *Boston College Law Review* 26, no.2 (1985): 567-8.

incumbent.⁵¹ I sorted the CDs using cluster filters to find the top *rural-Republican* and *rural-Democrat* CDs and the top *urban-Republican* and *urban-Democrat* CDs. Next, I used the Missouri Census Data Center to determine the counties in each CD.⁵² While the four selected rural CDs comprised of forty-eight counties, most of the urban CDs only had one county each. To run the multivariate regression, I used ten urban CDs for a meaningful analysis. I then reviewed district maps from the United States Census Bureau to determine the full and partial counties in each CD.⁵³ Realizing that Harris, TX appeared in two separate CDs, *urban-Republican* TX-02 and *urban-Democrat* TX-09, to avoid selection bias, I replaced these CDs with the next CD on the density ranking, TX-03 and IN-07, respectively. My final sample size consisted of fourteen CDs covering sixty-five full counties. Next, I sourced socio-economic data from the 2016 and 2018 American Community Survey (ACS) on each of the selected counties.⁵⁴ I collected information on “Educational Attainment,” “Income,” “Health Insurance,” and “Computer Use.”⁵⁵ Since no data on computer and internet usage existed in the 2016 ACS data, I substituted with 2017 ACS information instead.

Table 1. An overview of the fourteen congressional districts under analysis along with their 2017 Cook Political Report Partisan Voting Index (PVI) value and the computed 2016 and 2018 Internet Availability (IA) Index values.⁵⁶

No.	Analysis Group	Group	Party	Congressional District	2017 PVI	2016 IA	2018 IA
1	R.1R	Rural	Republican	SC-05	R+9	68.84	71.98
2	R.2R	Rural	Republican	PA-09	R+14	77.72	80.00
3	R.1D	Rural	Democrat	MS-02	D+14	60.83	64.57
4	R.2D	Rural	Democrat	NM-03	D+8	65.31	68.21
5	U.1R	Urban	Republican	TX-24	R+9	86.93	88.53

⁵¹ “PVI Map and District List,” *The Cook Political Report*, April 7, 2017, <https://cookpolitical.com/pvi-map-and-district-list> (accessed December 23, 2019).

⁵² “Geocorr 2018: Geographic Correspondence Engine,” *Missouri Census Data Center*, December 4, 2018, <http://mcdc.missouri.edu/applications/geocorr2018.html> (accessed January 31, 2020).

⁵³ “116th Congressional District Wall Maps,” *United States Census Bureau*, May 13, 2019, <https://www.census.gov/geographies/reference-maps/2019/geo/cong-dist-116-wall.html> (accessed January 31, 2020).

⁵⁴ “American Community Survey,” *United States Census Bureau*, <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2018/> (accessed January 7, 2020).

⁵⁵ See Appendix 1 for detailed variable description.

⁵⁶ While PVI was not directly used in the study, it is a good indicator of a CD’s Republican or Democrat leaning compared to the national political sentiment average.

No.	Analysis Group	Group	Party	Congressional District	2017 PVI	2016 IA	2018 IA
6	U.2R	Urban	Republican	AZ-05	R+15	85.77	87.77
7	U.3R	Urban	Republican	MO-02	R+8	86.72	88.37
8	U.4R	Urban	Republican	NY-02	R+3	88.97	90.09
9	U.5R	Urban	Republican	TX-03	R+13	93.39	94.38
10	U.1D	Urban	Democrat	FL-13	D+2	82.54	84.37
11	U.2D	Urban	Democrat	IL-07	D+38	81.28	83.26
12	U.3D	Urban	Democrat	CA-43	D+29	84.32	86.27
13	U.4D	Urban	Democrat	GA-06	R+8	87.63	89.24
14	U.5D	Urban	Democrat	IN-07	D+11	77.87	80.36

To transform the ACS data, I created four indices, Internet Availability (IA), Educational Attainment (ED), Income (IN), and Health Insurance (HI). Taking care to normalize each variable by dividing it with the appropriate population variable. For example, I divided the households with broadband internet service by the total number of households to control for size. To normalize per capita income, I divided it by the average per capita income across the sixty-five counties. Each index was constructed using the formulae outlined in Table 2.

Table 2. Indices for multivariate regression.

Index Name	Index Formula
Internet Availability Index (IA)	$IA = 1/2(\text{Computer}) + 1/2(\text{Broadband Internet})$
Educational Attainment Index (ED)	$ED = 1/9(\text{Five Lower Educational Attainment Levels}) + 2/9(\text{Bachelor Degree}) + 2/9(\text{Graduate Degree or Higher})$
Income Index (IN)	$IN = 1/4(\text{Employment Rate}) + 1/4(\text{Population Employed}) + 1/4(\text{Normalized Per Capita}) + 1/4(\text{Population Above Poverty Line})$
Health Insurance Index (HI)	$HI = 3/5(\text{With Health Insurance}) + 2/5(\text{Without Health Insurance})$

Next, I used SQL to create summaries for both 2016 and 2018 data at the CD, county, rural vs. urban, and Republican vs. Democrat levels. Using R software, I performed multivariate regression as well as correlation analysis and model of best fit.

ANALYSIS

Comparative analysis of the multivariate regression models for both 2016 and 2018 urban and rural CDs show a significant F-statistic and p-value. Additionally, each model has a moderate adjusted R-squared value, ranging from 51.79% to 60.24%. See Table 3 for a full statistical summary.

Across the four linear regression models, only IN held statistical significance on the IA. For 2016 and 2018 rural CDs, IN was significant at the .001 level. For urban CDs, 2016 data showed significance at a .1 level while 2018 data was significant at .11 level, narrowly missing the significance cut-off level of .1. This supports the notion that ISPs lack the incentive to invest in internet infrastructure for the relatively poorer rural areas and concentrate in wealthier, urban communities.⁵⁷

Following up on the low significance of both the ED and HI indices and their interaction effects, I investigated the models of best fit using Akaike Information Criterion (AIC). Unsurprisingly, the model of best fit for each of the four constructs only included IN. For instance, the 2016 rural multivariate model had a $F_{(3,44)} = 24.73, p < 1.562 \cdot 10^{-09}$ while the best fit linear model had a $F_{(1,46)} = 76.57, p < 2.377 \cdot 10^{-11}$, attesting to the importance of IN on IA. A similar pattern was observed for the three other models, reinforcing the primacy of income disparity on socio-economic determinants of prosperity as well as internet access.⁵⁸

Table 3. Multivariate linear regression models and statistical results for the 2016 and 2018 rural and urban congressional districts.

Year	Rural	Urban
2016	$IA_IDX = \alpha + \beta \cdot ED_IDX + \gamma \cdot HEALTH_IDX + \delta \cdot INCOME_IDX$	$IA_IDX = \alpha + \beta \cdot ED_IDX + \gamma \cdot HEALTH_IDX + \delta \cdot INCOME_IDX$
	$IA_IDX = 8.5211 + 0.7422 \cdot ED_IDX - 0.1192 \cdot HEALTH_IDX + 0.6922 \cdot INCOME_IDX$	$IA_IDX = 15.6499 + 0.5686 \cdot ED_IDX + 0.4697 \cdot HEALTH_IDX + 0.3576 \cdot INCOME_IDX$
	δ t value 5.062 Pr(> t) 7.85e-06 ***, significant at 0.001 level Adjusted R-squared: 0.6024	δ t value 1.849 Pr(> t) 0.0874 ., significant at 0.1 level Adjusted R-squared: 0.5896

⁵⁷ Huther, “The Digital Divide for Rural America,” 1-2.

⁵⁸ See Appendix 2 and 3.

	F-statistic: 24.73 on 3 and 44 DF, p-value: 1.562e-09	F-statistic: 8.664 on 3 and 13 DF, p-value: 0.002032
Year	Rural	Urban
2018	$IA_IDX = \alpha + \beta \cdot ED_IDX + \gamma \cdot HEALTH_IDX + \delta \cdot INCOME_IDX$ $IA_IDX = 8.65713 + 1.72589 \cdot ED_IDX + 0.03346 \cdot HEALTH_IDX + 0.45839 \cdot INCOME_IDX$ δ t value 3.795 Pr(> t) 0.000448 ***, significant at 0.001 level Adjusted R-squared: 0.5179 F-statistic: 17.83 on 3 and 44 DF, p-value: 1.018e-07	$IA_IDX = \alpha + \beta \cdot ED_IDX + \gamma \cdot HEALTH_IDX + \delta \cdot INCOME_IDX$ $IA_IDX = 51.01729 + 0.39106 \cdot ED_IDX - 0.07195 \cdot HEALTH_IDX + 0.35719 \cdot INCOME_IDX$ δ t value 1.714 Pr(> t) 0.11, Adjusted R-squared: 0.5545 F-statistic: 7.637 on 3 and 13 DF, p-value: 0.003407

Of particular interest is the disparity between the intercept values (α) among the models (see Table 4). Between 2016 and 2018, rural IA saw minimal growth of 0.136 while the urban IA increased by 35.3674. This temporal difference posits that technological evolution dramatically affects the digital landscape in the United States, and that digital innovation remains concentrated in urban regions, disadvantaging rural Americans. The most significant finding is the geographical difference: in 2016, the disparity between rural and urban IA was 7.1288, a substantial gap between populations. In 2018, the difference dramatically shot up to 42.3602, clearly demonstrating an increasing urban-rural digital divide since the latest presidential election year to a congressional election year. Moreover, it gives credence to the hypothesis that the urban-rural digital divide is growing, regardless of a CD’s political affiliation. Thus, the widening technological gap between urban and rural Americans does not fall along party lines, but rather digital fault lines: rural areas face lower-income and lower internet connectivity.

Table 4. Temporal and geographical differences between intercept values (α) for the 2016 and 2018 rural and urban congressional districts. Computed differences highlighted in green.

Year	Rural	Urban	Geographical Difference
2016	8.5211	15.6499	7.1288
2018	8.6571	51.0173	42.3602
Temporal Difference	0.136	35.3674	

LIMITATIONS

Theoretical Limitations

Internet access and availability is a double-edged sword: on one hand, these features can mobilize knowledge and contribute to geographic and demographic equity; on the other hand, they can perpetuate the quantity of extremist and inaccurate information spread across people.⁵⁹ Additionally, while an independent variable should be uncorrelated to the dependent variables, the inherently interconnected relationships between internet availability and one's income, education, and health coverage cause deviations from the ideal model.⁶⁰ Moreover, the ED, IN, and HI indices exclude other 'soft' determinants of socio-economic prosperity, such as ethnic and gender backgrounds, to avoid complexity that detracts from the main emphasis of this paper. The analysis also does not address those individuals who consciously live off-grid. However, this paper argues that unless the *option* to access and use digital technologies is available for all Americans, even those who willingly abstain from it, then the lack of internet connectivity remains a cause for inequality and fragmentation.

Quantitative Limitations

While the unit of analysis is the CD, the ACS only offers county-level information. Since there is no authoritative source on how to quantify the influence of partially-covered counties on the CDs, I included only full counties to remove outside bias from the study.⁶¹ However, the analysis could face an underestimation bias because it misses some congressional-level information from the partially-covered counties. To this end, the study only analyzes fourteen out of the total 435 CDs, limiting the sample size in the interest of managing the amount of data under review. Further studies could more representatively address the urban-rural digital divide by studying a larger sample of CDs. Lastly, while principal component analysis could be used to determine more appropriate weights for variables in the four indices, this is a statistical rather than a political science related construct.

Data Limitations

⁵⁹ Baecker, *Computers and Society*, 134-5, 138-40.

⁶⁰ See Appendix 3.

⁶¹ Christopher Warshaw and Jonathan Rodden, "How Should We Measure District-Level Public Opinion on Individual Issues?," *The Journal of Politics* 74, no.1 (2012): 204-5.

While the study acknowledges that the data is a lagging indicator to measure the four constructs under study, the design of the sourced data requires further conceptualization as well as robustness checks. The ACS estimates “Internet Access” by looking at computer presence and broadband internet subscriptions, neglecting the rapid evolution of cellphones, tablets, and other mobile devices to harness the internet. Importantly, due to external validity concerns, this study did not use FCC data. In a 2019 report, Microsoft uncovered “significant discrepancies” in internet access “across nearly all counties” in the United States.⁶² Compared to the FCC’s finding that “25 million Americans lack access to a broadband connection,” Microsoft determined the number was closer to “162.8 million” underconnected people.⁶³

CONCLUSION: THE GAP BETWEEN US

The Information Age sparked global innovation and communication across the United States. However, the gaps in internet access, usability, and inclusivity between urban and rural centers systemically disenfranchise low-income and rural Americans.⁶⁴ Efforts to streamline telecommunications networks date back to Roosevelt administration.⁶⁵ To catch the *have-nots*, the Clinton and Obama administrations created first-order policies of broadband infrastructure growth and second-order digital education and inclusion initiatives. Concerns over best practices to govern the internet resulted in flip-flopping net neutrality policies between the Obama and Trump administrations, injecting partisan schisms into the digital divide.⁶⁶

In considering whether heterogeneous internet access influences political preferences, this essay explored if the modern American digital divide falls along urban-rural or Republican-Democrat lines. Through multivariate linear regression on data for fourteen CDs, this paper determined that income disparities most significantly affected internet availability. Most importantly, the severe differences in internet access between urban and rural CDs across 2016 and 2018 support the hypothesis. Through these digital fault lines, disenfranchised Americans become *have-wonts* and continue to fall through the cracks.

⁶² John Kahan, “It’s time for a new approach for mapping broadband data to better serve Americans,” *Microsoft*, April 8, 2019, <https://blogs.microsoft.com/on-the-issues/2019/04/08/its-time-for-a-new-approach-for-mapping-broadband-data-to-better-serve-americans/> (accessed February 20, 2020).

⁶³ *Ibid.*

⁶⁴ Huther, “The Digital Divide for Rural America,” 7.

⁶⁵ Communications Act of 1934 47 U.S.C. § 151 et seq. (1934).

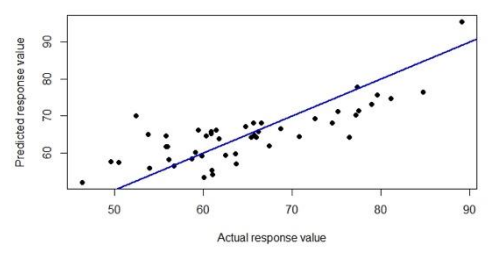
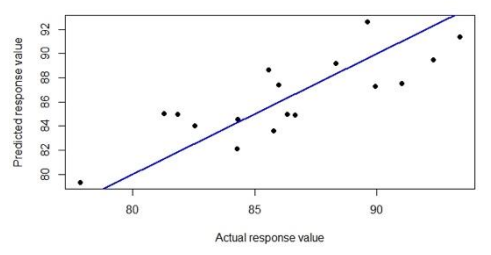
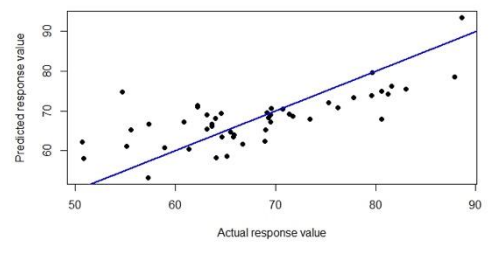
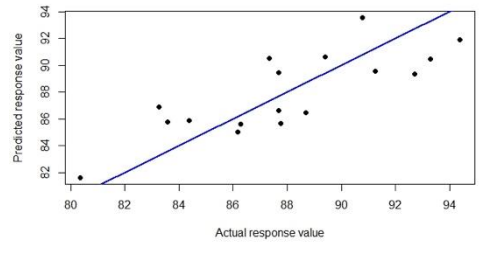
⁶⁶ Hart, “The Net Neutrality Debate in the United States,” 427.

APPENDIX 1: DETAILED VARIABLE DESCRIPTION

Appendix 1. Data extracted from the 2016 and 2018 American Community Survey's DP02, DP03, and DP05 files for each of the sixty-five counties covered by the fourteen congressional districts.			
Sr No	ACS Variable ID	ACS Variable Name	My Analysis Variable Name
1	GEO_ID	id	GEO_ID
2	NAME	Geographic Area Name	COUNTY_NAME
3	DP02_0001E	HOUSEHOLDS BY TYPE Total households	TOT_HSHLD
4	DP02_0058E	EDUCATIONAL ATTAINMENT Population 25 years and over	POP_25_OVER
5	DP02_0059E	EDUCATIONAL ATTAINMENT Population 25 years and over Less than 9th grade	ED_L9
6	DP02_0060E	EDUCATIONAL ATTAINMENT Population 25 years and over 9th to 12th grade no diploma	ED_L12
7	DP02_0061E	EDUCATIONAL ATTAINMENT Population 25 years and over High school graduate (includes equivalency)	ED_HS
8	DP02_0062E	EDUCATIONAL ATTAINMENT Population 25 years and over Some college no degree	ED_SC
9	DP02_0063E	EDUCATIONAL ATTAINMENT Population 25 years and over Associate's degree	ED_AD
10	DP02_0064E	EDUCATIONAL ATTAINMENT Population 25 years and over Bachelor's degree	ED_BD
11	DP02_0065E	EDUCATIONAL ATTAINMENT Population 25 years and over Graduate or professional degree	ED_GD_PD
12	DP02_0150E	COMPUTERS AND INTERNET USE Total households	IU_TOT_HSHLD
13	DP02_0151E	COMPUTERS AND INTERNET USE Total households With a computer	HSH_COMP
14	DP02_0152E	COMPUTERS AND INTERNET USE Total households With a broadband Internet subscription	HSH_BIS
15	DP03_0004E	EMPLOYMENT STATUS Population 16 years and over!!In labor force Civilian labor force Employed	I_EMP
Sr No	ACS Variable ID	ACS Variable Name	My Analysis Variable Name

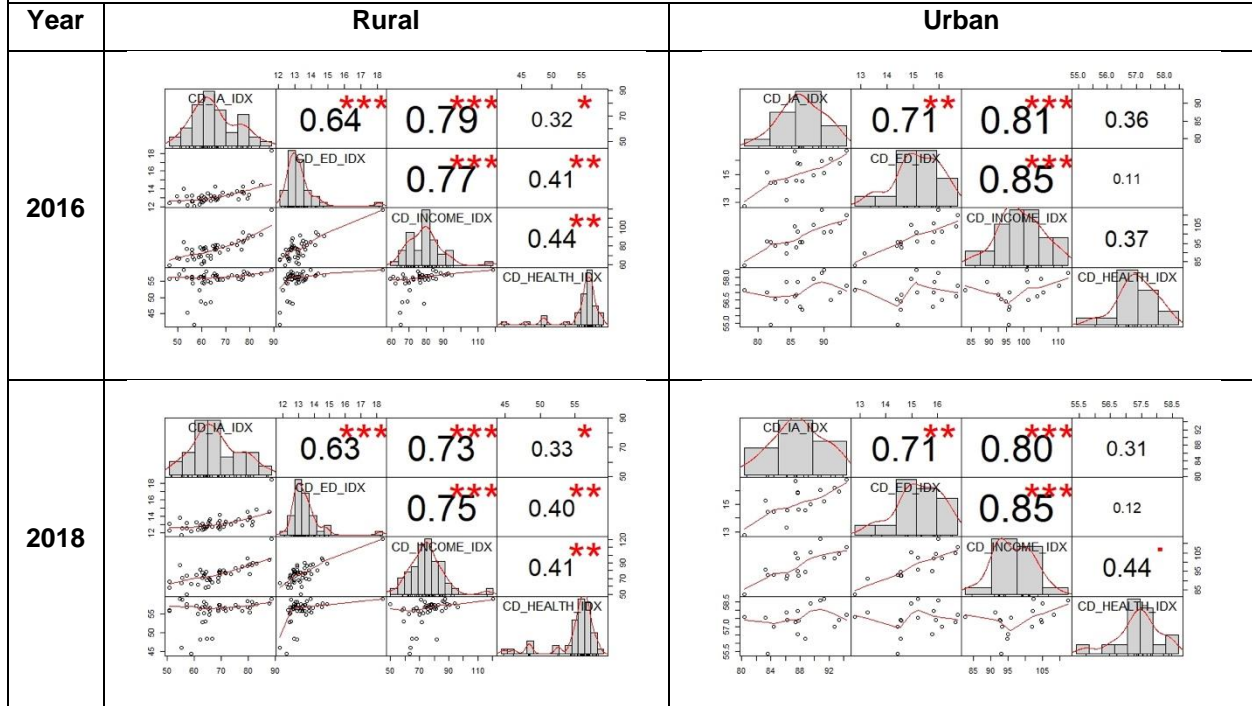
16	DP03_0005E	EMPLOYMENT STATUS Population 16 years and over In labor force Civilian labor force Unemployed	I_UNEMP
17	DP03_0009PE	% EMPLOYMENT STATUS Civilian labor force Unemployment Rate	I_UER
18	DP03_0088E	INCOME AND BENEFITS (IN 2018 INFLATION-ADJUSTED DOLLARS) Per capita income (\$)	I_PCI
19	DP03_0096E	HEALTH INSURANCE COVERAGE Civilian noninstitutionalized population With health insurance coverage	H_WITH
20	DP03_0099E	HEALTH INSURANCE COVERAGE Civilian noninstitutionalized population No health insurance coverage	H_NO_INS
21	DP03_0097E	HEALTH INSURANCE COVERAGE Civilian noninstitutionalized population With health insurance coverage With private health insurance	H_PVT
22	DP03_0098E	HEALTH INSURANCE COVERAGE Civilian noninstitutionalized population With health insurance coverage With public coverage	H_PUB
23	DP03_0119PE	PERCENTAGE OF FAMILIES AND PEOPLE WHOSE INCOME IN THE PAST 12 MONTHS IS BELOW THE POVERTY LEVEL All families	I_POV_LINE
24	DP05_0033E	RACE Total population	TOT_POP
25	DP05_0025E	SEX AND AGE Total population 18 years and over	TOT_VOTE
26	DP05_0026E	SEX AND AGE Total population 18 years and over Male	TOT_VOTE_M
27	DP05_0027E	SEX AND AGE Total population 18 years and over Female	TOT_VOT_F

APPENDIX 2: MODELS OF BEST FIT ON URBAN AND RURAL COUNTIES, 2016 AND 2018

<i>Appendix 2. Models and graphs of best fit using AIC criteria for the 2016 and 2018 rural and urban congressional districts.</i>		
Year	Rural	Urban
2016	<p>IA_IDX = $\alpha + \beta \cdot \text{INCOME_IDX}$</p> <p>IA_IDX = 9.04918 + 0.72720 · INCOME_IDX</p> <p>β t value 8.750 Pr(> t) 2.38e-11 ***, significant 0.001 level Adjusted R-squared: 0.6165 F-statistic: 76.57 on 1 and 46 DF, p-value: 2.377e-11</p>	<p>IA_IDX = $\alpha + \beta \cdot \text{INCOME_IDX}$</p> <p>IA_IDX = 42.02064 + 0.44838 · INCOME_IDX</p> <p>α t value 5.077 Pr(> t) 0.000136 ***, significant 0.001 level β t value 5.364 Pr(> t) 7.89e-05 ***, significant 0.001 level Adjusted R-squared: 0.6345 F-statistic: 28.77 on 1 and 15 DF, p-value: 7.89e-05</p>
		
2018	<p>IA_IDX = $\alpha + \beta \cdot \text{INCOME_IDX}$</p> <p>IA_IDX = 24.83928 + 0.56980 · INCOME_IDX</p> <p>β t value 7.245 Pr(> t) 3.91e-09 ***, significant 0.001 level Adjusted R-squared: 0.5228 F-statistic: 52.49 on 1 and 46 DF, p-value: 3.914e-09</p>	<p>IA_IDX = $\alpha + \beta \cdot \text{INCOME_IDX}$</p> <p>IA_IDX = 48.41042 + 0.40191 · INCOME_IDX</p> <p>α t value 6.217 Pr(> t) 1.65e-05 ***, significant 0.001 level β t value 5.091 Pr(> t) 0.000133 ***, significant 0.001 level Adjusted R-squared: 0.6089 F-statistic: 25.91 on 1 and 15 DF, p-value: 0.0001329</p>
		

APPENDIX 3: CORRELATION MATRIX OF THE FOUR INDICES

Appendix 3. Correlation between Internet Availability (IA), Educational Attainment (ED), Income (IN), and Health Insurance (HI) indices. In 2016 and 2018 Rural data, ED significantly correlates to IA, IN significantly correlates to ED and IA, and HI correlates to IN and ED, but much less so with IA. In 2016 and 2018 Urban data, ED correlates with IA and IN strongly correlates to ED and IA.



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CONGRESS AND THE PRESIDENT’S ROLE IN DESIGNING WELFARE-TO-WORK PROGRAMS THAT PROMOTE ECONOMIC MOBILITY

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This paper examines how the 1990s work-first approach to welfare reform has affected economic mobility and the potential of Human Capital Development (HCD) approaches to combat cyclical poverty. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 adopted a work-first strategy largely because of short-term studies that seemed to show some initial benefits to this approach. Even though longer-term studies showed these results reversed, the work-first philosophy had already been set in motion. Since then, some states enacted pilot programs stressing HCD methods. However, many have not allocated any significant portion of their federal funds to the education and training of welfare recipients due to federal restraints. This paper will provide a comparative analysis by examining studies conducted on HCD and work-first programs. While this paper emphasizes the importance of HCD approaches for increased economic mobility that can ultimately save government funds long-term, it will also investigate the potential challenges of research and implementation. Additionally, it will analyze employment outcomes by educational attainment and states’ allocation of TANF funds to education and training. Lastly, it will discuss recent legislation before Congress that can provide solutions. The result will be an economic analysis that supports the development of a cohesive policy solution for the most successful welfare reform approaches that foster economic mobility.

INTRODUCTION

In the last decade, the United States has attained the longest economic expansion in history.¹ With such unprecedented levels of growth, it would be a natural assumption that economic mobility should be increasing as well. However, the chance of moving from the bottom quintile of income earners to the top quintile is only 7.5%, which is considerably lower than comparable nations.² Additionally, the share of children making more than their parents has been steadily declining.³ Deep poverty rates are also on the rise, with a study conducted by Dr. Kathryn Edin and Luke Shaefer finding that American families living on \$2 a day per person has

¹ Gretchen Frazee, “Can the Longest Economic Expansion in U.S. History Last?” (Public Broadcasting Service, July 1, 2019), <https://www.pbs.org/newshour/economy/making-sense/can-the-longest-economic-expansion-in-u-s-history-last>.

² Raj Chetty et al., “Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States,” *The Quarterly Journal of Economics* 129, no. 4 (2014): 16, <https://www.nber.org/papers/w19843.pdf>.

³ Raj Chetty, et al. “The Fading American Dream: Trends in Absolute Income Mobility Since 1940.” *National Bureau of Economic Research*, no. 22910 (2016): 18. <https://www.nber.org/papers/w22910.pdf>.

surged to 1.5 million households, which includes about 3 million children.⁴ As a result, income concentration has reached pre-Great Depression levels, with the richest 0.1% acquiring 188 times the wealth as the bottom 90%.⁵ The interaction of a myriad of economic forces has contributed to this current reality, including fluctuations in the labor market combined with innovations in technology, the decline in unionized labor, and the outsourcing of low-wage jobs. Policymaking on poverty issues from the federal government has sometimes properly accommodated for these economic forces, but far too often has failed to fully adjust to economic realities in order to provide sustainable pathways out of poverty for millions of Americans.

A BRIEF HISTORY OF WELFARE REFORM

The most substantial changes to modern poverty governance occurred with 1990s welfare reform, which culminated in the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Its passage took lengthy bipartisan negotiations and eventual collaboration between Democratic President Bill Clinton and the Republican majority in Congress at the time. When campaigning, Clinton had promised to “end welfare as we know it”, and he certainly delivered. PRWORA completely overhauled the current cash entitlement program, Aid to Families with Dependent Children (AFDC), which was originally named Aid to Dependent Children (ADC).⁶ President Franklin D. Roosevelt established ADC in 1935 to provide a social safety net for low-income families following the Great Depression. The 1996 reform eliminated the cash entitlement provision, implemented a five-year lifetime limit on assistance receipt, and established a non-entitlement block grant program, Temporary Assistance for Needy Families (TANF). Based on a work-first or Labor Force Attachment (LFA) ideology, PRWORA instituted a thirty-hour per week work requirement that excluded most long-term education and job training from being counted. Under the new law, TANF recipients can only count vocational training for up to one year of work requirements as a standalone activity, which is before many postsecondary programs can be completed. Otherwise, they can only count education or training towards the work participation rate if combined with at least twenty hours

⁴ Kathryn Edin and H. Luke Shaefer, *\$2.00 a Day: Living on Almost Nothing in America* (Boston: Mariner Books, 2016), xvii.

⁵ Emmanuel Saez, “Striking It Richer: The Evolution of Top Incomes in the United States.” *Inequality in the 21st Century*, (2018): 39–42. doi:10.4324/9780429499821-8.

⁶ Edin and Shaefer, *\$2.00 a Day*, 21.

per week of another core activity, including community service and employment. As a result, many TANF recipients dropped out of these programs to pursue low-wage, full-time jobs.⁷

Two decades prior to the eventual passage of PRWORA, the increasing number of recipients and subsequent rising expenditures led to a widespread desire for change across the political spectrum. As a result of this movement for reform, a waiver period began in the 1980s and 1990s consisting of state demonstration projects and experiments with cash welfare for these two decades. Reforms included work requirements, sanctions, family caps, and time limits.⁸ Since states implemented these policies on an individual basis, this time period has provided informative data on the isolated effects of individual reforms, which researchers have adequately studied. Results from these studies are useful, but they have their limitations since the economy and labor market have both significantly evolved since the turn of the new century.

THE POLITICS BEHIND WELFARE REFORM

Perhaps an even stronger impetus for reform was the perception that welfare was causing many social ills, such as out-of-wedlock births and government dependency. Racial tensions fueled these perceptions. Ronald Reagan popularized the image of the “welfare queen”, which became ingrained in American society as a single woman of color decked out in furs driving a Cadillac to pick up her welfare check and not working or looking for work. Even though evidence proves this perception is far from reality, especially regarding race since women of color have never been the majority of welfare recipients, the facts did not stand a chance in the face of this compelling narrative delivered by a charismatic presidential candidate.⁹

In reality, examinations of the demographics of TANF recipients consistently find that the vast majority are already working. They have turned to TANF because of the shortcomings in the low-wage labor market, such as the often physically demanding jobs with insufficient hours, unreliable schedules, low pay, and minimal if any benefits. Many also encounter workplace harassment or discrimination, health concerns for themselves or a dependent family member, and the fallout of childcare or transportation needs. In Kansas, 84% of those leaving TANF worked

⁷ Randi Hall, “Expanding Education and Training Opportunities Under TANF: A Path to Stable Employment in Today’s Economy,” CLASP, July 2016.

⁸ James Patrick Ziliak, *Welfare Reform and Its Long-Term Consequences for America's Poor* (New York: Cambridge University Press, 2015), 22-23.

⁹ Edin and Shaefer, *\$2.00 a Day*, 14.

at some point the year prior or following their exit, but the employment was unstable and unreliable due to the nature of low-wage, non-unionized labor.¹⁰

The racialization of welfare stems back even before the myth of the welfare queen became commonplace. Intentional discrimination under the ADC program resulted in an 80% white caseload in 1939.¹¹ As more women of color gained access to welfare over time due to migrations north and the Civil Rights Movement, hostility towards the program proliferated. Many viewed it as a “black program,” even though significantly more white people have always used it. When Clinton came onto the scene as a presidential candidate, racial politics had already driven a wedge in the Democratic Party, which had previously had formidable support in the South. He sought to mitigate these effects by aligning himself with the conservative rhetoric on the unpopular welfare program. This resulted in effective, bipartisan rhetoric that the AFDC program was indefensible and had to be drastically altered.¹²

COMPARATIVE ANALYSIS OF WELFARE-TO-WORK STRATEGIES

Results in the years immediately following the 1996 reforms have been examined to a similar extent as the waiver period, but long-term results spanning until the most recent decade are lacking. Even though long-term results are essential to developing sustainable solutions to poverty due to its cyclical nature, historically the rationale for welfare legislation has not always been grounded in long-term orientation. Indeed, a short-term study of the Riverside California GAIN program conducted by the Manpower Demonstration Research Corporation (MDRC) partially laid the foundation of the rationale for the work-first ideology of PRWORA. This three-year study produced more desirable labor market outcomes for Riverside’s work-first approach to their welfare program compared to other California GAIN programs that took a “Human Capital Development” (HCD) approach. Unlike the LFA approach, an HCD approach promotes

¹⁰ Ladonna Pavetti, “Quality Work and Direct Financial Assistance, Not Work Requirements, Stabilize Families,” Center on Budget and Policy Priorities, August 28, 2019, <https://www.cbpp.org/blog/quality-work-and-direct-financial-assistance-not-work-requirements-stabilize-families>.

¹¹ Joe Soss, Richard C. Fording, and Sanford Schram, *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race* (Chicago: University of Chicago Press, 2011), 65-67.

¹² Ibid.

education and training to remove barriers to employment for low-income individuals before launching them into the workforce.¹³

A few years later, a long-term examination of the same programs overturned the MDRC findings. The study, published by the *Journal of Labor Economics* in 2006, found that the results reversed over time by using regression-adjustment methods. They found that in regard to employment and earnings outcomes, the LFA approach of the Riverside GAIN program had only short-run advantages over HCD programs at best. They determined that Riverside's comparatively favorable labor market conditions caused most of these short-run benefits rather than the LFA training techniques. Results indicated that over the long-term of four to six years after training, welfare recipients participating in a program with an HCD approach had higher employment rates and earnings than those who participated in a program with an LFA approach. They conclude by calling for programs that move away from the quick fixes of LFA approaches and towards the long-term orientation of sustainable HCD methods.¹⁴

Numerous other studies that focused on long-term results have also concluded that HCD training techniques lead to better long-term outcomes than LFA training techniques. A 2015 study conducted by the University of Maryland of around 30,000 TANF recipients in the Colorado Works welfare program revealed that earning a credential through the program increased individuals' quarterly earnings and employment rates significantly. Those with short-term certificates saw an average \$416 increase in quarterly earnings, and those with an associate degree saw an average of \$2,200 increase in quarterly earnings. Additionally, recipients who earned an associate degree were 21% more likely to find employment.¹⁵

An evaluation of Arkansas' Career Pathways Initiative, which provides a comprehensive set of services to low-income adults, including remedial education, GED preparation, and credentialing, found that participants who received Temporary Employment Assistance (TEA) earned \$3,100 more per year on average in the year after leaving college compared to a control

¹³ James Riccio, Daniel Friedlander, and Stephen Freedman. *GAIN: Benefits, costs, and three-year impacts of a welfare-to-work program*. (New York: Manpower Demonstration Research Corporation, 1994).

¹⁴ Joseph V. Hotz, Guido W. Imbens, and Jacob A. Klerman. "Evaluating the differential effects of alternative welfare-to-work training components: A reanalysis of the California GAIN program." *Journal of Labor Economics* 24, no. 3 (2006): 521–66.

¹⁵ Lesley Turner, "The Returns to Higher Education from Marginal Students: Evidence from Colorado Welfare Recipients", *University of Maryland College Park Department of Economics*, (2015). http://econweb.umd.edu/~turner/Turner_CO.pdf.

group of other TEA recipients.¹⁶ Project Quality Employment Through Skills Training (QUEST), a sectoral-based skills training program for low-income adults, covers education-related expenses for participants to earn an associate's degree or an accredited occupational certificate in high-demand industries that pay sustainable wages and offer advancement opportunities. A rigorous evaluation of the program conducted by the Economic Mobility Project found it yielded sizable, prolonged gains in employment and earnings for participants six years after program enrollment. QUEST takes a holistic approach to ensure participants succeed by including remedial instruction, basic education training, weekly work readiness training, and job placement assistance. Compared to a randomized control group of low-income adults that did not receive services but were otherwise similar, QUEST participants earned \$5,080 in wages on average and were 15% more likely to be engaged in year-round work by the sixth year.¹⁷

After examining a large number of studies on the outcomes of welfare-to-work programs, Barnow and Gubits found that longer-term, intensive training strategies were more effective than short-term strategies that sought to move welfare recipients quickly into the first available job.¹⁸ Similarly, after reviewing experimental evaluations of twenty welfare programs, Bloom and Michalopoulos concluded that programs that offered both employment-focused and educational or training options with the flexibility to determine the appropriate combination on an individual basis had the most successful outcomes.¹⁹ A 2006 study examined earnings data for sixteen quarters after female welfare participants in Missouri and North Carolina first entered the program between 1997 and 1999. To differentiate between the effect on earnings from short-term job search activities and longer-term intensive training, they used propensity score matching methods. Their results show that short-term job search activities minimally impact the earnings outcomes for welfare recipients long-term. In comparison, they found the longer, intensive

¹⁶ Josh Bone, "TANF Education and Training: The Arkansas Career Pathways Initiative", CLASP, April 2010, <http://www.clasp.org/resources-and-publications/files/Arkansas-Career-Pathways.pdf>.

¹⁷ Ida Rademacher, "Project QUEST: San Antonio's Systemic Approach to Workforce Development," *Economic Opportunities Program, The Aspen Institute*, (2001): 15-17. <https://wdr.doleta.gov/conference/pdf/rademacher.pdf>.

¹⁸ Burt S. Barnow and Daniel B. Gubits. "Review of Recent Pilot, Demonstration, Research, and Evaluation Initiatives to Assist in the Implementation of Programs under the Workforce Investment Act." *Chapter 5 of the Strategic Plan for Pilots, Demonstrations, Research, and Evaluations, 2002–2007*, (2002): 6. https://wdr.doleta.gov/research/FullText_Documents/ETAOP%202003-10%20Review%20of%20Recent%20Pilot,%20Demonstration,%20Research,%20and%20Evaluation%20Initiatives.pdf.

¹⁹ Dan Bloom and Charles Michalopoulos, "How Welfare and Work Policies Affect Employment and Income: A Synthesis of Research," *Manpower Demonstration Research Corporation*, (2001): 25. https://www.mdrc.org/sites/default/files/full_393.pdf.

training had initial negative effects on earnings outcomes, but turned positive within two years of program completion and continued in following years.²⁰ This follows intuitive logic, since most earnings decline during an educational or training program but increase upon completion, which further demonstrates the need for examinations beyond the initial years.

Advocates of PRWORA claim work requirements increase employment and decrease dependency. However, the evidence from a variety of evaluations of the effects of work requirements does not support this rationale used to justify them. The Center on Budget and Policy Priorities (CBPP) concluded that increases in employment from work requirements that did not focus on removing barriers to gainful employment were modest and faded over time, which is demonstrated in Table One of the Appendix. CBPP found the most effective programs provided opportunities for individuals who were subject to work requirements to improve their education or build their skills first.²¹ In fact, stable employment, which is defined as employment for 75% of the calendar quarters in years three through five after initial benefit receipt, proved to be an anomaly for recipients subject to work requirements.²²

RESEARCH AND IMPLEMENTATION CHALLENGES

Nonetheless, there is some divergence from this general trend in outcomes. In 2006, a meta-analysis of twenty-seven experimental evaluations of 116 welfare-to-work programs over periods of up to twenty quarters found that job search strategies positively impacted labor market outcomes, but that basic education, vocational training, and work experience had marginal or negative impacts.²³ This finding could be the result of experimental errors with this particular study detailed in their paper or of the general flaws in meta-analyses, such as ignoring dispersion in effect sizes. It could also be due to improper implementation of HCD programs or more fundamental shortcomings of analyses of welfare-to-work programs.

²⁰ Andrew Dyke, Carolyn J. Heinrich, Peter R. Mueser, and Kenneth R. Troske. "The effects of welfare-to-work program activities on labor market outcomes." *Institute for the Study of Labor*, no. 1520, (2005).

²¹ Ladonna Pavetti, "Work Requirements Don't Cut Poverty, Evidence Shows." Center on Budget and Policy Priorities, June 2016, <https://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>.

²² Jeffrey Grogger and Lynn A. Karoly. *Welfare reform: Effects of a decade of change* (Cambridge, MA: Harvard University Press, 2005).

²³ David Greenberg, Andres Cebulla, and Stacy Bouchet, "Report on a Meta-Analysis of Welfare-to-work Programs," *Institute for Research on Poverty*, no. 1312-05 (2005), 38.

Many welfare recipients have low educational attainment and job skills that create challenging obstacles. Some reside in areas with limited employment options. Many face physical or mental health problems, substance abuse, or domestic violence. Individualized treatment can be difficult to implement with a limited budget. The LFA strategy requires lower initial funding, even though successful HCD programs save money over time. HCD programs have been underutilized and underdeveloped in the past, which has limited their success.

Moreover, evaluating the true effects of welfare-to-work programs faces significant barriers. Many studies seeking to distinguish the outcomes associated with different training techniques can only capture the effects of official policies and fail to accurately account for what is implemented in practice.²⁴ For example, even the California GAIN program in Riverside and the Portland welfare program, which are both categorized as “work-first”, still supported individuals’ efforts to advance their education or skills, although they primarily focused on quick employment entry.²⁵ Some studies will group low-cost, job-oriented activities with more intensive and expensive training, which will compromise the results. Definitions of long-term versus short-term programs vary depending on the study, with some categorizing twelve-week training programs as long-term, even though the Job Opportunities and Basic Skills (JOBS) Act defines long-term training programs as running from six months to two years.²⁶

Advocates of PRWORA focus on the 75% overall decline in caseload from 1996 to 2016 and the increase in employment for recipients in the years immediately following the passage of the 1996 legislation. However, one reason caseloads are decreasing is because people who were previously or currently eligible are not receiving benefits under the new regulations. Only 23% of families living in poverty actually received TANF cash assistance in 2016.²⁷

After PRWORA, low-income individuals and families without work or welfare assistance increased. In New Jersey, the percentage of these individuals averaged around 25-28% over five years. Among former recipients who were without welfare or work, 40% were considered “least stable”, meaning they did not live with any employed partner or receive any other form of

²⁴ Jeffrey Grogger, Lynn Karoly, and Jacob Klerman, “Consequences of Welfare Reform: A Research Synthesis,” *Rand Corporation*, (2002): 23. <http://www.acf.hhs.gov/programs/opre/resource/consequences-of-welfare-reform-a-research-synthesis>.

²⁵ Pavetti, “Work Requirements Don't Cut Poverty, Evidence Shows”.

²⁶ Dyke, “The effects of welfare-to-work program activities on labor market outcomes,” 570.

²⁷ Liz Schott. “TANF at 22: Its Work Programs Do Little to Help Needy Parents Get Work.” Center on Budget and Policy Priorities, August 2018. <https://www.cbpp.org/blog/tanf-at-22-its-work-programs-do-little-to-help-needy-parents-get-work>.

income assistance. Rather than leaving welfare due to improved earnings or employment outcomes, sanctions caused about a third of TANF exits.²⁸ In fact, less than one-third of TANF exits can be attributed to employment.²⁹ In 2011, states reported that on average only 27.8% of their TANF recipients entered employment and 30.8% saw earnings increase.³⁰

Increasing employment also appears to be a successful outcome, but for a sustainable pathway out of poverty, recipients need a stable job that pays a living wage. Furthermore, researchers concluded that the single most important factor in the increase in employment among female heads of family in the 1990s was the expansion of the EITC, rather than welfare reform.³¹ The CBPP found that in Kansas, parents leaving welfare assistance had unstable employment and earnings below half of the poverty line.³² On a national scale, studies consistently find that participants leaving TANF find themselves in low-wage jobs and still living below the federal poverty line.³³ While overall poverty rates may have decreased, extreme poverty—defined as living on less than \$2 in cash a day per person—has doubled since the 1996 reform.³⁴

ANALYSIS OF EMPLOYMENT OUTCOMES BY EDUCATIONAL ATTAINMENT

With today's modern labor market, increasingly all but the lowest paying jobs require a form of postsecondary credential. In a compilation of the research on employment outcomes, the United States Department of Labor concluded that a postsecondary degree or industry recognized credential has the largest impact on a workers' lifetime earnings.³⁵ According to data from the Bureau of Labor Statistics, adults with less than a high school diploma not only have the highest

²⁸ Robert G. Wood and Anu Rangarajan, "What's Happening to TANF Leavers Who Are Not Employed?" Mathematica Policy Research, October 2003, <http://www.mathematica-mpr.com/~media/publications/PDFs/tanfleave.pdf>.

²⁹ Schott, "TANF at 22."

³⁰ Office of Family Assistance, *TANF High Performance Measures – Performance Year 2011*, Administration for Children and Families, U.S. Dept. of Health & Human Services, published December 2013, <http://www.acf.hhs.gov/programs/ofa/resource/high-performance-measures-performance-year-2011>.

³¹ Grogger, "Consequences of Welfare Reform: A Research Synthesis."

³² Schott, "TANF at 22."

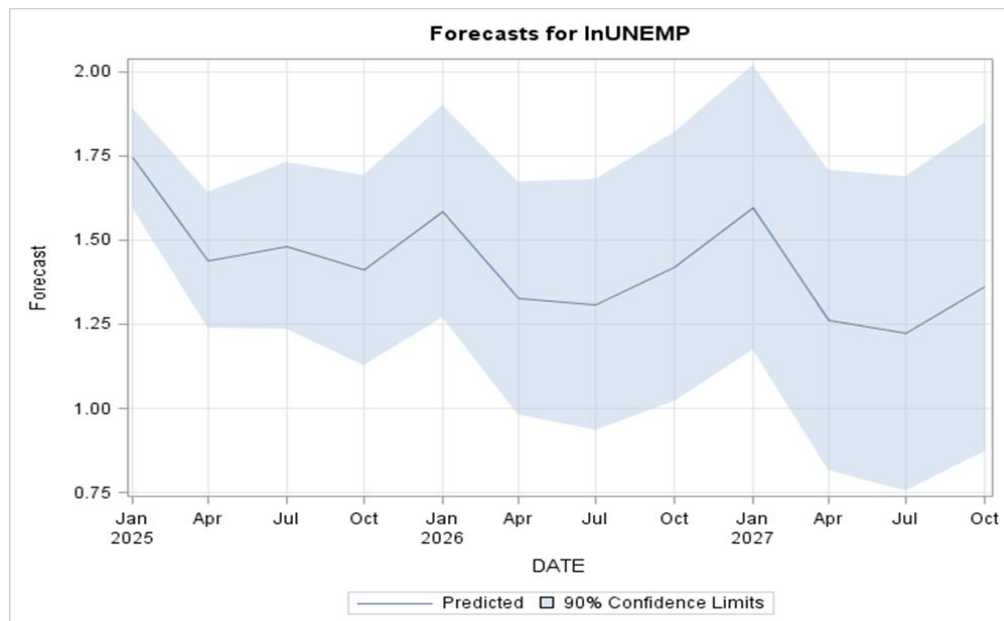
³³ Elizabeth Lower-Basch and Mark Greenberg, "Single Mothers in the Era of Welfare Reform", *The Gloves-off Economy: Workplace Standards at the Bottom of America's Labor Market*, (2008): 175-177. <http://www.clasp.org/resources-and-publications/publication-1/0490.pdf>.

³⁴ Shafer, Luke, and Kathryn Edin. "Policy Brief: Extreme Poverty in the United States, 1996 to 2011." *National Poverty Center*, (2012): 4. http://www.npc.umich.edu/publications/policy_briefs/brief28/policybrief28.pdf.

³⁵ U.S. Department of Labor, U.S. Department of Commerce, U.S. Department of Education, U.S. Department of Health and Human Services, "What Works In Job Training: A Synthesis of the Evidence", (2014): 4. <http://www.dol.gov/asp/evaluation/jdt/jdt.pdf>.

unemployment rates, but are also the most vulnerable to economic downturns. The opposite is true for adults with a bachelor's or associate degree. Even earning a high school diploma or GED can significantly decrease the chance of being unemployed, which demonstrates the need for remedial education for TANF recipients.³⁶ The gap between earnings for those without a high school diploma and those with a bachelor's degree is only increasing. These disparities in unemployment and earnings can be seen in Graph One and Two of the Appendix.

I forecasted unemployment for individuals without a high school diploma in upcoming years in Statistical Analysis System (SAS) from data retrieved from the US Bureau of Labor Statistics.³⁷ The logged version had a lower Schwarz Bayesian Information Criteria, so I used this version in order to give a more accurate confidence interval that is depicted by the shaded region. This relatively wide confidence interval points to the uncertainty of future employment outcomes for this demographic. The sharp spikes indicate that the unreliable nature of employment for low-skilled labor is likely to continue.



³⁶ U.S. Bureau of Labor Statistics, retrieved from Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series>.

³⁷ Ibid.

ANALYSIS OF STATES' ALLOCATION OF TANF FUNDING

Advocates for PRWORA argued that states would use the increased flexibility of the block grant to invest greater resources in helping recipients find sustainable employment and cover work-related costs, such as transportation and childcare. While work-related supports increased initially, they have remained flat or declined since the early years. According to the CBPP, \$3 out of every \$4 in TANF funding are spent on a purpose other than cash assistance, which was 70% of spending at TANF's inception. Childcare and work-related activities constituted only 6.8% of total federal TANF funds spent by states in 2014.³⁸ States are using an increasing amount of their TANF block grant on other state services, some of which are entirely unrelated to helping provide a safety net or work opportunities for low-income people. In *The Uncertain Hour*, an NPR podcast, Krissy Clark exposes how some states spend federal welfare dollars on marriage classes for middle and upper-class couples in Oklahoma, unbeknownst even to the participants.³⁹ She also details how Michigan spends the largest portion of its welfare funds on out-of-wedlock pregnancy prevention, and another significant portion on college scholarships that can go to middle and upper-class students to private universities.⁴⁰

As long as states can justify their spending into one of four broad categories—"assisting needy families, promoting work and marriage, reducing out-of-wedlock pregnancy, and increasing two-parent families"—it is permitted.⁴¹ The inclusion of these four categories in the 1996 legislation goes back to the politics surrounding welfare at the time and the perception that the program was eroding societal morals. States are actually incentivized not to spend their TANF funds on cash assistance, which requires lengthy paperwork and oversight. Additionally, the federal work participation rate gives little credit for education and training activities.⁴²

³⁸ CLASP analysis of *TANF Financial Data – Fiscal Year 2014*, Office of Family Assistance, Administration for Children and Families, U.S. Dept. of Health & Human Services, published July 2015, <http://www.acf.hhs.gov/programs/ofa/resource/tanffinancial-data-fy-2014>.

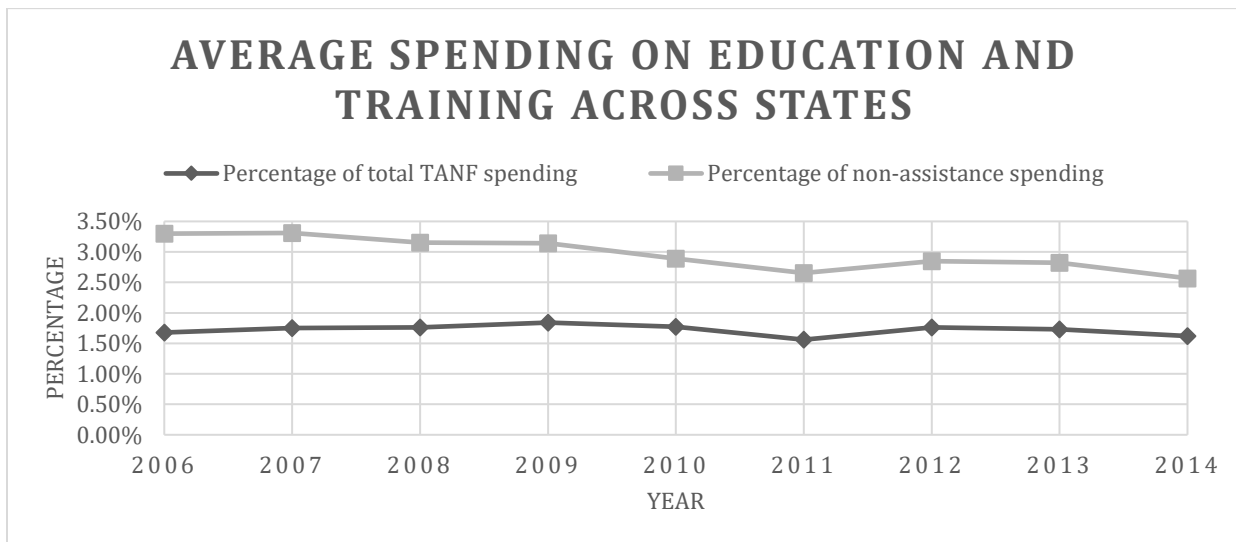
³⁹ Clark, Krissy. "What's love (styles) got to do with it?" *The Uncertain Hour*, National Public Radio. Podcast audio, May 26, 2016.

⁴⁰ Clark, Krissy. "Everything but the kitchen sink." *The Uncertain Hour*, National Public Radio. Podcast audio, June 9, 2016.

⁴¹ Ibid.

⁴² Elizabeth Lower-Basch, Amy Ellen Duke-Benfield and Lavanya Mohan, "Ensuring Full Credit Under TANF's Work Participation Rate", CLASP, March 2014, <http://www.clasp.org/resources-and-publications/publication-1/Ensuring-Full-CreditUnder-TANFs-Work-Participation-Rate.pdf>.

Even with the increasing literature on the benefits of HCD strategies over LFA strategies, many states have still not allocated more of their funding to education and job training. Each year, states report to the United States Department of Health and Human Services the amount they spend from federal and state funds across both assistance and non-assistance categories. I analyzed the allocation of TANF funds across all fifty states by averaging the total amount spent on education and training as both a share of total TANF dollars spent and dollars spent on non-assistance categories, which are expenditures that meet one of the four categories but are not cash assistance. As demonstrated by the graph below, states have only been allocating anywhere from 1.56% to 1.84% on average of their total TANF funding and 3.31% to 2.65% of non-assistance spending on education and training from 2006-2014.⁴³



Another failure of the block grant structure of TANF is that Congress and the President have never increased it from its original amount of \$16.5 billion in the twenty-three years since its inception. Due to inflation, this has led to the significant decrease of its purchasing power. The original \$16.5 billion in 1996 is worth only \$10.1 billion today, which means TANF funding has experienced a 38.6% decline in purchasing power.⁴⁴ Rather than a mere lack of action, this is an intentional policy decision. Politicians frequently employ this strategy on public assistance

⁴³ “TANF Financial Data 2006-2014”, Office of the Administration for Children & Families, accessed December 2, 2019, <https://www.acf.hhs.gov/ofa/programs/tanf/data-reports>.

⁴⁴ Calculated using the latest US government CPI data published on January 14, 2020 to adjust for inflation through December 2019.

programs with the direct goal of decreasing their value. They then use the subsequent decreased effectiveness of these programs as a result of less funding in real dollar terms as a rationale not to increase their funding in the future, which can pose a challenging political cycle to overcome.

MODERN LEGISLATION BEFORE CONGRESS

Congress currently has proposals before them that could make progress in overcoming the shortcomings of previous poverty governance. TANF has been operating on a continuing resolution since 2010. As a part of reauthorization, Congress should look into requiring states to allocate more funds to education and training. The Pathways to Health Careers Act would expand the Health Profession Opportunity Grant (HPOG) program under the Affordable Care Act. HPOG provides TANF recipients and other low-income individuals with education and training for sustainable healthcare jobs, which has been identified as a top growing industry. The bill stipulates that new HPOG grantees should provide childcare and transportation supports; emphasize career pathways with opportunities for advancement; supply case management and career coaching; and partner with employers, colleges, and apprenticeship programs.⁴⁵

The Empowering Individuals to Succeed Through Education and Workforce Training Act would provide funding for support services for individuals participating in certain training activities through a new grant program under the Workforce and Innovation Opportunity Act. Individuals pursuing apprenticeships, adult education and literacy activities, and occupational skills upgrading programs would be eligible to receive assistance covering expenses such as transportation, childcare, tuition, housing, and referrals to healthcare and legal aid services.⁴⁶ The Coordinating for TANF Recipients Act would direct the Department of Health and Human Services to make TANF funds available for state demonstration projects that provide coordinated case management to help TANF recipients improve their employment outcomes.⁴⁷

⁴⁵ “Pathways to Health Careers Act”, H.R. 3398, 116th Congress, introduced June 21, 2019, <https://congress.gov/bill/116th-congress/house-bill/3398>

⁴⁶ “Empowering Individuals to Succeed Through Education and Workforce Training Act”, H.R. 5206, 116th Congress, introduced November 20, 2019, <https://www.congress.gov/bill/116th-congress/house-bill/5206/actions?r=3&s=1&KWICView=false>

⁴⁷ “Coordinating for TANF Recipients Act”, H.R. 4167, 115th Congress, Introduced October 27, 2017, <https://www.congress.gov/bill/115th-congress/house-bill/4167/actions?KWICView=false>

Congress should consider each of these pieces of legislation to determine the most viable path forward for assisting TANF recipients in achieving economic mobility. They have made progress in recent years already, such as the bipartisan reauthorization of the Workforce Innovation and Opportunity Act (WIOA) in 2014 that made TANF programs mandatory partners in the one-stop career centers. WIOA focuses on demand-driven training and postsecondary education that leads to secure employment for low-skilled recipients of public assistance.⁴⁸ They have also let opportunities pass them by, such as the bipartisan Enhancing and Modernizing Pathways to Opportunity through Work, Education, and Responsibility Act introduced in the Senate in 2016 that never passed. This bill would have allowed welfare recipients to count vocational education towards the work participation rate for up to thirty-six months.⁴⁹

Furthermore, Congress has yet to introduce some sustainable solutions, primarily because of political obstacles. Due to the misguided belief that welfare recipients simply do not want to work legislation has often focused on punitive rather than uplifting measures. Edin and Shaefer dispel this notion in their book by interviewing a wide range of welfare recipients who are all eager to find self-sufficient employment but have faced numerous obstacles in doing so.⁵⁰

In response, states have developed programs to combat some of the shortcomings of the counterproductive incentive structure of the federal work requirements. Nebraska's Employment First program allows recipients to count vocational education for up to thirty-six months to meet their work requirements.⁵¹ Oklahoma's Special Projects program allows TANF recipients to attend any state community college or technology center while they receive assistance.⁵² In both Pennsylvania's Keystone Education Yields Success program and Oregon's Rogue Educational Achievement program, TANF recipients may use vocational education to count towards work requirements for up to twenty-four months.⁵³ While these states and many others are making significant progress, if left to the states alone, necessary reforms will not be fully realized.

⁴⁸ Kisha Bird, Marcie Foster, and Evelyn Ganzglass, "Career Success for Low-Income Youth and Adults: Key Provisions of the Workforce Innovation and Opportunity Act (WIOA)", CLASP, September 2014, <http://www.clasp.org/resources-and-publications/publication-1/KeyProvisionsofWIOA-Final.pdf>.

⁴⁹ "EMPOWER Act of 2016", S. 3091, 114th Congress, introduced June 23, 2016, <https://www.congress.gov/bill/114thcongress/senate-bill/3091>.

⁵⁰ Edin and Shaefer, *\$2.00 a Day*.

⁵¹ Lavanya Mohan, "TANF Education and Training: Nebraska's Employment First", CLASP, February 2014, <http://www.clasp.org/resources-and-publications/publication-1/Nebraskas-Employment-First-Program-2.pdf>.

⁵² Elizabeth Kenefick, "TANF Education and Training: The Oklahoma Special Projects", CLASP, July 2011, <http://www.clasp.org/resources-and-publications/publication-1/Oklahoma-Special-Projects.pdf>.

⁵³ Josh Bone, "TANF Education and Training: Pennsylvania's KEYS Program", CLASP, April 2010,

Congress and the President should have a compelling interest in this research because if policies help welfare recipients achieve economic mobility, the quality of life for many families will improve while saving government money long-term. Individuals without a high school diploma can cost the government up to \$671 in public assistance spending, but once they earn a diploma, each individual provides a \$5,400 net gain in taxes.⁵⁴ The gains are even larger for individuals earning a bachelor's degree. The cohort of single mothers enrolled in postsecondary education in Kentucky graduating this year will pay \$173 million more in taxes than if they only had high school diplomas, generating \$56 million in savings on public assistance spending.⁵⁵

CONCLUSION

Developing a comprehensive solution that accounts for current inequities in the low-wage labor market requires understanding the historical and political evolution of welfare reform. In order to design welfare-to-work programs that promote economic mobility, Congress and the President must develop evidence-based solutions that can appropriately tackle the inefficiencies of the current system, rather than developing policies based on preconceived ideologies that can contradict the available evidence. Despite the emergence of conflicting evidence, the work-first approach still has formidable political support due to the continuation of past reasoning. The end result of our nation's welfare system remains to be seen, but from examining the available data on poverty, it's clear that many low-income Americans are not seeing the gains of this expanding economy. The federal government should correct the flaws in our social safety net that disincentivize the most sustainable pathways for economic mobility—education and training.

<http://www.clasp.org/resources-and-publications/publication-1/KEYS.pdf>.

⁵⁴ Ishwar Khatiwada, Joseph McLaughlin, and Andrew Sum, with Sheila Palma, "The Fiscal Consequences of Adult Educational Attainment," *National Commission on Adult Literacy*, (2007), <https://files.eric.ed.gov/fulltext/ED508426.pdf>.

⁵⁵ Dykstra, Cathe. "Guest Columnist: Investing in Students Who Are Single Moms Will Strengthen Kentucky's Economy." *The State Journal*, January 23, 2020. https://www.state-journal.com/opinion/guest-columnist-investing-in-students-who-are-single-moms-will/article_82be3334-3df6-11ea-9313-93ae138fe608.html.

APPENDIX

TABLE 1

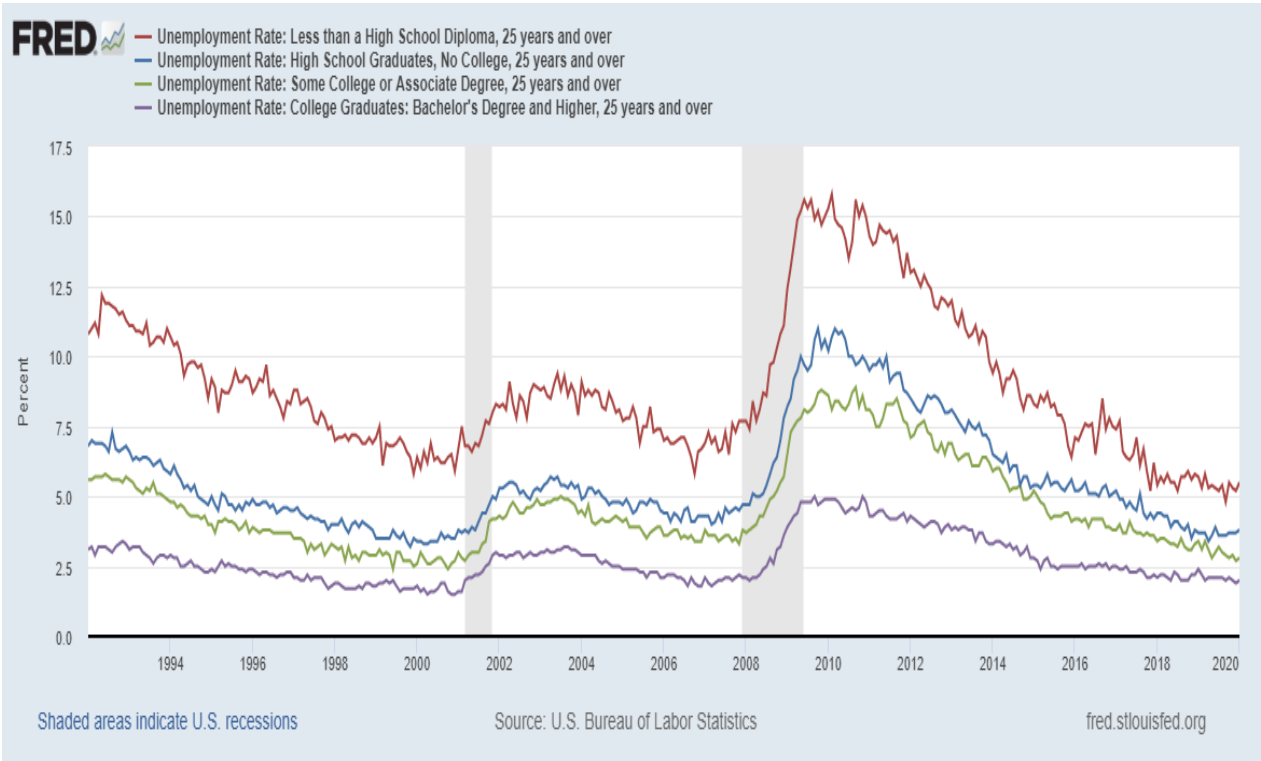
Employment Increases Among Cash Assistance Recipients Subject to Work Requirements Were Modest and Faded Over Time

Program Name	Percentage of recipients who worked					
	Year 1-2			Year 5		
	Subject to Work Requirements	Not Subject to Work Requirements	Impact	Subject to Work Requirements	Not Subject to Work Requirements	Impact
NEWWS Study Sites						
Atlanta, GA (LFA)	66.1	61.6	4.5***	65.1	63.0	2.1
Atlanta, GA (HCD)	64.4	61.6	2.8**	63.9	63.0	0.6
Columbus, OH (Integrated)	73.9	72.2	1.7	69.1	68.8	0.3
Columbus, OH (Traditional)	73.5	72.2	1.3	69.3	68.8	0.5
Detroit, MI	62.3	58.2	4.1***	68.8	68.8	0.0
Grand Rapids, MI (LFA)	77.7	70.1	7.6***	70.0	73.0	-2.9*
Grand Rapids, MI (HCD)	75.4	70.1	5.3***	70.3	73.0	-2.7*
Oklahoma City, OK	64.1	65.0	-0.9	53.2	54.2	-1.0
Portland, OR	72.1	60.9	11.2***	62.4	58.6	3.8*
Riverside, CA (LFA)	60.1	45.0	15.1***	48.7	44.5	4.2***
Riverside, CA (HCD)	48.2	38.9	9.3***	44.9	39.9	5.0***

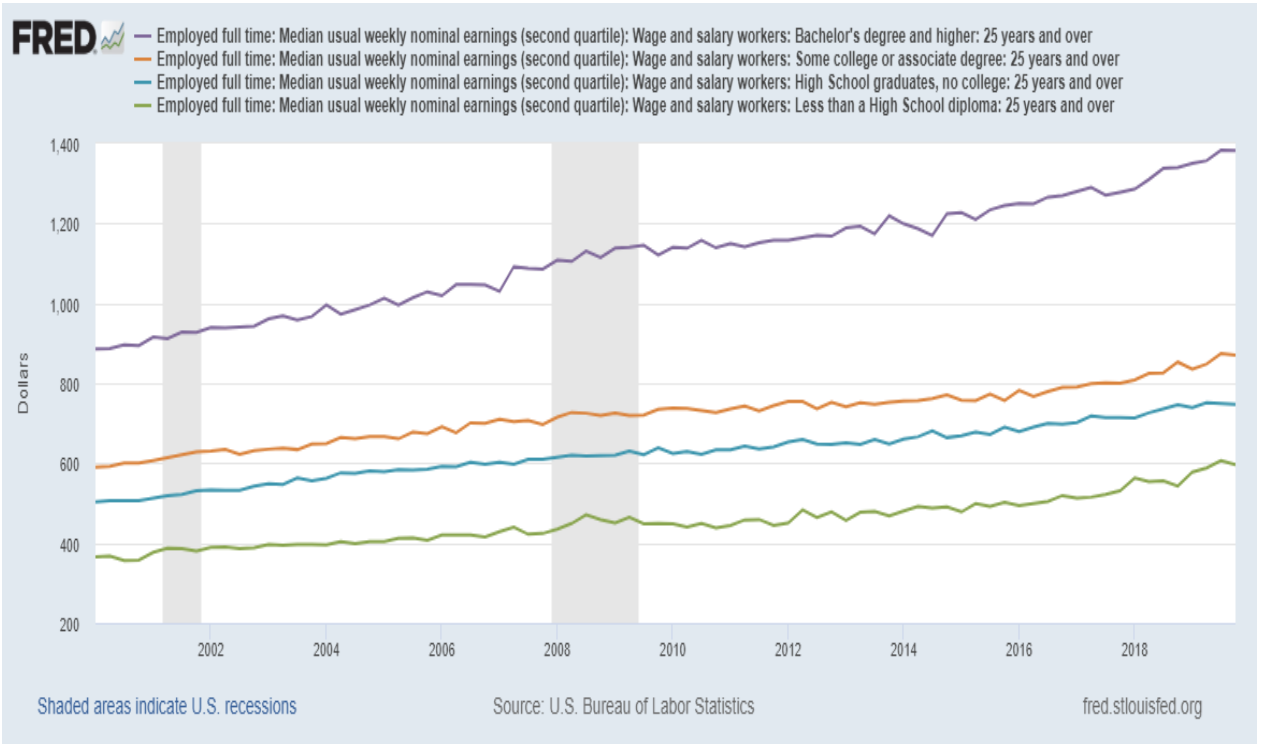
*, **, and *** denotes statistical significance at the .10, .05, and .01 levels, respectively, with .01 being the highest level of significance.

Note: NEWWS = National Evaluation of Welfare-to-Work Strategies; GAIN = Greater Avenues for Independence; IMPACT = Indiana Manpower Placement and Comprehensive Training Basic Track. The Columbus, Ohio, integrated site featured one worker providing employment case management and eligibility determination, while the traditional site featured two workers: one completing eligibility functions and one providing employment case management. Source: Jeffrey Grogger and Lynn A. Karoly, *Welfare Reform: Effects of a Decade of Change*, Harvard University Press, 2005.

Graph One: Unemployment Rates by Educational Attainment Level



Graph Two: Median Weekly Nominal Earnings by Educational Attainment Level



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THE CHALLENGE FOR THE PRESIDENCY AND CONGRESS OF IMPROVING THE VACCINATION RATE IN THE UNITED STATES AT THE FEDERAL VERSUS THE STATE LEVEL

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In 2019, New York City and several other American cities had large measles outbreaks. The United States, one of the richest countries in the world, endured an epidemic of measles due to vaccination hesitancy and an unclear federal government stance on the issue. In this article, I explain that the U.S. public health policy and especially the vaccination policy are established at the state level, involving discrepancies between states. While in theory it suggested that the federal administration has no power on this subject, vaccination is required for new U.S. citizens and servicemen who are engaged in the department of defense. With vaccine-preventable diseases on the rise, a federal response through the Presidency and Congress may be required to avoid future disease outbreaks.

VACCINATION HISTORY AND OUTBREAKS

History of Vaccines and Immunization

While improved living conditions have played a decisive role in the fight against certain infectious diseases, vaccination is considered as a major development in society that has saved millions of lives and still continues to save lives. In 1999, the Centers for Disease Control and Prevention (CDC) ranked vaccination first in their *Ten Great Public Health Achievements* ranking.¹

Empirical methods of “vaccination” appeared very early in human history, based on the observation that a person who survives the disease is spared in subsequent epidemics. In 1549, the Chinese author Wan Quan mentioned in his book *Douzhen xinfa* that smallpox inoculation was used to prevent smallpox.² In 1796, the English physician Edward Jenner inoculated James Phipps, who was 8-year-old, with pus from the limb of a farmer infected with cowpox. Three months later, he inoculated the child with smallpox, and the child was found to be immune.³ In

¹ Centers for Disease Control and Prevention, “Ten Great Public Health Achievements--United States, 1900-1999,” *MMWR. Morbidity and Mortality Weekly Report* 48, no. 12 (April 2, 1999): 241–43.

² Eline P. Meulenberg, *Antibodies Applications and New Developments* (Bentham Science Publishers, 2012).

³ Stanley Plotkin, “History of Vaccination,” *Proceedings of the National Academy of Sciences of the United States of America* 111, no. 34 (August 26, 2014): 12283–87, <https://doi.org/10.1073/pnas.1400472111>.

Jenner's time, a third of those who contracted the disease died from it and those who survived could be generally disfigured. In 1979, the World Health Organization (WHO) declared smallpox eradicated from the face of the earth.⁴ Many vaccines have been developed after this discovery to prevent epidemics.

Impact of immunization on public health

Two hundred years after the discovery of the vaccination, it is estimated that about nine million lives are saved worldwide every year. An additional sixteen million lives could be saved if effective vaccines were deployed against all potentially vaccine-preventable diseases. Polio could be next on the list of eradicated diseases. More than 80% of the world's children are now immunized against poliovirus. If polio is eradicated, the United States could save \$270 million that is currently spent on polio immunization. Measles, which kills 1.1 million children each year, is another possible candidate for eradication.⁵ Once high coverage has been achieved through routine immunization, national immunization days combined with close surveillance and "blitz attacks" against any outbreak can eliminate the disease.

In total, vaccines have controlled to varying degrees seven serious human diseases (smallpox, diphtheria, tetanus, yellow fever, pertussis, polio, and measles) but so far only one disease, smallpox, has been eradicated by vaccines, saving some five million lives a year.⁶ Thanks to the immunization strategies in Western countries, the incidence, prevalence, morbidity, and mortality of many communicable diseases have decreased significantly.⁷ For each birth cohort in the United States that received recommended vaccines, approximately twenty million illnesses and forty thousand deaths are prevented, which represents an estimated saving of \$70 billion.⁸

⁴ World Health Organization, "Archives of the Smallpox Eradication Programme," WHO, accessed January 26, 2020, https://www.who.int/archives/fonds_collections/bytitle/fonds_6/en/.

⁵ World Health Organization, *State of the World's Vaccines and Immunization* (World Health Organization, 2009), <https://apps.who.int/iris/handle/10665/44169>.

⁶ World Health Organization.

⁷ C. Lee Ventola, "Immunization in the United States: Recommendations, Barriers, and Measures to Improve Compliance," *Pharmacy and Therapeutics* 41, no. 8 (August 2016): 492–506; Rima F. Khabbaz et al., "Challenges of Infectious Diseases in the USA," *Lancet (London, England)* 384, no. 9937 (July 5, 2014): 53–63, [https://doi.org/10.1016/S0140-6736\(14\)60890-4](https://doi.org/10.1016/S0140-6736(14)60890-4).

⁸ Amanda F. Dempsey and Gregory D. Zimet, "Interventions to Improve Adolescent Vaccination: What May Work and What Still Needs to Be Tested," *American Journal of Preventive Medicine* 49, no. 6 Suppl 4 (December 2015):

Outbreaks: The United States measles cases

Besides cost savings that can be generated, vaccination has two major goals. First, it gives individual protection against communicable diseases. Second, it gives protection to the community through herd immunity. Certain groups of people cannot be vaccinated due to contraindications because of the risk of a serious adverse reaction, such as an infection by HIV, pregnancy, or an immunocompromised status.⁹ In other cases, vaccines may not provide immunity because not enough antibodies are produced. Therefore, having widespread immunity helps prevent illness in vulnerable people who cannot be vaccinated and may have a poor prognosis if they are infected with communicable diseases.

This is the case with measles, a viral infection. Thanks to the vaccines in 1963, there has been a morbidity reduction of measles of 99.9% through vaccination campaigns established by the CDC from 1978. Measles was declared eliminated from the United States in 2000.¹⁰

Unfortunately, after a low number of measles cases, this number started to increase in 2011 with 220 cases present in the United States. In 2014, another outbreak took place due to a case at Disneyland and caused a jump in the number of cases up to 660.¹¹ More recently, from January 1 to December 31, 2019, 1282 cases were confirmed in thirty-one states (See Figure 1).¹²

The main causes that can be cited are the increase of the vaccination hesitancy, and the exemptions (medical, religious, or philosophical) authorized by several states.¹³

S445-454, <https://doi.org/10.1016/j.amepre.2015.04.013>; Khabbaz et al., “Challenges of Infectious Diseases in the USA.”

⁹ Centers for Disease Control and Prevention, “Vaccines Indicated for Adults Based on Medical Indications,” September 26, 2019, <https://www.cdc.gov/vaccines/schedules/hcp/imz/adult-conditions.html>.

¹⁰ Centers for Disease Control and Prevention, “Measles | History of Measles,” February 25, 2019, <https://www.cdc.gov/measles/about/history.html>.

¹¹ Centers for Disease Control and Prevention, “Measles Outbreak — California, December 2014–February 2015,” accessed February 1, 2020, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6406a5.htm>.

¹² Centers for Disease Control and Prevention, “Measles Cases and Outbreaks,” Centers for Disease Control and Prevention, January 6, 2020, <https://www.cdc.gov/measles/cases-outbreaks.html>.

¹³ Elena Conis, “Measles and the Modern History of Vaccination,” *Public Health Reports (Washington, D.C.: 1974)* 134, no. 2 (April 2019): 118–25, <https://doi.org/10.1177/0033354919826558>.

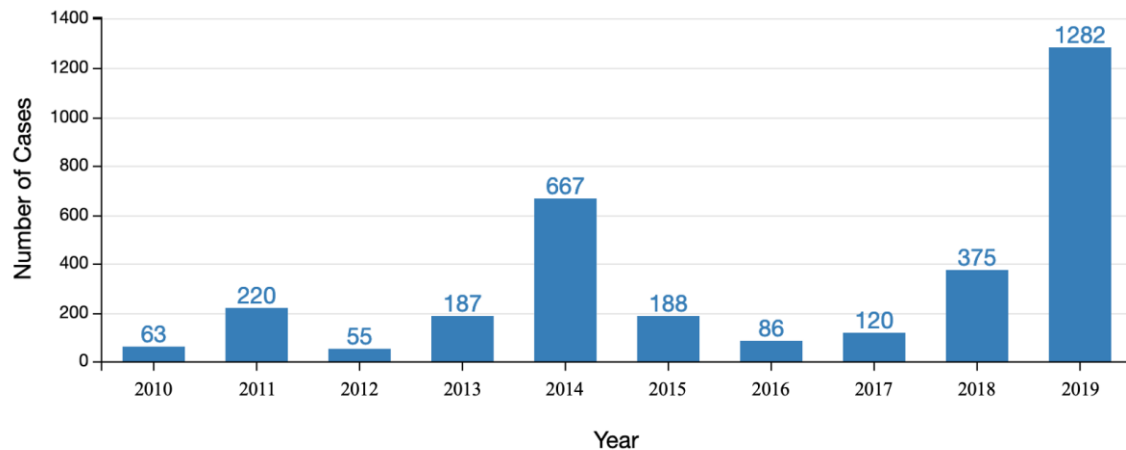


Figure 1: Number of measles cases reported in the United States by year from 2010 to 2019, from the Centers for Disease Control and Prevention (December 31, 2019)¹⁴

VACCINATION LEGISLATION: REQUIREMENTS AND EXEMPTIONS

Vaccination: a state issue

To understand vaccination legislation, we need to realize who is responsible for public health policy. As ratified in 1788, the legislative power of Congress is defined and limited to powers enumerated under the eighth section of the first article of the U.S. Constitution.¹⁵ As mentioned by the tenth amendment to the U.S. Constitution ratified December 15, 1791: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.”¹⁶ No authority is given by the constitution to Congress about public health. That is why many public health efforts have been the responsibility of states. To clarify, the Supreme Court decided in 1991: “The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals.”¹⁷ It means that state governments have the general authority to enact laws to ensure the public health and safety of the states’ inhabitants.

¹⁴ Centers for Disease Control and Prevention, “Measles Cases and Outbreaks.”

¹⁵ United States Constitution, “The Constitution of the United States: A Transcription,” National Archives, November 4, 2015, <https://www.archives.gov/founding-docs/constitution-transcript>.

¹⁶ United States Constitution.

¹⁷ *Barnes v. Glen Theatre, Inc.*, 501 US 560 (Supreme Court 1991).

States and local governments have enacted vaccination laws to improve their state's public health by enacting legislation dedicated to certain groups of people such as school children and health care workers for instance. States (like Arizona) can also require vaccination in case of a public health emergency.¹⁸

Mandatory vaccination was challenged several times in the early twentieth century. One of the fundamental cases was *Jacobson v. Commonwealth of Massachusetts*.¹⁹ In 1905, the City of Cambridge, Massachusetts, decided to mandate vaccination for smallpox to avoid an epidemic. A citizen of Cambridge named Henning Jacobson was opposed to this mandatory vaccination, due to "great and extreme suffering" caused by the vaccine during his childhood in Sweden. Due to his refusal to be vaccinated, Jacobson received a \$5 fine. Contesting the mandatory vaccination and this fine, he appealed to the Supreme Court, using the first section of the fourteenth amendment which says: "nor shall any state deprive any person of life, liberty, or property, without due process of law." For Jacobson, Massachusetts was "restricting one aspect of liberty" by forcing him to get vaccinated. In 1905, the U.S. Supreme Court upheld the Cambridge, MA, Board of Health's authority to require vaccination against smallpox during a smallpox epidemic. The Supreme Court rejected Jacobson's argument justifying that to guarantee "the safety of the general public [...] under the pressure of great dangers" (a possible epidemic), the restriction of liberty with the mandatory vaccination is "necessary for the public health or safety."²⁰ Additionally, the Supreme Court suggested that "the state should use means that have a real or substantial relation to their goal."²¹ Here, the mandatory vaccination was not an arbitrary choice and helped to accomplish the goal of preventing a smallpox epidemic.

In 1922, the Supreme court restates its decision in *Zucht v. King*, which stipulated that a school can refuse to admit an unvaccinated student if the vaccination is required to enter into this school.²²

¹⁸ State of Arizona, "36-787 - Public Health Authority during State of Emergency or State of War Emergency," accessed January 29, 2020, <https://www.azleg.gov/ars/36/00787.htm>.

¹⁹ *Jacobson v. Massachusetts*, 197 US 11 (Supreme Court 1905).

²⁰ *Jacobson v. Massachusetts*, 197 US.

²¹ Wendy K. Mariner, George J. Annas, and Leonard H. Glantz, "Jacobson v Massachusetts: It's Not Your Great-Grandfather's Public Health Law," *American Journal of Public Health* 95, no. 4 (April 2005): 581-90, <https://doi.org/10.2105/AJPH.2004.055160>.

²² *Zucht v. King*, 260 US 174 (Supreme Court 1922).

Medical, religious, or philosophical exemptions

States play a significant role in determining immunization policy: they have a role as “guardians of the public health.”²³ States’ power to promote public health and safety includes the authority to require mandatory vaccines. This suggests two major points: (1) some exemptions can be authorized by the state, and (2) each state has its own public health policy. Therefore, there are fifty distinct public health policies in the United States. All fifty states, as well as the District of Columbia, currently have laws requiring specified vaccines for students. This requirement is generally subject to certain exemptions, which vary from state to state. The medical exemptions are justified. As discussed previously, some people cannot be vaccinated due to contraindications because of the risk of a serious adverse reaction, such as an infection by HIV, pregnancy, or an immunocompromised status (excluding HIV infection).²⁴ These groups are exempt from vaccination to preserve their health.

Medical exemptions can be permanent but also temporary and approved by a nurse or a physician.²⁵ For example in Connecticut, “an individual for whom a medical contraindication has been determined to be of a temporary nature shall be reviewed by a physician, physician assistant, certified nurse practitioner or local health authority at least annually to determine that the contraindication continues to exist.”²⁶ In Montana, the state government requires exemption applications to include “the period of time during which the immunization is contraindicated.”²⁷ In certain states, a recertification of medical exemptions is required such as in Georgia, New Mexico, or Kansas which requires an “annual written statement signed by a licensed physician stating the physical condition of the child to be such that the tests or inoculations would seriously endanger the life or health of the child.”²⁸

²³ ‘Immunizations Policy Issues Overview’ <<https://www.ncsl.org/research/health/immunizations-policy-issues-overview.aspx>> [accessed 25 January 2020].

²⁴ Centers for Disease Control and Prevention, “Vaccines Indicated for Adults Based on Medical Indications.”

²⁵ Centers for Disease Control and Prevention, “CDC - State School and Childcare Vaccination Laws - Publications by Topic - Public Health Law,” February 28, 2019, <https://www.cdc.gov/phlp/publications/topic/vaccinations.html>.

²⁶ ‘Department of Public Health School Immunizations Requirements §§ 10-204a-1—10-204a-4 CONTENTS Sec. 10-204a-1. Definitions’

<https://eregulations.ct.gov/eRegsPortal/Browse/getDocument%3Fguid%3D%7BC4C82D0A-894B-424F-AFA1-7EE530D7A0B1%7D+%&cd=1&hl=fr&ct=cInk&gl=fr&client=firefox-b-1-d> [accessed 1 February 2020].

²⁷ State of Montana, “37.114.715 : MEDICAL EXEMPTION - Administrative Rules of the State of Montana,” accessed February 1, 2020, <http://www.mtrules.org/gateway/RuleNo.asp?RN=37.114.715>.

²⁸ State of Kansas, “Kansas Statutes Related to School Immunizations: K.S.A. 72-5209(b)(1),” accessed February 1, 2020, www.kdheks.gov/immunize/download/Kansas_Statutes_Related_to_School_Immunizations.pdf.

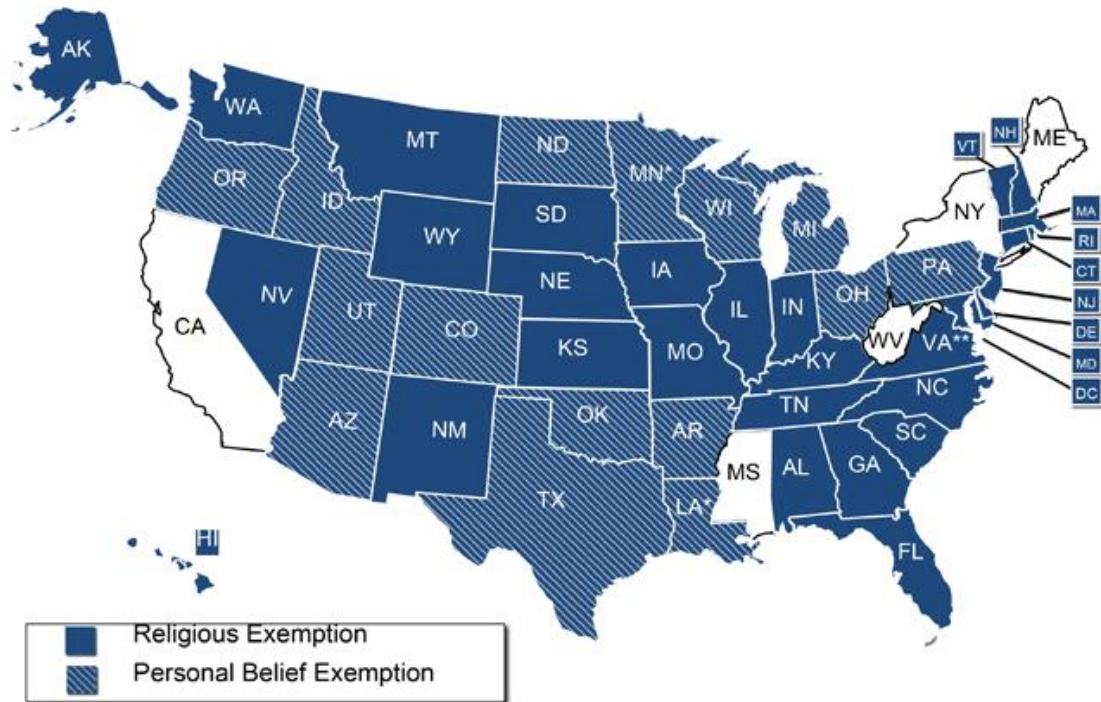


Figure 2: Non-medical states exemptions from school immunizations requirements in 2019, from the National Conference of State Legislatures (NCSL), adapted from the LexisNexis StateNet Database and the Immunization Action Coalition, May 2019.²⁹

In addition, there are non-medical state exemptions depending on the state (Figure 2). Forty-five states including Washington D.C. authorize religious exemptions if people have religious objections to immunization. The number of people who are unvaccinated based on religious exemption is increasing. It is worth considering whether religious freedom is a threat to public health.³⁰

Also, there are fifteen states which allow philosophical exemption “for those who object to immunizations because of personal, moral or other beliefs.”³¹ The reasons are varied. Some people believe that vaccines harm and do not help while others believe that “natural immunity” is better.³² Other people will cite conspiracy theories, when at the same time others are still

²⁹ National Conference of State Legislatures, “States With Religious and Philosophical Exemptions From School Immunization Requirements,” accessed January 25, 2020, <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>.

³⁰ James G. Hodge, “Respecting Religious Freedoms and Protecting the Public’s Health,” *Public Health Reports (Washington, D.C.: 1974)* 130, no. 5 (October 2015): 546–49, <https://doi.org/10.1177/003335491513000518>.

³¹ National Conference of State Legislatures, “States With Religious and Philosophical Exemptions From School Immunization Requirements.”

³² Eve Dubé et al., “Nature Does Things Well, Why Should We Interfere?: Vaccine Hesitancy Among Mothers,” *Qualitative Health Research* 26, no. 3 (February 2016): 411–25, <https://doi.org/10.1177/1049732315573207>.

wondering what is the point of vaccines, believing they are invulnerable to illness.³³ Several states like New Jersey prohibit personal belief exemptions by law: “prohibited from exempting a child from mandatory immunization on the sole basis of a moral or philosophical objection to immunization.”³⁴

Finally, five states do not have any law authorizing non-medical exemptions: California, New York, West Virginia, Maine, and Mississippi. There are no consequences to the absence of laws authorizing non-medical exemptions, so any state can remove non-medical exemptions. Nonetheless, for some people who oppose vaccination, these states have overstepped their authority by disrespecting individual parents’ rights. Some anti-vaccine activists even consider mandatory vaccination to be a violation of the Nuremberg Code.³⁵

State versus federal requirements: military and immigrants or permanent residents

Although states establish public health policy, and thus the vaccination policy, the federal government is also involved in two distinct situations. The first one is in the case of military forces. The Department of Defense requires American troops to be immunized against a number of diseases, including tetanus, diphtheria, influenza, hepatitis A, measles, mumps, rubella, polio, and yellow fever.³⁶ Even if military personnel don’t want to be vaccinated for religious aspect, the United States Court of Appeals for the Ninth Circuit stated that religious beliefs were not above military orders and that “to permit this would be to make the professed doctrines of religious belief superior to military orders, and in effect to permit every soldier to become a law unto himself.”³⁷

The second one is in the case of U.S. citizenship and immigration. According to the ninth chapter of part B of the eighth volume of the U.S. Citizenship and Immigration Services

³³ Kristin S. Hendrix et al., “Ethics and Childhood Vaccination Policy in the United States,” *American Journal of Public Health* 106, no. 2 (February 2016): 273–78, <https://doi.org/10.2105/AJPH.2015.302952>.

³⁴ State of New Jersey, “N.J.A.C. 8:57-4.3 and 4.4 Immunization of Pupils in Schools Rule, Religious and Medical Exemption The New Jersey,” December 1, 2008, https://www.state.nj.us/health/cd/documents/religious_exemption.pdf+&cd=1&hl=fr&ct=clnk&gl=fr&client=firefox-b-1-d.

³⁵ Principia Scientific International, “California’s Forced Vaccinations a Violation of Nuremberg Code | PSI Intl,” accessed February 23, 2020, <https://principia-scientific.org/californias-forced-vaccinations-a-violation-of-nuremberg-code/>.

³⁶ Department of Defense, “Department of Defense (DoD) Directive 6205.02E,” September 19, 2006, <https://health.mil/Reference-Center/Policies/2006/09/19/Immunizations-to-Protect-the-Health-of-Service-Members-and-Military-Beneficiaries+&cd=1&hl=en&ct=clnk&gl=fr&client=firefox-b-1-d>.

³⁷ *United States v. Chadwell* (United States District Court, D. Delaware. February 7, 1977).

(USCIS) Policy Manual, vaccines are required by statute or by the CDC for getting the admissibility for being a permanent resident.³⁸ Applicants have to fulfill the form I-693 to report their vaccination records.³⁹ Six vaccines are currently required by statutes such as measles, mumps, and rubella vaccine. If someone lacks the required vaccines, the alien is inadmissible, as defined in Act 212 of the Immigration and Nationality Act.⁴⁰

RISE AND RESPONSES TO VACCINE HESITANCY

A rise of vaccination hesitancy

Vaccination hesitancy was listed among the top ten global health threats of 2019 by the World Health Organization.⁴¹ Other than moral and religious reasons, several reasons explain the rise of vaccination hesitancy this past decade. Some parents refuse to vaccinate their children due to a concern about side effects: they think that “vaccines will harm and not help.”⁴² Others think that vaccination is “unnatural and natural immunity is preferable.”⁴³ They are afraid of pain from injections and ingredients in the vaccines.⁴⁴ Another reason is a large number of injections per session: in a survey of parents of thirteen thousand children (8 to 35 month-old), more than 60% of the parents mentioned that they preferred their children to receive no more than two immunizations per visit.⁴⁵ Some people believe in conspiracy theories, such as the government could conduct “intelligence-gathering operations under the auspices of a vaccination program.”⁴⁶

³⁸ United States Citizenship and Immigration Services, “Chapter 9 - Vaccination Requirement,” USCIS, accessed January 25, 2020, <https://www.uscis.gov/policy-manual/volume-8-part-b-chapter-9>.

³⁹ United States Citizenship and Immigration Services, “I-693, Report of Medical Examination and Vaccination Record,” USCIS, accessed February 2, 2020, <https://www.uscis.gov/i-693>.

⁴⁰ United States Citizenship and Immigration Services, “Immigration and Nationality Act,” USCIS, July 10, 2019, <https://www.uscis.gov/legal-resources/immigration-and-nationality-act>.

⁴¹ World Health Organization, “Ten Health Issues WHO Will Tackle This Year,” accessed February 22, 2020, <https://www.who.int/news-room/feature-stories/ten-threats-to-global-health-in-2019>.

⁴² Hendrix et al., “Ethics and Childhood Vaccination Policy in the United States.”

⁴³ Dubé et al., “Nature Does Things Well, Why Should We Interfere?”

⁴⁴ Erick Temoka, “Becoming a Vaccine Champion: Evidence-Based Interventions to Address the Challenges of Vaccination,” *South Dakota Medicine: The Journal of the South Dakota State Medical Association* Spec no (2013): 68–72.

⁴⁵ Edwin L. Anderson, “Recommended Solutions to the Barriers to Immunization in Children and Adults,” *Missouri Medicine* 111, no. 4 (August 2014): 344–48.

⁴⁶ Daniel Jolley and Karen M. Douglas, “The Effects of Anti-Vaccine Conspiracy Theories on Vaccination Intentions,” *PloS One* 9, no. 2 (2014): e89177, <https://doi.org/10.1371/journal.pone.0089177>.

Finally, some parents do not vaccinate their children because of a lack of access due to the cost and a lack of information.⁴⁷

Misinformation through social media outlets such as Facebook, Twitter, or Instagram, plays an important role in vaccination hesitancy. Approximately three billion social media users have been identified.⁴⁸ In the United States, 68% of adults use Facebook and more Americans get news from Facebook than any other website or single news outlet.⁴⁹ Social media has become a very powerful tool for transmitting elements of language. A recent study from Jamison et.al examined 309 advertisements on Facebook.⁵⁰ They revealed that 53% of these ads were pro-vaccine and 47% anti-vaccine. However, they found that “the median number of ads per buyer was significantly higher for anti-vaccine ads.” They discovered that 54% of anti-vaccine ads on Facebook were funded by only two groups: The World Mercury Project (WMP) chaired by Robert F. Kennedy Jr., and Stop Mandatory Vaccinations (SMV), a project of Larry Cook.⁵¹ Authors concluded that “a small set of anti-vaccine advertisement buyers have leveraged Facebook advertisements to reach targeted audiences.” In light of these data, public health communication efforts should consider the potential impact on Facebook users’ vaccine attitudes and behaviors. Due to the 2019 measles outbreak, Facebook announced in March 2019 its first policy to combat misinformation about vaccines.⁵² From now on, if a user searches for a publication related to a vaccine, an automatic message will appear advising the user to follow WHO or CDC recommendations.

Statements of public figures can also have an impact on social media on the vaccination hesitancy. In 2014, Donald J. Trump wrote on Twitter, “Healthy young child goes to doctor, gets

⁴⁷ C. Lee Ventola, “Immunization in the United States: Recommendations, Barriers, and Measures to Improve Compliance,” *Pharmacy and Therapeutics* 41, no. 7 (July 2016): 426–36.

⁴⁸ “Number of Social Media Users Worldwide 2010-2021,” Statista, accessed February 22, 2020, <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/>.

⁴⁹ Elisa Shearer, “Social Media Outpaces Print Newspapers in the U.S. as a News Source,” *Pew Research Center* (blog), accessed February 22, 2020, <https://www.pewresearch.org/fact-tank/2018/12/10/social-media-outpaces-print-newspapers-in-the-u-s-as-a-news-source/>; Elisa Shearer and Katerina Eva Matsa, “News Use Across Social Media Platforms 2018,” *Pew Research Center’s Journalism Project* (blog), September 10, 2018, <https://www.journalism.org/2018/09/10/news-use-across-social-media-platforms-2018/>.

⁵⁰ Amelia M. Jamison et al., “Vaccine-Related Advertising in the Facebook Ad Archive,” *Vaccine* 38, no. 3 (January 16, 2020): 512–20, <https://doi.org/10.1016/j.vaccine.2019.10.066>.

⁵¹ Jessica Glenza, “Majority of Anti-Vaxx Ads on Facebook Are Funded by Just Two Organizations,” *The Guardian*, November 14, 2019, sec. Technology, <https://www.theguardian.com/technology/2019/nov/13/majority-antivaxx-vaccine-ads-facebook-funded-by-two-organizations-study>.

⁵² Christina Caron, “Facebook Announces Plan to Curb Vaccine Misinformation,” *The New York Times*, March 7, 2019, sec. Technology, <https://www.nytimes.com/2019/03/07/technology/facebook-anti-vaccine-misinformation.html>.

pumped with massive shot of many vaccines, doesn't feel good and changes - AUTISM. Many such cases!"⁵³

However, he elaborated on this sentiment during his 2016 campaign, he declared:

I am totally in favor of vaccines. But I want smaller doses over a longer period of time. Same exact amount, but you take this little beautiful baby, and you pump — I mean, it looks just like it's meant for a horse, not for a child, and we've had so many instances, people that work for me.⁵⁴

It appeared that Donald J. Trump's statement was tricky and not so reluctant about vaccines. But, in 2017, one of the most famous anti-vaccine public figures, Robert F. Kennedy Jr., declared that "Trump wants him to lead panel on immunization safety."⁵⁵ However, in April 2019, President Trump appeared to change his position again amid measles outbreaks in the United States, declaring: "They have to get their shots. The vaccinations are so important."⁵⁶

Community- and government-based interventions to improve vaccination compliance

In the face of vaccination hesitancy, the World Health Organization and the Centers for Disease Control and Prevention are the references for vaccination recommendations. Each year, the Centers for Disease Control and Prevention publishes immunization schedules for healthcare professionals. Other resources are also available for healthcare providers such as information on training on correct vaccine administration and on promoting vaccine safety and elements of language for talking to patients. It also publishes a parent-friendly schedule for better communication with non-professionals and some advice such as vaccine information for those traveling outside the United States. You can also find videos from the CDC on video-sharing platforms such as YouTube, addressed to different audiences: teenagers, adults, pregnant

⁵³ Donald J. Trump, "Donald J. Trump on Twitter: 'Healthy Young Child Goes to Doctor, Gets Pumped with Massive Shot of Many Vaccines, Doesn't Feel Good and Changes - AUTISM. Many Such Cases!' / Twitter," Twitter, accessed February 23, 2020, <https://twitter.com/realdonaldtrump/status/449525268529815552>.

⁵⁴ Anthony Zurcher, "US Vaccine Sceptic to Lead Safety Study," *BBC News*, January 11, 2017, sec. US & Canada, <https://www.bbc.com/news/world-us-canada-38577861>.

⁵⁵ Michael D. Shear, Maggie Haberman, and Pam Belluck, "Anti-Vaccine Activist Says Trump Wants Him to Lead Panel on Immunization Safety," *The New York Times*, January 10, 2017, sec. U.S., <https://www.nytimes.com/2017/01/10/us/politics/anti-vaccine-activist-trump-immunizations.html>.

⁵⁶ Justin Sink, "Trump Backs Vaccines Amid Measles Outbreak," *Bloomberg.Com*, April 26, 2019, <https://www.bloomberg.com/news/articles/2019-04-26/trump-backs-vaccines-amid-measles-outbreak-drops-autism-claims>.

women, and parents. The CDC website and videos contribute to better communication for patients and health care providers, but the CDC should use social media more often to better communicate and raise awareness about the necessity to be vaccinated. For example, the CDC could hire social media influencers who have played a major role in promoting brands. Social media influencers could utilize their social power to encourage people to get vaccinated.

Other than the CDC, new information and communication technologies may help for improving the vaccination rate. Public reminders by calls and text messages to parents and clinicians could be a solution. Kharbanda et al. examined the impact of text message reminders for on-time receipt of doses of Human Papilloma Virus (HPV) vaccine among parents of adolescents from nine pediatric sites in New York City.⁵⁷ This study demonstrated that adolescents of the parents enrolled in the text messaging program had approximately two times the odds of receiving HPV doses on time when compared with controls. Through this study, the use of text messaging to improve vaccination seems promising.

Another way of improving vaccination is public education. The production of more “patient-centered” educational materials is also a good approach. Katz et al. described the production of a comic book for teenagers.⁵⁸ This production included critics of parents in rural Ohio to promote HPV vaccination. Parents and the researchers created “a storyline, text, and artistic elements that were developed into a comic book.”⁵⁹ Among the adolescents whose parents authorized them to read the comic book, most had positive responses to the materials and indicated that the format and information were useful and engaging. The impact of the comic book on the utilization of the vaccine among a larger sample should be explored. The production of educational materials could be financially sponsored by the federal government.

Providing free vaccines and other financial incentives is another recommended evidence-based strategy to improve vaccination rates.⁶⁰ For example, the creation of a lottery for gift certificates or providing vaccines for free to the uninsured could be a solution.⁶¹ However, from

⁵⁷ Elyse Olshen Kharbanda et al., “Text Message Reminders to Promote Human Papillomavirus Vaccination,” *Vaccine* 29, no. 14 (March 21, 2011): 2537–41, <https://doi.org/10.1016/j.vaccine.2011.01.065>.

⁵⁸ Mira L. Katz et al., “Development and Initial Feedback about a Human Papillomavirus (HPV) Vaccine Comic Book for Adolescents,” *Journal of Cancer Education: The Official Journal of the American Association for Cancer Education* 29, no. 2 (June 2014): 318–24, <https://doi.org/10.1007/s13187-013-0604-8>.

⁵⁹ Dempsey and Zimet, “Interventions to Improve Adolescent Vaccination.”

⁶⁰ The Community Guide, “Vaccination,” *The Guide to Community Preventive Services (The Community Guide)*, accessed February 23, 2020, <https://www.thecommunityguide.org/topic/vaccination>.

⁶¹ Ventola, “Immunization in the United States,” July 2016.

previous studies, in addition to free vaccines, additional approaches may be required to achieve higher vaccination rates.⁶²

Finally, we can think about alternative public and private venues for vaccination as solutions. The creation of walk-in vaccination clinics by a nurse or shots delivered by pharmacists could be successful.⁶³ Recently, Oregon has become the first state to allow dentists to administer vaccinations for improving vaccination rates.⁶⁴

Possible measures to improve the vaccination rate: the challenge of avoiding the state/federal barrier

Although states exercise most of the authority in the public health arena, Congress is not without authority concerning public health matters. The Commerce Clause and the Spending Clause of the U.S. Constitution can permit Congress to influence vaccination policy. The Commerce Clause grants Congress the power “to regulate Commerce with foreign Nations, and among the several States.” This authority empowers Congress to manage “three broad categories of activities: channels of interstate commerce, persons or things in interstate commerce and activities that substantially affect interstate commerce.”⁶⁵ The Spending Clause, derived from the Constitution (Article 1, Section 8) empowers Congress to tax and spend for the general welfare.⁶⁶ Therefore, Congress may offer federal funds to entities, even if there are nonfederal, and prescribe the terms and conditions under which the funds are accepted and used by recipients. Congress may also use its spending power for improving the vaccination rate by distributing grants for states that are pro-vaccines. This power may encourage states to improve vaccination laws. Currently, the Public Health Service Act, under Section 317, provides grants to states and cities to support immunization.⁶⁷ Section 317 does not require proof of the vaccination rates for distributing grants. However, the Vaccinate All Children Act of 2019 would require a

⁶² Dempsey and Zimet, “Interventions to Improve Adolescent Vaccination.”

⁶³ Dempsey and Zimet.

⁶⁴ Kimber Solana, “Oregon Passes Bill Allowing Dentists to Administer Vaccines,” American Dental Association, accessed February 20, 2020, <https://www.ada.org/en/publications/ada-news/2019-archive/april/oregon-passes-bill-allowing-dentists-to-administer-vaccines20190426t142836>.

⁶⁵ Jessica Glenza, “Majority of Anti-Vaxx Ads on Facebook Are Funded by Just Two Organizations,” *The Guardian*, November 14, 2019, sec. Technology, <https://www.theguardian.com/technology/2019/nov/13/majority-antivaxx-vaccine-ads-facebook-funded-by-two-organizations-study>.

⁶⁶ United States Constitution, “Taxing and Spending Clause Article I, Section 8, Clause 1,” accessed February 19, 2020, <https://constitutionallawreporter.com/taxing-and-spending-clause/>.

⁶⁷ Centers for Disease Control and Prevention, “Questions on Vaccines Purchased with 317 Funds,” March 11, 2019, <https://www.cdc.gov/vaccines/imz-managers/guides-pubs/qa-317-funds.html>.

demonstration that the targeted people for the grant received the vaccines before distributing the grant.⁶⁸ As a result, the Spending Clause of Congress with the Vaccinate All Children Act of 2019 may be a solution for the federal government to improve and require vaccination.

Another possible measure exists but this measure could be considered as borderline with the federal power enacted by the Constitution. Under the Public Health Service Act, Congress granted “broad, flexible powers to federal health authorities who must use their judgment in attempting to protect the public against the spread of communicable disease.” That means that federal authorities could mandate vaccination “to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.”⁶⁹ This power could be used only if this authority is not exercised in a way that otherwise violates the Constitution or the Administrative Procedure Act.

CONCLUSION

Vaccination is an important public health issue in the United States. It is not just a subject related to public health, but also a matter of security. Vaccines are accessible and outbreaks can be avoided but are still present. U.S. public health policies and especially vaccination policies are established at the state level, which leads to discrepancies between states. Nonetheless, the president and Congress are not without authority. They can act to improve vaccination rates and at the same time preserve liberty, a very important concept enshrined in the U.S. Constitution. Congress may use its spending power for improving the vaccination rate by distributing federal grants for entities or states that are pro-vaccines. Solutions such as free provisions of vaccines, vaccination promotional campaigns on social media, and production of educational materials should also be considered.

⁶⁸ Frederica S. Wilson, “H.R.2527 - 116th Congress (2019-2020): Vaccinate All Children Act of 2019,” webpage, May 6, 2019, <https://www.congress.gov/bill/116th-congress/house-bill/2527>.

⁶⁹ Legal Information Institute, “42 U.S. Code § 264 - Regulations to Control Communicable Diseases,” LII / Legal Information Institute, accessed February 19, 2020, <https://www.law.cornell.edu/uscode/text/42/264>.

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RESTORING PRECLEARANCE: LESSONS FROM THE 2006 VOTING RIGHTS ACT REAUTHORIZATION INTRODUCTION

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The Voting Rights Act of 1965 (VRA) was a monumental piece of legislation adopted to address decades of racial discrimination in voting. One of the most notable provisions of the Voting Rights Act was Section 5, or the preclearance requirement. Section 5 required jurisdictions subject to it (places with a history of discrimination and a dearth of registered minority voters) to submit all electoral and voting changes for review by either the Department of Justice (DOJ) or the District Court of the District of Columbia (D.C.D.C.).¹ The provision granted an unprecedented amount of control over the local legislative process to federal administrators in the Department of Justice, a distortion of federalism that was deemed necessary at the time to counteract fast-moving local legislatures that continually found new methods to disenfranchise and dilute the vote of minority communities.²

Though Section 5 was meant to be a temporary provision, Congress renewed it four times since its passage, in 1970, 1975, 1982, and 2006.³ In doing so, Congress recognized that vote dilution and racial discrimination in voting remained a problem in covered jurisdictions, even with the VRA in place.⁴ Under Section 5, if the reviewing authority could only approve submitted electoral change if that “qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.”⁵ In his testimony to the Committee on the Judiciary of the United States Senate on May 17, 2006, the former Assistant Attorney General for the Civil Rights Division under President Carter, Drew S. Days III, argued that the contemporaneous record showed evidence of continued discrimination in covered jurisdictions and that the decreasing number of DOJ objections does not

¹ “About Section 5 Of The Voting Rights Act,” August 6, 2015, <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

² James Tucker, “The Politics of Persuasion: Passage of the Voting Rights Act Reauthorization Act of 2006,” *Notre Dame Journal of Legislation* 33, no. 2 (2007): 205–67.

³ “About Section 5 Of The Voting Rights Act.”

⁴ The ACLU compiled an 885-page document outlining their Voting Rights Act litigation to testify to the continuing need for Section 5 during consideration of the 2006 renewal. “The Case for Extending and Amending the Voting Rights Act,” American Civil Liberties Union, accessed March 1, 2020, <https://www.aclu.org/other/case-extending-and-amending-voting-rights-act>.

⁵ “Voting Rights Act of 1965,” accessed December 16, 2019, http://library.clerk.house.gov/reference-files/PPL_VotingRightsAct_1965.pdf.

conclusively mean less discrimination but could rather imply higher compliance.⁶ Section 5, he argued, was still needed to protect the rights of minority voters.

In the landmark 2013 case, *Shelby County v. Holder*, the Supreme Court invalidated key provisions of the VRA, namely the parts of Section 4 that determined the “coverage formula,” or the guidelines that established which jurisdictions would be subject to preclearance.⁷ Writing for the majority, Chief Justice Roberts reasoned that the coverage formula unfairly imposed restrictions that were necessary in 1965 to states and localities in 2013. Because voter discrimination did not happen at the same fervor and intensity in 2013 as in 1965, and because minorities in covered areas were registering and voting at high rates, Section 5 posed an undue burden on jurisdictions subject to it. He wrote:

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.⁸

Though the Court did not rule on the constitutionality of preclearance in *Shelby County*, the decision effectively dismantled the preclearance requirement. Justices Ginsberg, Sotomayor, Breyer, and Kagan were fiercely opposed to the majority opinion in *Shelby County*. In her dissenting opinion, Justice Ginsberg asserted that in striking down the coverage formula the Court eliminated the best protection against voter discrimination.⁹ It made no sense, she argued, to contend that the Voting Rights Act was no longer needed just because it was working.¹⁰ She wrote:

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. With that belief, and the argument derived from it, history repeats itself.¹¹

It appears that Justice Ginsberg’s prediction of “history repeat[ing] itself” has come true. Since the Supreme Court’s ruling in *Shelby County*, many states have passed restrictive voting laws. According to an analysis by the Brennan Center for Justice, twenty-three states have instituted more

⁶ “Understanding the Benefits and Costs of Section 5 Pre-Clearance,” Pub. L. No. J-109-76, § Committee on the Judiciary (2006), <https://www.govinfo.gov/content/pkg/CHRG-109shrg29625/pdf/CHRG-109shrg29625.pdf>.

⁷ *Shelby County, Ala. v. Holder*, 133 S. Ct. 2612 (Supreme Court 2013).

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

restrictive voting laws since 2010.¹² These laws include: voter ID laws implemented in states like Texas, Georgia, North Carolina, and Mississippi; other restrictions to voter registration including documentary proof of citizenship; and reduced early voting.¹³ These laws in turn reduce the ability of Americans, particularly racial minorities, to vote. A study published in the *Journal of Politics* finds that minority turnout for general elections is significantly lower in states with strict ID laws as compared to states without strict ID; Latino turnout is predicted to be 9.3% lower, black turnout 8.6% lower, and Asian American turnout 12.5 points lower.¹⁴

Critics of Section 5 argue that Section 2 of the Voting Rights Act, which prohibits voting laws that would “deny or abridge the right of any citizen of the United States to vote on account of race or color,” is an adequate replacement.¹⁵ Yet, Section 2 cannot fulfill the fundamental purpose of Section 5: to prevent implementation of discriminatory voting changes in a timely manner because litigation is a slow-moving, costly process that cannot easily dismantle discriminatory electoral law. Professor Nathaniel Persily perhaps said it best in his testimony before the Senate Committee on the Judiciary:

And I think here of the inglorious issues like annexations and the small things that happen— which are not notorious and where the partisan stakes are seen as relatively low. Often those are the areas where the Section 5 preclearance process is most important.¹⁶

The laws that receive the most attention in the wake of *Shelby County* are the flashiest: voter ID laws, redistricting plans, proof of citizenship requirements. The real danger with the absence of Section 5, though, is the unassuming laws: sudden changes in polling places, annexations of majority-white districts, changes from single-member districts to at-large districts, laws that can have discriminatory effect but are not necessarily deemed worthy of Section 2 litigation.

Under the absence of Section 5, lawmakers in Congress have made unsuccessful efforts to revive preclearance. The latest effort, known as H.R.4 or the Voting Rights Advancement Act of 2019, passed the House of Representatives on December 6, 2019, despite the support of only one Republican.¹⁷ Its companion bill in the Senate, S. 561, is stalled in committee and unlikely to

¹² Wendy Weiser and Max Feldman, “The State of Voting 2018” (Brennan Center for Justice, June 5, 2018), <https://www.brennancenter.org/our-work/research-reports/state-voting-2018>.

¹³ *Ibid.*

¹⁴ Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, “Voter Identification Laws and the Suppression of Minority Votes,” *The Journal of Politics* 79, no. 2 (April 1, 2017): 363–79, <https://doi.org/10.1086/688343>.

¹⁵ “Voting Rights Act of 1965.”

¹⁶ Understanding the Benefits and Costs of Section 5 Pre-Clearance.

¹⁷ Sheryl Gay Stolberg and Emily Cochrane, “House Passes Voting Rights Bill Despite Near Unanimous Republican Opposition,” *The New York Times*, December 6, 2019, sec. U.S.,

be brought to the floor for a vote.¹⁸

The right to vote remains a fundamental right held by citizens of the United States; thus, evidence that new state laws can restrict access to voting is concerning. As in 1965, turning to federal political institutions, especially Congress, may be the best way to protect this right. In order to understand how Congress may pass legislation to safeguard voting rights today, it is useful to look back at the legislative history of the Voting Rights Act.

This paper examines the 2006 reauthorization of the Voting Rights Act, known officially as the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (VRARA).¹⁹ In 2006, Republicans held the House, the Senate, and the presidency. Despite opposition from many in the party, who considered preclearance to be a violation of states' rights, Congress voted to extend the special provisions of the VRA for another 25 years.²⁰ Only thirty-three Representatives voted in opposition to the VRARA in the House and there was no opposition in the Senate, a far cry from the party-line vote for the more recent Voting Rights Advancement Act.²¹ Examining such history, therefore, can uncover important lessons and implications for the current voting rights battle.

This paper argues that the passage of the 2006 VRA reauthorization was due to the following factors: a campaign by civil rights groups dedicated to its passage, pressure on Republicans to appear in favor of civil rights and thus draw minority voters into their party, and support from the White House and top-ranking Republican congressional leaders. Despite opposition from a Republican coalition, the 2006 reauthorization sailed through Congress thanks to the concerted effort of civil rights groups and Republican leadership. Extrapolating from the circumstances of the 2006 reauthorization, this paper further argues that the factors needed for successful passage of voting rights legislation today include: bipartisan support, recognition of current threats to voting rights, and pressure on Congressional representatives to be in favor of civil rights and voting rights.

<https://www.nytimes.com/2019/12/06/us/politics/house-voting-rights.html>.

¹⁸ Patrick J. Leahy, "Actions - S.561 - 116th Congress (2019-2020): Voting Rights Advancement Act of 2019," webpage, February 26, 2019, <https://www.congress.gov/bill/116th-congress/senate-bill/561/actions>.

¹⁹ "H.R.9 - 109th Congress (2005-2006): Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006," legislation, July 27, 2006, <https://www.congress.gov/bill/109th-congress/house-bill/9>.

²⁰ Ibid.

²¹ Carl Hulse, "By a Vote of 98-0, Senate Approves 25-Year Extension of Voting Rights Act," *The New York Times*, July 21, 2006, sec. Washington, <https://www.nytimes.com/2006/07/21/washington/21vote.html>.

PART I: THE 2006 REAUTHORIZATION BATTLE

On July 10, 2005, Representative James Sensenbrenner (R-WI), then-Chairman of the House Judiciary Committee, announced in an address to the NAACP annual convention that he intended to introduce legislation to extend the Voting Rights Act, a move that was met with praise from other Republican congressional leaders and the NAACP.²² The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 was officially introduced on May 2, 2006, by Chairman Sensenbrenner in a bipartisan, bicameral event on the steps of the U.S. Capitol.²³

Despite the strong show of support from Republican congressional leadership, a coalition of Republicans, some of whom opposed the principle of preclearance and some of whom opposed the VRA's bilingual election provisions, united to oppose the reauthorization.²⁴ This coalition successfully blocked a number of attempts by Republican leadership to fast-track passage of the bill. When Republican Majority Leader John Boehner wanted to bring the bill to the floor under suspension of House rules, which would disallow amendments but would require a two-thirds majority for passage, the Republican coalition prevented this.²⁵ Moreover, Republican House leaders later had to cancel a vote on the bill after a group of Republicans rebelled against the VRA's bilingual ballot provisions, with chants of "pull the bill, pull the bill."²⁶ Finally, about eighty House Republicans signed on to a letter written by Rep. Steve King (R-IA), again objecting to the VRA's bilingual ballot provisions.²⁷ In the end, Republican leadership capitulated to their rank-and-file, allowing members to add amendments to the bill. Although three (of the four) amendments would have arguably weakened the VRA and had secured the backing of a majority of Congressional Republicans, all the amendments failed.²⁸

The failure of these amendments was in part due to a strong show of leadership by the White House and Republican congressional leaders. Before the passage of the House bill, the White House put out a Statement of Administration Policy in support of VRA reauthorization, stating that the

²² Tucker, "The Politics of Persuasion: Passage of the Voting Rights Act Reauthorization Act of 2006."

²³ Charles Babington, "GOP Rebellion Stops Voting Rights Act," June 22, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/21/AR2006062101910.html>.

²⁴ Tucker, "The Politics of Persuasion: Passage of the Voting Rights Act Reauthorization Act of 2006."

²⁵ Ibid.

²⁶ Ibid.

²⁷ Babington, "GOP Rebellion Stops Voting Rights Act."

²⁸ Sarah A. Binder, "Reading Congressional Tea Leaves from the 2006 Renewal of the Voting Rights Act," *Brookings* (blog), November 30, 1AD, <https://www.brookings.edu/opinions/reading-congressional-tea-leaves-from-the-2006-renewal-of-the-voting-rights-act/>.

Administration was “strongly committed to renewing the Voting Rights Act.”²⁹ In his July 2006 address to the NAACP, then-President George W. Bush declared that he looked forward to “the Senate passing this bill promptly without amendment so I can sign it into law.”³⁰ That very same day, Senate Majority Leader Bill Frist (R-TN) called a vote on the House bill “to prevent any Senate dilly-dallying on its bill”; the bill passed unanimously.³¹

Civil rights groups were also pivotal in securing passage of the bill. The ACLU vigorously lobbied members of Congress, “sending out action alerts that generated more than 100,000 emails and phone calls to Congress” as well as testifying in hearings and airing a documentary.³² Moreover, a number of civil rights groups, most notably the NAACP, worked closely with members of the Democratic Party to defeat amendments attached to the bill. Senator Chris Dodd (D-CT) acknowledged the contributions of these groups, saying,

I am grateful that the civil rights groups, the Leadership Conference on Civil Rights, the NAACP, the National Council of La Raza, the AFL–CIO and others, have worked so closely with Democratic Members of the House of Representatives to prevail over this adversity and were able to defeat every single one of these amendments.³³

Despite the successful passage of the VRA reauthorization, some Senate Republicans continued to register their displeasure with the legislation after the vote. In an unusual move, the Senate Committee on the Judiciary released a revised version of its report on the bill after its passage.³⁴ Only Republicans signed onto this version, and Democrats on the committee were not informed of the revision until the bill was signed into law. In fact, Democrats on the committee later objected to the revisions.³⁵ Reading the revisions does give insight, however, into the reasoning of Republican senators who, though opposed to reauthorizing preclearance in its entirety, voted for the bill. The section of the report titled “Additional View of Mr. Cornyn and Mr. Coburn” is particularly informative. Senators Cornyn and Coburn noted their concern with the rushed process of reauthorization and questioned the necessity of renewing the preclearance provision for all

²⁹ “Election Law @ Moritz (Litigation Documents),” accessed February 1, 2020, <https://moritzlaw.osu.edu/electionlaw/litigation/documents/hr9sap-h.pdf>.

³⁰ “President Bush Addresses NAACP Annual Convention,” accessed February 1, 2020, <https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060720.html>.

³¹ Nathaniel Persily, “The Promise and Pitfalls of the New Voting Rights Act,” *The Yale Law Journal* 117, no. 2 (November 2007): 174–339.

³² “ACLU History: The Reauthorization Battles: 1982 and 2006,” American Civil Liberties Union, accessed February 1, 2020, <https://www.aclu.org/other/aclu-history-reauthorization-battles-1982-and-2006>.

³³ “Proceedings and Debates of the 109th Congress, Second Session,” *Congressional Record*, July 20, 2006, <https://www.congress.gov/109/crec/2006/07/20/CREC-2006-07-20-pt1-PgS7949-6.pdf>.

³⁴ Persily, “The Promise and Pitfalls of the New Voting Rights Act.”

³⁵ *Ibid.*

covered jurisdictions. Despite their concerns, they recognized the “unparalleled success of the Voting Rights Act in the past in securing the opportunity to vote,” which was their rationale for their vote. Moreover, they felt that “the Act’s language was a foregone conclusion.” Sensing the inevitability of the Act’s passage, these senators chose to register their hesitations through the committee report rather than in a “nay” vote. What the actions of Senators Cornyn and Coburn point to is the pressure felt by some Republican lawmakers to pass the VRA reauthorization quickly and without resistance. Their actions, in concert with the back-and-forth between Republican leadership and rank-and-file Republicans and the campaign by civil rights groups, indicates the dynamics that resulted in successful passage of the VRA reauthorization. Despite trepidation from some Republicans and outright opposition from others, the symbolism of the Voting Rights Act as a key piece of civil rights history loomed large, and the need to extend it was a “foregone conclusion.”

In a similar vein, some Republicans, particularly Republican leadership, were insistent on passing the VRA reauthorization without fuss because of a desire to court African-American and Latino voters. In his analysis of the 2006 VRA reauthorization, James Tucker writes that if the Act had been passed with amendments attached, then:

They [Republicans] would violate the agreement reached by Chairman Sensenbrenner and Representative Watt, turning a positive issue for the Republican Party into one that could very well cost them the 2006 election. The civil rights community would never forgive them if that happened, laying waste to Republican efforts to court African- American and Latino voters.³⁶

Knowing that they could be excoriated for failing to pass a pristine version of the VRA reauthorization, Republican leadership moved quickly to wrangle their rank-and-file and pass an unamended reauthorization act.

PART II: IMPLICATIONS FOR VOTING RIGHTS TODAY

The prospects today for passage of any major voting rights legislation that reinstates preclearance are almost nonexistent. Both Senate leadership and the White House oppose debating or enacting such legislation. Before the passage of H.R.4, or the Voting Rights Advancement Act of 2019, which would reinstate preclearance according to an updated coverage formula, the White House released a Statement of Administration Policy opposing its passage, citing the *Shelby County*

³⁶ Tucker, “The Politics of Persuasion: Passage of the Voting Rights Act Reauthorization Act of 2006.”

decision and violation of state's rights as the rationale.³⁷ Senate Majority Leader Mitch McConnell has also vowed to block legislation from the Democratic House.³⁸ More importantly, many Republicans, along the lines of Chief Justice Roberts' majority opinion in *Shelby County*, believe that preclearance is no longer necessary.³⁹ Preclearance was the norm when legislators were debating in 2006, and renewal of a law is fundamentally different from reinstatement. *Shelby County* detached preclearance from "Voting Rights Act" fame, leaving it to be considered on its own terms. Extrapolating from the legislative history of the 2006 VRA reauthorization, this paper contends that the following factors are key to successfully passing voting rights legislation in the post-*Shelby* era.

1. *Bipartisanship*

The Voting Rights Advancement Act of 2019 (VRAA) passed the House of Representatives with only one Republican vote in favor.⁴⁰ Representative Sensenbrenner (R-WI), who led to the 2006 VRA reauthorization effort as Chairman of the House Judiciary Committee, blamed partisanship for the failure of the VRAA to garner wide support. In a statement on the VRAA, Rep. Sensenbrenner noted that the bill did not proceed on a bipartisan basis, saying,

What has happened in this bill is that all of the things that Democrats gave up gets back in the bill. It's kind of like the phoenix rising from the ashes. But none of the things the Republicans gave up end up going back into the bill.⁴¹

Even if the VRAA had bipartisan support in the House, it was always likely to fail in the Senate. Even so, bipartisanship for the 2006 VRA reauthorization was crucial to its success, particularly with leaders like Rep. Sensenbrenner partnering with Democrats to move the bill through Congress.

One caveat, though: bipartisan attempts to revive the Voting Rights Act in 2014, 2015, and 2016 were unsuccessful. The 2015 bill, which was sponsored by Rep. Sensenbrenner, presented a new coverage formula that would apply to jurisdictions with more recent voting rights violations; the bill died in committee.⁴² Bob Goodlatte (R-VA), Chairman of the House Judiciary Committee at

³⁷ "Statement of Administration Policy: H.R. 4 - Voting Rights Advancement Act of 2019" (Executive Office of the President, December 3, 2019), https://www.whitehouse.gov/wp-content/uploads/2019/12/SAP_HR-4.pdf.

³⁸ Caitlin Oprysko, "House Passes Voting Rights Package Aimed at Restoring Protections," POLITICO, accessed February 1, 2020, <https://www.politico.com/news/2019/12/06/house-passes-voting-rights-package-077112>.

³⁹ *Ibid.*

⁴⁰ Stolberg and Cochrane, "House Passes Voting Rights Bill Despite Near Unanimous Republican Opposition."

⁴¹ "Sensenbrenner Urges Need for Bipartisanship in Restoring Voting Rights Act," Congressman Jim Sensenbrenner, October 23, 2019, <https://sensenbrenner.house.gov/2019/10/sensenbrenner-urges-need-for-bipartisanship-in-restoring-voting-rights-act>.

⁴² "All Info - H.R.885 - 114th Congress (2015-2016): Voting Rights Amendment Act of 2015," legislation, March 16,

the time, said “he believed the Voting Rights Act was sufficient as it stands.”⁴³

Although bipartisan attempts at reviving the VRA have failed thus far, bipartisanship will still be key to achieving successful voting rights legislation moving forward. As in 2006, strong support from Republican leadership can be pivotal to gaining the approval of rank-and-file Republicans, many of whom still do not believe in the necessity of an updated Voting Rights Act. Before such bipartisan support can be achieved, however, the following two factors must fall in place.

2. *Recognition that voting rights are under threat*

In 2006, the House report mainly highlighted the continuing need for VRA protections in covered jurisdictions; until its revisions, the Senate report did the same.⁴⁴ The findings of the House report state that “vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process.”⁴⁵

Today, lawmakers differ on whether certain electoral laws are racially discriminatory. Voter ID laws are the perfect example. Across the country, courts have struck down voter ID laws in states like Texas and North Carolina. The United States Court of Appeals for the Fourth District found that the North Carolina voter ID law intentionally discriminated against African Americans.⁴⁶ Yet, some lawmakers maintain the voter ID laws are necessary for securing our elections. In an op-ed in the Washington Post, the Secretary of State for Kansas, Kris Kobach, argued that voter ID laws protect against voter fraud. Citing instances of voter fraud and the ubiquity of state IDs, Kobach writes, “It’s absurd to suggest that anyone is ‘disenfranchised’ by such protective measures.”⁴⁷

2015, <https://www.congress.gov/bill/114th-congress/house-bill/885/all-info>.

⁴³ Athena Jones CNN, “Democrats File Bill to Update the Voting Rights Act - CNNPolitics,” CNN, accessed February 1, 2020, <https://www.cnn.com/2015/06/24/politics/voting-rights-act-democrats-file-bill/index.html>.

⁴⁴ “H. Rept. 109-478 - FANNIE LOU HAMER, ROSA PARKS, AND CORETTA SCOTT KING VOTING RIGHTS ACT REAUTHORIZATION AND AMENDMENTS ACT OF 2006,” legislation, accessed February 1, 2020, <https://www.congress.gov/congressional-report/109th-congress/house-report/478/1.>; Tucker, “The Politics of Persuasion: Passage of the Voting Rights Act Reauthorization Act of 2006.”

⁴⁵ “H. Rept. 109-478 - FANNIE LOU HAMER, ROSA PARKS, AND CORETTA SCOTT KING VOTING RIGHTS ACT REAUTHORIZATION AND AMENDMENTS ACT OF 2006.”

⁴⁶ Adam Liptak and Michael Wines, “Strict North Carolina Voter ID Law Thwarted After Supreme Court Rejects Case,” *The New York Times*, May 15, 2017, sec. U.S., <https://www.nytimes.com/2017/05/15/us/politics/voter-id-laws-supreme-court-north-carolina.html>.

⁴⁷ Kris Kobach, “Voter ID Laws Are Good Protection against Fraud,” *Washington Post*, July 13, 2011, sec. Opinions, https://www.washingtonpost.com/opinions/voter-id-laws-are-good-protection-against-fraud/2011/07/08/gIQAGnURBI_story.html.

More scholarship is emerging on the impact these laws have on marginalized populations. A new algorithm developed by researchers, for example, shows that “black voters are more likely to lack adequate identification under voter ID laws” (7.5% of black registered voters compared to 3.6 of registered white voters).⁴⁸ As more laws are instituted that have either a discriminatory purpose or effect, a concerted campaign will need to be waged to convince lawmakers that voting rights are in need of federal protection.

3. Pressure on Congressional representatives to appear in favor of civil rights

Just as Republicans in 2006 were thinking about the electoral consequences of failing to pass a Voting Rights Act reauthorization (particularly one named after three esteemed Civil Rights leaders), similar pressures might convince Republicans to act decisively. Although restrictive voting laws have been shown to depress minority turnout, some encouraging trends indicate that the electorate will shift in favor of stronger civil rights protections. The 2018 midterm elections, in particular, demonstrated that voters pay attention to progressive causes, electing in a record number of women, LGBTQ, and minority politicians.⁴⁹ Moreover, policies like automatic voter registration and the restoration of felon voting rights are expanding the electorate to those may have been denied the right to vote in the past. If the failure to institute voting rights legislation becomes equated, yet again, with a failure to act in favor of civil rights, then lawmakers may be pressured by the changing electorate to pass such legislation.

CONCLUSION

Until the country is clamoring for the enactment of strong voting rights legislation, it is unlikely that another preclearance scheme will become law. Although a number of lawsuits are challenging the constitutionality of restrictive voting laws across the country, the Voting Rights Act, and preclearance especially, was instituted because lawmakers recognized that slow-moving lawsuits could not strike down discriminatory electoral changes fast enough. However, with minorities voting at higher rates today, and with the progress of civil rights since 1965, it is uncertain whether some lawmakers will again feel the pressing need to institute major voting rights

⁴⁸ “Voter ID Laws Really Do Discriminate, a New Study Shows,” *Wired*, accessed March 1, 2020, <https://www.wired.com/story/voter-id-law-algorithm/>.

⁴⁹ Ella Nilsen, “Live Election Results: Historic Races,” *Vox.com*, November 19, 2018, <https://www.vox.com/a/midterms-2018/historic-races>.

legislation. If voter restrictions worsen, then perhaps, in the words of Justice Ginsberg, history needs to repeat itself once more, and Congress must act to pass a new Voting Rights Act.

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Part 4

Foreign Policy & National Security

INVESTIGATING NONCOMPLIANCE IN THE MULTILATERAL NUCLEAR MATERIALS REGIME

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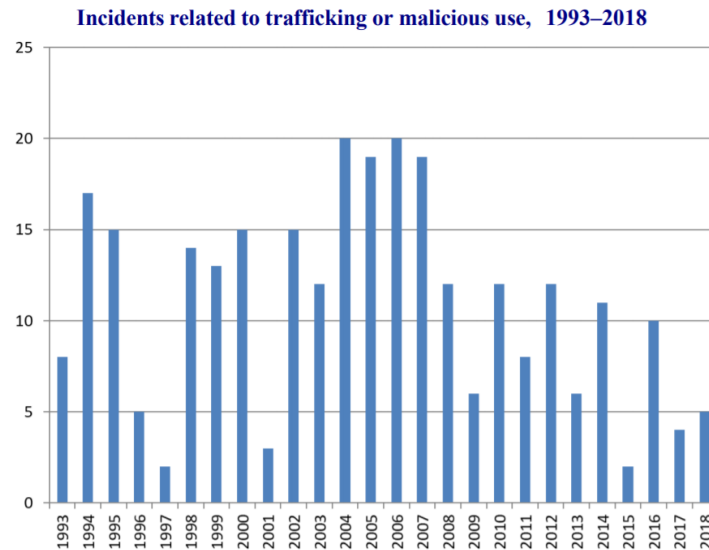
In studying the global nuclear nonproliferation regime, existing work has mainly focused upon nuclear arms control treaties and as of late, states' compliance with international nonproliferation commitments has also been called into question as one of the foundations of the modern nuclear age. By comparing non-nuclear and nuclear weapons states on the basis of their compliance with the principal global nuclear materials regime, this work establishes greater understanding of the benefits and detriments of multilateral nonproliferation commitments. I hypothesize that both non-nuclear and nuclear weapons states have greater proportions of noncompliance for incidents related to trafficking material outside their borders. The initial results of my work show that the benefits of selling material for profit are often what motivates trafficking rather than the development of weapons or some other state-sponsored reason. The findings of this study bear significant weight on the contemporary debate regarding bilateral and multilateral arms control in the modern nuclear age for both Congress and the Presidency.

INTRODUCTION

Over the past few years, the issue of arms control treaties – particularly between the United States and Russia – has come to the forefront of American politics. Since these treaties are largely proposed by the President and then require Congressional approval, understanding the merit of arms control-related treaties and their efficacy is of utmost priority to future Congressional decisions. Within this field, there have been numerous studies done on the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) but not that much has been done to study protocols related to materials rather than weapons. The findings of this research could be used to inform future debate within the United States on the merits of bilateral versus multilateral control regimes. In the most recent abrogation of the Intermediate-Range Nuclear Forces Treaty, the Administration stressed that a multilateral treaty would be necessary to move forward.

In addition, due to this focus on nuclear weapons treaties rather than materials, non-nuclear weapons states are often not studied at similar depth despite the real risk their materials might pose on an international scale. This study's focus on the role of trafficking in both nuclear and non-nuclear weapons states is meant to expand the criteria used to predict or justify

noncompliance. The chart below shows the publicly acknowledged IAEA incidents related to trafficking or malicious use and given the lack of research done to unpack these violations, there is certainly room for more analysis.



In large part, this question has only been investigated to determine whether bilateral or multilateral regimes are more effective at ensuring compliance. Some research done by Hackel argues that regional challenges due to geography and proximity of adversaries and the practical ability of the state to ensure compliance (accidental trafficking) may contribute more heavily than most studies actually credit. However, since his piece (*Continuity and Change*) is largely rhetorical, this piece ought to lend some more robust support for his initial theory.

Understanding how and when states are “pushed” into non-compliance will help policy makers understand whether contemporary questions of bilateral versus multilateral regimes are even pertinent or whether the issues of compliance are more nuanced. Should my research discover that non-nuclear weapons states are more likely to traffic nuclear materials outside of their borders than inside than nuclear states, that would lend credibility to the argument that non-nuclear weapons states require some other type of incentive to comply.

LITERATURE REVIEW

Compliance per State as Determined by Accession to a Bilateral or Multilateral Regime

In “Multilateralism, Bilateralism, and Exclusion in the Nuclear Proliferation Regime”, Daniel Verdier argues that state compliance with a multilateral treaty only functions as intended if there is a low cost of compliance.¹ He states that “the institutionalist literature in general holds that multilateral institutions perform better in issue areas involving bargaining and coordination, while bilateral institutions do better in areas involving enforcement through retaliation.” In an attempt to investigate this claim, he instead argues that “for states with a low cost of compliance, a multilateral instrument should suffice, whereas for states with a higher cost of compliance, this multilateral instrument should be supplemented with bilateral deals.” He utilizes the monopolistic economic competition model to describe the nuclear nonproliferation regime “as a contract between a principal (the nuclear cartel) and a large number of agents (the rest of the world)” in the Nuclear Non-Proliferation Treaty. He utilizes the prisoner’s dilemma and then proposes an equation summary that generates the figure included below.

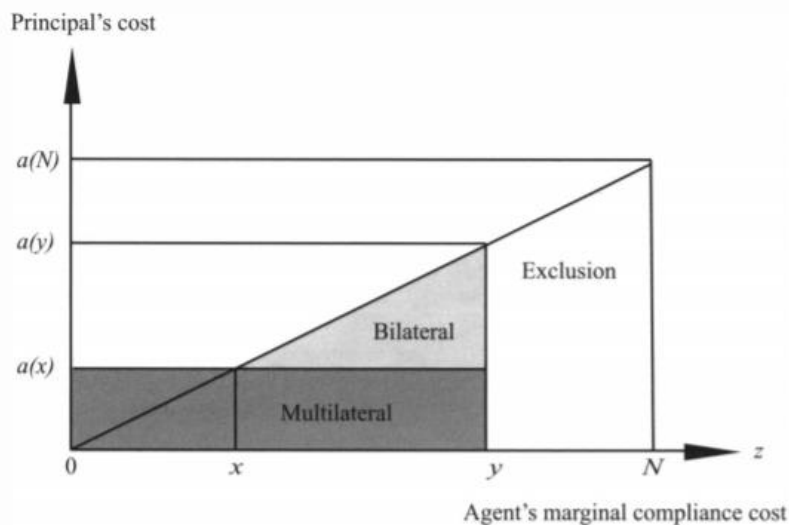


FIGURE 3. *Solution template*

He also models the ratification process of the Non-Proliferation Treaty to quantify the factors that may lead to a country’s ratification of the treaty. Aspects of his modeling may prove fruitful later on in my research as well. Theoretically, his claim about the rise in “cost” for states which

¹ Verdier, Daniel. "Multilateralism, Bilateralism, and Exclusion in the Nuclear Proliferation Regime." *International Organization* 62, no. 3 (2008): 439-76. www.jstor.org/stable/40071900

respond to bilateral commitments instead should also be evident in my study of materials treaty ratification/compliance.

Existing Theories to Explain Non-Compliance

Abram and Antonia Handler Chayes explore the pertinence of compliance with international regulatory regimes in their work *On Compliance*.² They argue that on the whole states will always to some extent comply with the undertakings they have made but that there are three important distinctions that are necessary to understand before descending into deeper debate. They argue that (1) “general level of compliance with international agreements cannot be empirically verified. That nations generally comply with their international agreements, on the one hand, and that they violate them whenever it is ‘in their interests to do so ‘ are not statements of fact or even hypotheses to be tested, but assumptions...(2) compliance problems often do not reflect a deliberate decision to violate an international undertaking on the basis of a calculation of interests...(3) the treaty regime as a whole need not and should not be held to a standard of strict compliance but to a level of overall compliance that is ‘acceptable’ in the light of the interests and concerns the treaty is designed to safeguard.” They propose a variety of other rationale to explain why states may deviate from treaty obligations and in fact argue that the other states understand the need for such departures and thus they are justified. I will explore how such rationale applies in the specific case of infrastructure that I have chosen to explore.

In “Continuity and Change in International Verification Regimes,” Erwin Hackel attempts to unpack why treaties limiting nuclear proliferation are conservative in their intent and content.³ From the literal verification mandate perspective, he argues that “the search for transparency through intrusive verification is predicated on the assumption that not all treaty partners can be trusted to act in good faith or in a responsible manner.” Though this “attitude of skepticism” can be healthy for the “safeguards philosophy of an international watchdog agency, it has costs of its own.” Chief among the costs mentioned is the idea that it may paradoxically increase the propensity of member states to not fully trust in international verification. One could argue that if individual states could not be fully trusted, how could an international organization

² Chayes, A., & Chayes, A. (1993). On compliance. *International Organization*, 47(2), 175-205.
doi:10.1017/S0020818300027910

³ Häckel, Erwin. (2006). “Continuity and Change in International Verification Regimes.” 10.1007/3-540-33854-3_28

which is composed of them be trusted? Much like Verdier's claim that such states thus sign on to "weak treaties," Hackel states that "the mandate given to an international verification agency is in all cases the outcome of a multilateral negotiation in which all parties have sought to retain for themselves as much freedom from external interference as might be compatible with treaty purposes. It is a compromise on the lowest denomination of common interests, restricting international authority to the minimum of necessity."

However, unlike Verdier, Hackel introduces the idea that regional geography may also contribute to states' compliance with such agreements beyond the strength of the agreement itself. As evidenced by the delay of most developing countries to sign onto the Additional Protocol, "distrust and resistance against stringer international verification comes mostly from states in the developing areas, where national sovereignty is cherished and anxiously asserted more than elsewhere." In fact, going beyond the need to declare sovereignty, such states may also not even be unwilling – but simply unable to comply for practical purposes. In order to comply, states need effective control of national territory and borders, sound administration and responsible officials, reliable records, physical security, and many other enabling factors. However, the inability to control materials without incident also extends beyond small regional powers given that China, Russia, South Africa, and Pakistan have all suffered periods of domestic upheaval resulting in increased materials risk. This presents the motivating cleavage upon which to investigate materials noncompliance incidents – particularly as a part of my qualitative study – in order to discern whether one of these reasons is more likely than the other to lead to noncompliance.

Mathematical Analysis of Risks Associated with Nuclear Terrorism

There have also been some studies done to mathematically model the systematic aspects of the risks associated with nuclear terrorism. In Bunn 2006, he designed a mathematical model for the risks of nuclear terrorism.⁴ He explored several key parameters, with an emphasis on four means that terrorists might use to acquire nuclear materials: outsider theft, insider theft, the black market, and provision by a state. Unlike some previous models, the model presented by Bunn is based on the more realistic assumption that a limited number of nuclear terrorist groups undertake a limited number of theft attempts, suggesting that the relationship between the risk

⁴ Bunn, Matthew. (2006) A Mathematical Model of the Risk of Nuclear Terrorism. *Annals, AAPSS*: 607

and the quantity of facilities or materials is less direct. The mathematical analysis developed by Bunn suggests that even largely rare events such as nuclear terrorist attacks can be modeled in a systematic way. Therefore, it is possible for this study to establish whether or not patterns exist among states for trafficking.

THEORY

My theory predicts that both nuclear and non-nuclear weapons states have greater proportions of noncompliance for incidents related to trafficking material outside their borders. The dependent variable being studied is noncompliance violations of illicit materials trafficking and the independent variable is ownership of nuclear weapons.

Compliance with international nuclear materials regimes, or safeguards violations, has wide variation across this sample of states.⁵ My dependent variable of compliance has three values of categorization: no violations, violations due to trafficking material outside one’s borders, and violations due to trafficking material into one’s borders. Common reasons to traffic out include a lack of regulatory control or infrastructure or a need for quick cash. The most obvious reason to traffic material in is to flirt with the development of nuclear weapons or technology.

The independent variable being studied is the ownership of nuclear weapons. Having domestic nuclear weapons is a characteristic of only nine countries around the world (United States, United Kingdom, France, Russia, China, North Korea, Israel, India, Pakistan) and all other 13 countries with weapons-usable materials would fall into the other category.

The following 2x3 explains what various outcomes could mean regarding the predicted relationship between my independent and dependent variables.

	No Violations	Violations from OUT	Violations from IN
Nuclear Weapons States	COMPLIANCE	- Earning cash from selling material	- Sudden need for nuclear material? - Purchasing off of less

⁵ Bunn, Matthew. “Countering Nuclear Black Markets by Strengthening Nonproliferation Culture,” in Matthew Bunn, Martin B. Malin, William C. Potter, and Leonard S. Spector, eds., *Preventing Black-Market Trade in Nuclear Technology* (Cambridge, U.K.: Cambridge University Press, 2018), pp. 249-270

		<ul style="list-style-type: none"> - Aiding a non-nuclear weapons state - Regional motivations 	<p>organized groups to protect materials safety?</p>
Non-Nuclear Weapons States	COMPLIANCE	<ul style="list-style-type: none"> - Need for cash - Lack of infrastructure to properly control materials - Incentive to support proliferation of a specific state - Regional concerns 	<ul style="list-style-type: none"> - Considering exploring nuclear weapons or other illicit technology development

Inherent assumptions being made include that all individuals and therefore states will always pursue compliance with international safeguards. Since my data set is restricted to states which have ratified a specific treaty, there could be a selection effect of restricting to only states who intend to support compliance measures. In addition, there is no explicit distinguishing between intentional and unintentional violations. This was to allow for the categorization of the dependent variable. Unpacking this more clearly in my case analysis will be essential. In addition, my hypothesis assumes the incentives for trafficking material out are largely the same for nuclear weapons and non-nuclear weapons states. This may prove to be an unwieldy assumption. The scope conditions relevant also mandate that this theory is only pertinent to nuclear materials treaties – not arms control – and only multilateral regimes.

SELECTION OF CASES AND METHODS

This theory is applicable to both nuclear weapons states and non-nuclear weapons states though there is a difference between nuclear weapons states (9), states which just possess nuclear weapons-usable materials within their borders (13) and the rest of the countries (154). I will only be using incident violation reports for the first two of these categories.

The eventual full study design utilizes nested analysis as a mixed method strategy. For the CSPC portion of this work, I only conducted the small N qualitative study. For this part of the study, I focused on studying the incidents which took place in 2018 and worked to understand countries based on their ownership of nuclear material, size, geography, and corruption levels and did a deep dive into why the countries acceded to the protocols, how incidents tend to occur in the country, and unpack what levels of infrastructure or corruption might exist that contribute to the state's incentives.

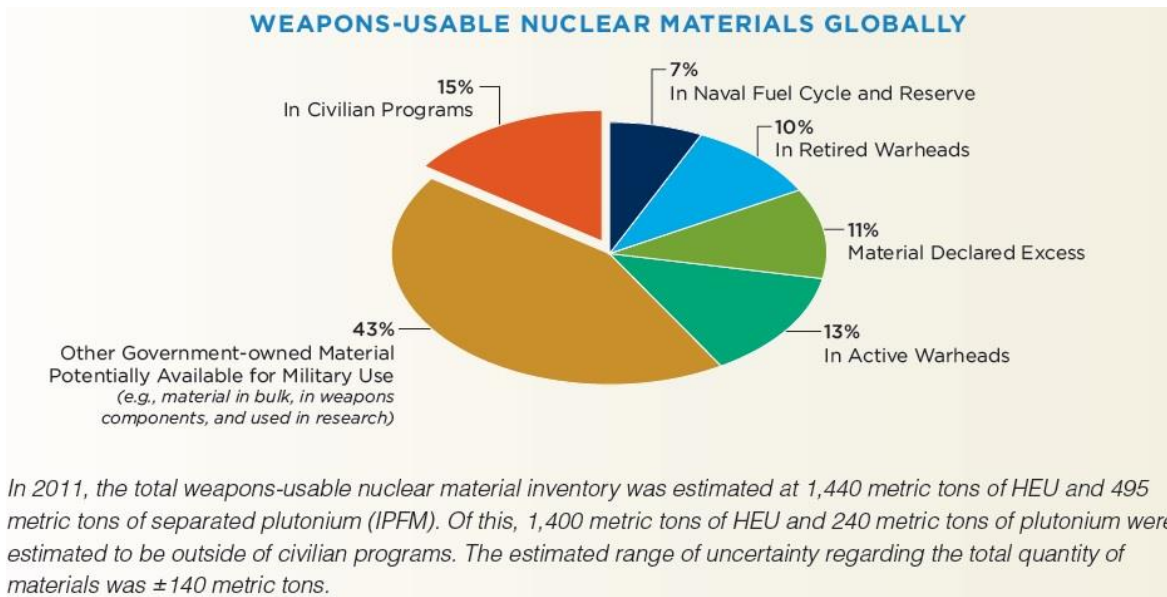
In the future, a large N study will be done quantitatively to help demonstrate the plausibility of my theory. The trendlines will be descriptive and demonstrate whether my theory is consistent. For the quantitative part of the study, I intend to utilize descriptive statistics (bar plots, plots by factors including regime type, region, GDP). By displaying the proportions of types of violations for each type of state and how they have changed over time, the descriptive statistics part of my study will not be statistically significant or give conclusive evidence of a specific theory. It is merely to enable better discussion in my case analysis since the incident cases are not so innumerate that I cannot explore them qualitatively. Some of the descriptive statistics I will try to show include proportions of types of violations per type of state, the difference between nuclear and non-nuclear weapons matched pair states, and other trendlines related to characteristics of the incidents.

DATA

I utilized the Nuclear Threat Initiative and James Martin Center for Nonproliferation's publicly available Global Incidents and Trafficking Database. This database catalogues over 1,000 materials incidents and will require some parsing to determine which types of incidents are relevant. NTI also has a Nuclear Security Index with data beginning in 2012 through 2018 in order to gauge where the country stands in the modern age. The index also specifies exactly how many internationally binding commitments each country has made. This database will be used in tandem with the Incident and Trafficking Database from the IAEA which dates back to 1995 in order to tally incidents and risk factor.

There are three principal treaties on nuclear safety and security: 1) the Convention on Nuclear Safety 2) the Convention on the Physical Protection of Nuclear Material (CPPNM) and

3) the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. There is also the overall IAEA safeguards standards and the Additional Protocol. I am focusing solely on the CPPNM treaty since it focuses specifically on the physical protection of nuclear materials and is the only treaty to do so. The figure below shows how weapons-usable materials exist physically across the world and it is important to note that the CPPNM only covers the 15% of material used in civilian programs. This is just a small piece of a much more unwieldy system.



I focused upon the following set of countries: Australia, Belarus, Belgium, Canada, China, France, Germany, India, Iran, Israel, Italy, Japan, Kazakhstan, Netherlands, North Korea, Norway, Pakistan, Russia, South Africa, Switzerland, United Kingdom, and the United States. These countries comprise the set of countries which have weapons-usable nuclear materials within their borders. I labeled this set of countries without weapons as the non-nuclear weapons states for this study. The figure below shows a snapshot of what the data in my database looks like from a case perspective.



Some of the limitations of this design include the fact that successful trafficking is likely often unreported and attempting to quantify what amount of data might be missing from my set will be difficult. Since the CNS also only has open-sourced reporting of incidents, that limits the extreme reality of my work since access to the IAEA database is restricted to government agencies. This is to ensure full transparency on the parts of states to be willing to divulge vulnerabilities, so I cross-referenced the CNS incidents with the publicly available fact sheets from the IAEA.

RESULTS

For this initial portion of my research, I chose to focus upon the incidents which took place from 2016 - 2018. Just in 2018, the James Martin Center for Nonproliferation Studies' (CNS) global, multi-language, review of open source reports found a total of 156 incidents of nuclear or other radioactive materials outside of regulatory control, occurring in 23 countries. Since CNS began tracking incidents in 2013, researchers have identified a total of 1,040 incidents in 58 countries. As in past years, CNS researchers identified that an alarming number of incidents occur while nuclear and other radioactive materials are in transit. In 2018, 68 incidents (41% of total incidents) occurred during transport, consistent with similarly high rates in previous years.

Of the incidents that occurred during material transport, 25 were confirmed thefts, again consistent with previous years.

With respect to trafficking material, across 2016 - 2018, twelve definitive cases of intentional trafficking of nuclear and other radioactive materials were recorded.⁶ While this represents only a small percentage of all recorded incidents, it must be remembered that more cases likely occur, but go undetected or unreported. It also critical to remember that extreme danger posed by even one successful trafficking incident.

Walking through these twelve cases, we notice a few patterns.

Case 1 (2018): Ukrainian security services arrested six individuals believed to be part of an international radioactive materials smuggling ring. The individuals were arrested after attempting to sell police an unspecified quantity of radium-226 in a sting operation. It is unclear how the individuals acquired the material.

Case 2 (2018): Ukrainian security services seized a device containing radioactive material from an individual who planned to sell and mail the device to an unnamed EU country.

Case 3 (2018): Four scrap metal dealers in the Netherlands were arrested after authorities determined they were illegally selling radioactive scrap metal used in ballast blocks on ships.

Case 4 (2018): Sheremetyevo airport customs in Russia found a “yellow, radioactive mineral” in a package arriving from Italy. A criminal investigation is underway, and the stone was presumably confiscated.

Case 5 (2018): Customs officials in Orenburg, Russia confiscated 292 “medical medallions” from an entering truck driven by a Kazakhstani citizen. The medallions were reportedly being smuggled into the country and registered gamma radiation 20 times in

⁶ James Martin Center for Nonproliferation Studies, CNS Global Incidents and Trafficking Database – “2016 Annual Report.” April 2017

James Martin Center for Nonproliferation Studies, CNS Global Incidents and Trafficking Database – “2017 Annual Report.” April 2018

James Martin Center for Nonproliferation Studies, CNS Global Incidents and Trafficking Database – “2018 Annual Report.” April 2019

excess of the background level. A criminal investigation is underway on charges of “illegal movement of potent, poisonous, toxic, explosive, radioactive substances, radiation sources, or nuclear materials across the border.

Case 6 (2017): In Malaysia, police arrested several individuals for the theft and attempted sale of iridium-192 (#2017021). Police believe the individuals obtained the material by stealing it from a local oil company.

Case 7 (2017): In Ukraine, police arrested an individual for attempting to remove 15 kilograms of radioactive lead. Police believe the individual intended to sell the material (#2017145).

Case 8 (2017): In Kazakhstan, police arrested four individuals for the theft and attempted sale of plutonium-239, plutonium-241, and americium-241.²² The thieves attempted to sell the material for \$130,000 to undercover members of Kazakhstan’s security services. Police say the individuals obtained the material by stealing a static electricity control device used in heavy industry and that the thieves claimed they could obtain more material using similar means (#2017094).

Case 9 (2016): In January, Georgia’s security agency reported that it had arrested three men for attempting to sell an unknown quantity of cesium-137 for \$100,000 (#2016578). The report did not state whether the men had a buyer for the material or where the material came from.

Case 10 (2016): In March, Ukrainian authorities searched a warehouse belonging to an unnamed businessman and seized a crate containing radioactive materials, including at least one strontium-90 source (#2016613). The report indicated that the owner of the warehouse had plans to illegally sell the material. Ukrainian authorities did not state whether the individual had a buyer in place or where the material came from. The report also did not state whether the warehouse owner was arrested.

Case 11 (2016): In April, Georgia’s security agency reported the arrest of six men of Georgian and Armenian origin who were attempting to sell an unknown quantity of depleted uranium for \$200 million (#2016607). Authorities also located a specially designed container for transportation of significant quantities of uranium at the residence

of one of the individuals arrested. Georgian authorities did not state where the material came from or whether the individuals had a buyer ready.

Case 12 (2016): Later on in April, Georgian authorities announced they had arrested five men who were attempting to sell 1.665 kilograms of depleted uranium for \$3 million (#2016608). As with previous cases, the Georgian security services did not release information regarding the origin of the material, nor did they state whether the individuals had a buyer in place.

Though the intended end use is unknown, the primary motivation appears to be profit in all of these cases – whether the material was being trafficked within or outside of a country’s borders. In addition, there is a pattern surrounding medical or industrial isotopes which could point to needed additional security in those areas. In terms of NWS and NNWS, the only nuclear weapons state on this list was Russia. This indicates that much of the ongoing trafficking may occur in former Soviet states which possess materials given the high incidence of Ukrainian, Georgian, and Kazakhstani cases. It is also critical to look at how various countries self-report incidents during different years. For example, Georgia’s rate of incidence appears to be highest in 2016 but part of that impulse came from increased scrutiny at the national and international levels. Heightened awareness of noncompliance led to more funding put into security within Georgia and followed from the security protocols set out by the end of the 2016 Nuclear Security Series meetings done by the Obama Administration.

THE ROLE OF THE PRESIDENCY AND CONGRESS

From the perspective of both the Presidency and Congress, these issues of nuclear materials trafficking bear significant weight. Given the almost exclusive powers of the President to launch nuclear weapons and assess those aspects of strategy, Congress is left entirely to decide on funding for United States domestic and international programs focused on nuclear material security and nuclear terrorism prevention. Both of these parties are also crucial in the decisions to accede to a variety of nuclear arms control and materials security treaties so gaining more context for their efficacy is always useful. Over the past decade, Congress was also tasked with assessing the implementation of the Obama Administration’s efforts to secure nuclear materials

by the end of 2013. The Obama Administration's FY2011, FY2012, and FY2013 congressional budget requests proposed overall increases in funding for nuclear security-related accounts, with the stated purpose of ramping up programs to meet the President's four-year goal. It was one of the Administration's preeminent goals and culminated in the reduction of nuclear weapons across the world. However, this commitment to international security has waned over the last few years. In May of 2019, it was reported that "for the third year in a row, the Trump administration [was] proposing to reduce funding for core United States nuclear security and nonproliferation programs at the semiautonomous National Nuclear Security Administration (NNSA)."⁷ In testimony to Congress, the National Nuclear Security Administration as well as other government agencies have testified that these funds aid in securing nuclear materials around the world because those areas are more likely to be susceptible to nuclear material falling into the hands of terrorists or adversaries. Understanding that the principal cause for trafficking material specifically looks to be financial, the Presidency and Congress ought to look at more constructive ways to prevent materials trafficking. Continuing to understand the importance of our funding cycles and the benefits such assistance can play in the international arena is critical as the United States reevaluates its commitments to various other nuclear-related treaties.

CONCLUSION

My research is focused on two questions: Are states' noncompliance violations due to trafficking illicit material into their borders or smuggling it out? How does this compare for nuclear versus non-nuclear weapons states? By using open-sourced incident reporting and qualitative case analysis, I establish that noncompliance is often due to trafficking of material out of or within a country for financial gain. I predicted that both nuclear and non-nuclear weapons states often have violations more related to the trafficking of material outside their borders than into due to their overlapping incentives. However, from my preliminary results, it seems that the question was misdirected. It seems that non-nuclear weapons states traffic material more frequently, perhaps due to a lack of overarching international security structure that is as strict, and that whether the material goes out or in – it's usually done for profit. My next steps will include further research into cases over the last decade rather than just 2016-2018 and more

⁷ Kingston Reif, "Nuclear Security Funding Cuts in Future." Arms Control Today. May 2019

efforts to understand where the potential gaps in my dataset may lie. These results can help inform the funding appropriations made by Congress and the Presidency for future nuclear security and nonproliferation programs. In particular, targeted attention and aid toward the former Soviet states should remain a priority given my findings that incidents largely take place within this geographic region. Protecting these countries and their material falls on all countries but the United States must continue to lead.

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MEDIATION IN TIMES OF SCIENCE DIPLOMACY: WHAT ROLE FOR THE UNITED STATES PRESIDENCY?

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This study will present an exploratory inquiry to understanding the U.S. presidency's involvement as a third party in international relations, through the specific lens of its mediation practices. It will interrogate how far, in what form, and to what effect has the U.S. presidency mediated scientific conflicts in the past, and what essential preconditions and contextual factors impeded or assisted such a role. Particularly, it focuses on the U.S. mediation in water conflicts in the Middle East and North Africa regions. It will draw conclusions on the conditions surrounding U.S. mediation and its effectiveness.

INTRODUCTION

U.S presidents have always had an ongoing commitment to act as mediators in international relations. If their involvement has been well-documented in the Palestinian-Israeli conflict for example, it is less so for more complex conflicts in the field of science diplomacy.

Science diplomacy is based on the understanding that science is by nature an international field whereby the scientists' language framework advances cooperation as it creates a space where communication and mutual understanding can be made across lines of conflict.¹ It aims at informing foreign policy objectives with scientific advice.² The water resources field in this regard is rich with experiences and illustrations of collaborative approaches that not only entail the intervention of scientists but also the use of technological tools. However, when poorly managed or distributed, as other natural resources, water can also be a major driver of conflict and instability.³ The combination of changes affecting water resources on one hand and conflict dynamics on the other, suggest that water will be the most pressing environmental concern of the century. More generally, as the number one country in the world of science, the United States contributed to the advancement of science diplomacy as a framework of international

¹ Timothy Legrand and Diane Stone, "Science Diplomacy and Transnational Governance Impact," *British Politics* 13, no. 3 (September 2018)

² Pierre-Bruno Ruffini, *Science and Diplomacy: A New Dimension of International Relations* (New York, NY: Springer Berlin Heidelberg, 2017).

³ UNESCO. 2019. *World Water Development Report 2019: 'Leaving No One Behind'*. Paris.

cooperation.⁴ Particularly, U.S. presidents have played important mediation roles in water conflicts in the Middle East and North Africa (MENA) region. This study will thus present an exploratory inquiry to understanding the U.S. presidency's involvement as a mediator in international relations, with a focus on international water conflicts.

RESEARCH QUESTION

As scientific conflicts are becoming more and more complex, there is a need to analyze its potential or constraints in the current state of international affairs where foreign policy needs to adapt to increased levels of uncertainty and instability. This exploratory research project will thus try to understand how the United States exerts its role as a mediator and what it refers to, with the aim of generating insights to maximize the chances of successful intervention. It tries to answer the following research question: What does the experience demonstrate about the role of the U.S. president as a third-party intervenor in water conflicts? In short, it will examine the effectiveness of United States interventions as a third-party in water conflicts and identify the conditions that influence its involvement. From the theoretical perspective, there is a lot of research dealing separately with the study of conflict resolution, foreign policy analysis and water resources management. However, there is a gap in the literature on this precise topic as there are no theoretical models already developed for tackling the specific mediation role of the U.S. presidency in water conflict. Using an inductive approach and building on the disciplines of conflict resolution, foreign policy analysis and water resources management, we will first present an integrated analytical framework which we will then use to analyze the case-studies' empirical results. The aim is to explore the likelihood of hypotheses that could be further tested in future research.

THEORETICAL FRAMEWORK

Theories of International conflict resolution: the concept of effectiveness

⁴ Pierre-Bruno Ruffini, *Science and Diplomacy: A New Dimension of International Relations* (New York, NY: Springer Berlin Heidelberg, 2017).

My research aims to examine the effectiveness of United States intervention as a third-party in water conflict and thus tackles the question of the most suitable type of mediator to deliver nonviolent resolution of water disputes. Given the numerous definitions of mediation that exist in the literature, I choose to define mediation as

the process of conflict management, related but distinct from the parties' own efforts, whereby the disputing parties(...) seek the assistance, or accept an offer of help from an individual, group, state or organization to change, affect or influence their perceptions or behavior, without resorting to physical force, or invoking the authority of the law.⁵

In order to understand its “success” or “failure” which is measured according to its result, a cease-fire, a partial settlement or a full settlement, it is essential to adopt a systemic approach that would account for the conditions surrounding the mediation.⁶ In his contingency model, Bercovitch identifies four important factors associated with a successful mediation: the nature of the mediator (rank and identity, relationship with parties), the nature of the dispute (duration and timing of intervention, issues), the nature of the parties (political and cultural system, power status, previous relationship with parties), and the mediation process (initiator, environment and strategies).⁷ Bercovitch's contingency model will form the basis of my approach in analyzing the case-studies. Furthermore, for each of the factors, I use the level-of-analysis framework developed by Kenneth Waltz, in which he presents three levels of analysis to be considered for understanding the causes of war: each of the individuals levels, the nation-states levels, and the international system level.

In this regard, Chester A. Crocker, Fen Osler Hampson, and Pamela Aall identify “entry points,” a specific set of circumstances most favorable for conflict resolution. These are divided into four categories: geopolitical shifts, a dramatic shift in internal conflict dynamics, a major change in the leadership structure, and the arrival of a new mediator. They stress the necessity for third parties to acquire a good understanding of the history of the specific conflict situation,

⁵ Eileen F. Babbitt, “Remembering Jacob Bercovitch (1946-2011): A Pioneering Scholar of International Mediation,” *Negotiation Journal* 27, no. 4 (October 1, 2011): 499–500, <https://doi.org/10.1111/j.1571-9979.2011.00321.x>.

⁶ Bercovitch, J. (1996). *Resolving international conflicts*. Boulder, Colo.: Rienner.

⁷ *Ibid.*

the adversaries, the conflict issue, balance of forces, previous conflict resolution attempts, and the external context, before choosing an appropriate strategy for their involvement⁸. Another important factor is the concept of “ripeness” developed by Zartman, whereby the third party must consider whether the conflict is ripe for resolution.⁹

A FOCUS ON SUPERPOWER MEDIATION

Mediation is often thought of within the normative context of conflict resolution, whose theoretical underpinning is structuralism. Since this paper looks at superpower mediation, the United States mediation will be discussed using a realist framework of international relations, where mediation is considered as a foreign policy instrument used by states to advance their interests, influences and policy goals.¹⁰ A principal factor in superpower’s mediation is the mediator’s leverage on disputing parties and its ability to present itself as the guarantor of the agreement. Three types of strategic reasons have been identified that pertain to the motivation of the powerful state to intervene in a conflict: humanitarian, strategic and regional/security governance reasons. In the case of the United States, the mediating role undertaken by the president and his administration is complementary to other policies put in place by the administration such as arms supplies, training relationships, security guarantees, close cultural ties and macroeconomic assistance programs. Thus, a solely process-driven approach that is only concerned with maintaining an outward appearance of a peace process is not enough to ensure the conflict is contained and controlled. Zartman and Touval describe the role of states as mediators as intervening with a mix of both defensive and offensive goals. For states, self-interest in entering mediation can translate to the aim of producing settlements that will “increase the prospects of stability, deny their rivals opportunities for intervention, earn them gratitude of one of both parties, or enable them to continue to have a role in future relations.”¹¹

⁸ Croker, Chester A, Fen Osler Hampson, and Pamela R Aall. 2004. *Taming Intractable Conflicts*. Washington, D.C.: United States Institute of Peace.

⁹ Ibid.

¹⁰ Bercovitch, Jacob, and Jeffrey Z Rubin. 1992. *Mediation in International Relations*. Basingstoke: Macmillan in association with the Society for the Psychological Study of Social Issues.

¹¹ Ibid.

FOREIGN POLICY ANALYSIS: THE UNITED STATES PRESIDENT AND MEDIATION

The Institutional make-up of the American government renders the president the most important decision-making power when it comes to foreign policy.¹² Congress has less of a role to play in foreign policy than in domestic policy for example. As chief executive, the President sets forth his administration's strategic objectives. His personal values usually affect his approach to international relations which in turn determines the United States' overall foreign policy. When the United States is invited to mediate in a dispute, it normally engages the services of one of its top decision makers. In these cases, figures such as President Carter, Secretaries of State Albright, Baker or Kissinger fulfilled a mediatory role, as representatives of their countries. Their performance is determined by the position they hold in their own country, the freedom they are given in determining policies, and the resources and the political orientation given by their superior.¹³ In this regard, research shows that U.S. involvement as a mediator has led to breakthroughs when the administration was highly engaged and kept at the problem after an initial setback, when it was able to benefit from an exogenous event and managed it to the United States advantage. According to Kriesberg, there were relatively no successes with a medium level of U.S. engagement.¹⁴ Croker adds that in many cases mediators operate in a non-supportive institutional environment which is particularly characteristic to states with large bureaucratic environments, like the U.S. government. Therefore, the constraints and incentives created by domestic politics influence the occurrence and strategy of U.S. mediation. For democratic powerful states, the mediation process starts domestically, where systems and institutions across governments are involved (in addition to the effects of public opinion and reputational consideration). Mediation is thus seen as a low-risk policy option to boost presidential approval as it provides presidents with the occasion to demonstrate their leadership and competence and get media attention. For example, findings show that mediators will want to intervene when conflicts are most violent and visible internationally.¹⁵ Therefore, if a leader's motivation and domestic constraints change, the mediation process is very likely to be impacted.

¹² Neustadt, Richard. *Presidential Power and the Modern Presidents*.

¹³ Bercovitch, J. and Schneider, Who Mediates? the Political Economy of International Conflict Management.

¹⁴ Kriesberg, Louis. 2001. "Mediation and The Transformation of The Israeli-Palestinian Conflict". *Journal of Peace Research* 38 (3): 373-392.

¹⁵ Todhunter, "Domestic Political Incentives, Congressional Support, And U.S. Mediation."

INTERNATIONAL WATER MANAGEMENT

The question of water conflicts in international relations can be summarized in the dilemma between state sovereignty and the fact that water flow does not account for political boundaries. From a realist and power politics perspective, the question of water is often “securitized” for national interests, thus engendering international repercussions. On the other hand, the theoretical underpinnings of the debates that focus on cooperation over water are those of functionalism. A functionalist perspective argues that cooperation on water can encourage cooperation in other more sensitive political areas.¹⁶ The regime theory is also often considered in the research to explain cooperation. It looks at the formal and informal rules being developed over time through negotiations and interaction between states which ultimately form a “regime” through which cooperation can occur and develop into institutions.¹⁷ At the core of this approach is the belief that through an emphasis on technology, science and innovation, politics can be set aside and cooperation encouraged. However, other researchers argue that issues surrounding water are not solely technical but are rather primarily political.¹⁸ A purely technical perspective that would avoid politics will not succeed because of its misguided policy options and perspectives. In that regard, the water diplomacy framework asserts the importance of inclusive approaches in negotiations over water. Involving stakeholders simultaneously and from different levels is key to building a sustainable cooperation system that would support diplomatic activities. These activities are divided into different tracks to address the increased complexity of conflicts and take advantage of unofficial diplomacy to tackle all dimensions of sharing water resources, which include economic and social dimensions. Discussions around the best possible format for negotiations on international water resources are discussed in the pioneering work of Wolf and Priscoli who develop a framework for understanding water conflict management and identify four general stages of conflict management over water. The first stage pertains to the assessment of the current water setting. The second stage aims at thinking about the basin as a whole, without considering borders in order to think about possible policy options. The third

¹⁶ Jagerskog, Anders. 2000. "Conflict And Co-Operation On Trans-Boundary Water Resources.

¹⁷ Diebold, William, and Robert O. Keohane. 1984. "After Hegemony: Cooperation And Discord In The World Political Economy".

¹⁸ Aggestam, Karin, and Anna Sundell-Eklund. 2013. "Situating Water In Peacebuilding: Revisiting The Middle East Peace Process".

stage is to find ways to enhance the benefits of each of the riparian countries, and the fourth (and last) stage marks a return to a discussion around borders for a resilient institutional capacity building and an equitable distribution of benefits.¹⁹

CASE-STUDY SELECTION AND RESEARCH DESIGN

The methodological approach of this research has been adapted to the availability of necessary data. This project involves a small-n analysis following Bercovitch's contingency model for the analysis of case-studies. We have used Mill's methods of difference that allows for an analysis of cases that vary with respect to a dependent variable, with similar independent variables.²⁰ The three cases-studies studied are the Johnston mediation over the Jordan river basin in the early 1950s, the conflict over the Wazzani watercourse between Lebanon and Israel in 2002, and the current mediation by President Trump on the Nile basin. These three cases of U.S mediation varies in terms of the dependent variable which I choose to be the outcome of the mediation. Each case of mediation evolved differently and ended with different results. In the first case study of the Jordan river, the mediation failed to bring the parties to agree on a settlement. In the case of the Wazzani Dispute, it somewhat succeeded in appeasing the tensions but failed to reach an agreement: the United States mediated the conflict before handing it over to the United Nations. The mediation ended without an explicit settlement. In the Nile basin case, the ongoing mediation by the United States has produced considerable positive advancement in the state of the dispute. The case studies have similar contextual characteristics as they were taken from the MENA region where the United States is an important partner and reference point. A qualitative approach has been used with two complementary types of data sources: first, through semi-structured interviews with main policy actors and second, through official and unofficial policy archive documents, institutional publications and the media. The qualitative research methodology includes process tracing. Process tracing analyzes critical junctures, causal mechanisms, and the process dynamics of negotiations.²¹ It helps in exploring the effects of the U.S. mediation through the different phases in order to identify possible causal mechanisms

¹⁹ Jerome Delli Priscoli and Aaron T. Wolf, *Managing and Transforming Water Conflicts* (Cambridge: Cambridge University Press, 2009).

²⁰ Timberlake, Michael, and Charles C. Ragin. 1989. "The Comparative Method: Moving Beyond Qualitative And Quantitative Strategies."

²¹Ibid.

between the mediator toolkits and the result of the mediation process. Between November and February, I have conducted fifteen interviews on the condition of anonymity. The people interviewed included officials representing the Jordanian, Lebanese and Syrian governments, officials representing the conflict parties of Ethiopia, Egypt and Sudan, representatives from the United States involved in the mediation processes, and finally, representatives of international organizations (World Bank, United Nations, European Union and the Nile Basin Initiative).

CASE-STUDY ANALYSIS:

The Johnston Mediation over the Jordan river

Background information and issues: the Johnston mediation that lasted from 1953 to 1955 is named after United States special envoy Eric Johnston who was sent by President Eisenhower in order to mediate an agreement between riparian countries of the Jordan river: Jordan, Israel, Lebanon and Syria. The conflict began with border clashes between Israel and Syria in the summer of 1951, after Arab states began to discuss unilateral plans for the use of water. Eric Johnston, who was the Chairman of the Technical Cooperation Agency in Amman, was sent as the personal representative of the President with the aim to help countries reach a comprehensive settlement of the river system allocations and design a regional development plan.

Mediation process: Several previous plans for water allocation had been designed by scientists but without agreement. Johnston's mediation consisted of four rounds of negotiations and his approach aimed at constructing a "unified plan" that would be a compilation of previous already designed plans in order to help Arab states and Israel reach an agreement that would benefit all. Johnston's mission had two broader aims. His starting point was to present the unified plan to both parties and ask for their views. Johnston worked until the end of 1955 to reconcile United States, Arab, and Israeli proposals. All states had agreed for a regional plan, and conceded some of their initial positions. The technical committees from all sides accepted the Unified Plan and the Israeli Cabinet approved. Despite the forward momentum and although this plan was backed with a U.S offer to fund two-thirds of the development costs, the Arab League

Council decided not to accept the plan in October 1955 because of the political implications of accepting, and the momentum died out.²²

Context and environment: Major political problems occurred during this time which started in the difficult context of the Baghdad pact. The West had refused to finance the Aswan Dam in Egypt. This prompted Egypt to launch an arms deal with the Soviet Union followed by the Suez Canal campaign and the 1956 attack on Egypt by Israel, France, and Britain. Egypt was an important support to the Johnston Plan and was included in all negotiations even though it wasn't a riparian country. Arab countries like Iraq and Saudi Arabia pressured Lebanon, Syria, and Jordan not to accept the Plan.

The mediator's motivation, identity, rank and relationship to parties: Johnston was not considered by the Arabs as a neutral mediator and was perceived as a negotiator on behalf of Israel.²³ He was known to be the "vice chairman of the American Christian Palestine Committee, a pro-Zionist philanthropic organization."²⁴ This engendered a loss of credibility of the mediator as he was perceived as impartial. Some Arabs may have considered that a final agreement with Israel would be a recognition which was a step they were not willing to make at the time. There were issues of national sovereignty that were thus not met. On the other hand, a large segment of the Israelis viewed Johnston's Unified Plan as damaging to the interests of Israel and its agricultural development plans. Johnston was the special envoy at a time of the Eisenhower doctrine in the Middle East. President Eisenhower rejected the Soviet Union's suggestion that the United States, the Soviet Union, Britain, and France jointly negotiate an Arab-Israeli peace treaty. At that time, Eisenhower reasoned that such a step would undermine Western influence in the region and betray those Middle East states that were resisting the soviet power.

WAZZANI DISPUTE BETWEEN LEBANON AND ISRAEL

Background information and issues: On August 31, 2002, the Lebanese Government started the construction of a pumping project in the Wazzani catchment basin with the purpose of

²² Jerome Delli Priscoli and Aaron T. Wolf, *Managing and Transforming Water Conflicts* (Cambridge: Cambridge University Press, 2009).

²³ Salman M.A. Salman, "Mediation of International Water Disputes — the Indus, the Jordan, and the Nile Basins Interventions," in *International Law and Freshwater*

²⁴ Ibid.

providing drinking water supply to villages experiencing a “water stress” situation because water needs were substantially increasing. This was following a severe drought in the region. The Lebanese president at the time, Emile Lahoud, said that this was a transgression of the national sovereignty.²⁵ Hezbollah, the Shiite militia in Lebanon threatened to shell Israel if it attacks the pumping plant. At the beginning of this project, the Prime Minister of Israel Sharon threatened military action. The threats were taken very seriously by the Lebanese officials and the United States decided to intervene. Richard Armitage, the Deputy Secretary of State of the United States, called for taking this matter with great seriousness and sent the Senior Advisor for Science and Technology at the state department, Mr. Charles Lawson, to Lebanon to handle consultations with the Lebanese officials.

The mediation process: The visit of Mr. Lawson to Lebanon was preceded by a visit of experts from the USAID bureau in Lebanon accompanied by American experts from the Water Authority of Jordan. Charles Lawson arrived in Lebanon on September 18, 2002 and headed directly to the Wazzani to examine the situation in the presence of a Lebanese delegation. Two meetings took place between Mr. Lawson and the Lebanese official. He informed them that Israel was planning to expand its projects on the Jordan river. He offered that the United States mediate in the conflict to avoid the rise of tensions. The United States suggested that the water experts of Lebanon and Israel be the one discussing this issue, without political interference, and that Lebanon refrain from installing the pumping system. He also recognized that Lebanon has the right to use a part of the Jordan river but it had to be in conformity with the Johnston plan that was used as a basis for the negotiations between Jordan and Israel as well as for the Oslo agreements between Palestinians and Israelis. The Israeli insisted on the principle of establishing a joint agreement with all the riparian states sharing the Jordan River rather than a bilateral approach and that experts of both states play a role in the resolution of the conflict. However, this plan was considered by Lebanon as obsolete and in need of a review. As a follow-up to these missions, it was convened that the Lebanese government through its Wazzani work team prepare a document to be submitted to the Secretary General of the UN.

Context and environment: International observers were predicting escalation as the threat of an American war against Iraq was real. They were afraid that Israel would take advantage of the new regional context to attack the Hezbollah, the ally of Syria and Iran. From this point of

²⁵ Information provided by Lebanese officials, Beirut, December 13, 2019.

view, the Wazzani conflict could become the pretext for a regional escalation. The Arab League expressed its support of Lebanon and said Israel wants to launch a war to prevent Lebanon from benefiting from its waters. The Russian Minister of Foreign Affairs called on Lebanon and Israel to settle their disputes in a peaceful manner through negotiations. Stephan de Mistura, the UN representative in Lebanon also recognized that the United Nations could help in mediating the conflict. The European Union also sent a delegation of experts headed by Walter Mazzetti, President of the Euro-Mediterranean water Information System. Mazzetti invited the officials in charge of the Ministry of Energy and Water to collaborate with the European Union in order to launch a socio-economic development program for South Lebanon. In July 2002, a UN expert commission was put in place and several technical missions to Lebanon were organized.

The mediator's motivation, identity, rank and relationship to parties: The Lebanese official welcomed the mediator as an expert and trusted mediator to Lebanon. The fact that Lawson was a hydrologist reassured the Lebanese in their claims. It is worth mentioning that Mr. Armitage was sent to the region before to mediate a settlement on the Jordan river. He was thus familiar with the challenges of water issues in the region. Due to internal disagreement in Lebanon, the UN and the EU were involved, which prevented the American to effectively settle the dispute.²⁶ In addition, the fact that Lebanon was signatory to UN conventions whereas the United States and Israel were not, complicated discussions since the legal bases were different.

THE NILE DISPUTE OVER THE G.E.R.D:

Background information and issues: The Nile is the third biggest river basin in the world. The riparian countries are Rwanda, Tansania, Ouganda, Congo, Burundi, Kenya, Ethiopia, Erythrea, Sudan, South Sudan and Egypt. Tensions over the Nile basin started with the end of colonialism in the region. Two colonial-era treaties gave Egypt and Sudan greater control over the Nile, with other upstream countries opposing the colonial arrangements as they were not parties to the treaty. A series of international negotiations supported by donors and UN agencies brought about the creation of a “cooperative framework” that was established in 2001 under the World Bank and the UNDP.²⁷ This framework is today called the Nile Basin Initiative which was

²⁶ Interview with U.S. public official, Washington D.C, February 12, 2020.

²⁷ Delli Priscoli, Jerome, and Aaron T Wolf. 2010. *Managing and Transforming Water Conflicts*. Cambridge: Cambridge University Press.

the first basin wide platform for cooperation created on the Nile. In March 2011, Ethiopia announced its plan to build the Grand Ethiopian Renaissance Dam (GERD) on the Blue Nile, despite strong opposition from Egypt and Sudan. After a series of high-level meetings, Egypt and Ethiopia agreed on the establishment of an international panel of experts in order to assess the impact of the dam on the Blue Nile, but the technical discussions were blocked and the construction of the dam that began in 2013 is expected to end in 2020. The core issue concerns the rate of the filling of the dam which will heavily impact Egypt's water resources.

The mediation process: Egypt first asked the World Bank to mediate the conflict, which was rejected by the Ethiopians. During the UN General Assembly in New York in September 2019, Egyptian President Abdel-Fattah al-Sissi asked President Donald Trump to mediate the conflict. Egypt counted on the leverage of the United States to bring the Ethiopians to the table and they consider the United States as the only country capable of ensuring the enforcement of agreements.²⁸ The mediation started on November 6, 2019 with a meeting between United States Treasury Secretary Steven Mnuchin, the ministers of Egypt, Sudan, and Ethiopia, and the World Bank president. President Trump was also present and declared he was very optimistic, although the Ethiopian Minister of Foreign Affairs said that the solution would only be found on the technical level. The second meeting took place on January 13, 2020, and a joint statement was issued outlining the principles of cooperation on which the parties agree. On their third meeting on February 13, 2020 a second joint statement was issued whereby Egypt, Ethiopia, the United States, and the World Bank announce that they have reviewed the work of their technical and legal teams and that they will be meeting at the end of February to prepare for a final agreement.²⁹ The Ethiopians didn't attend the last meeting held on February 28, 2020 as they were still undertaking national consultations. The Secretary of the Treasury, however, issued a statement announcing that the parties were able to reach a final agreement and invited the Ethiopians to sign it as soon as possible.

International environment: Ethiopia's announcement of the GERD happened in the midst of the Egyptian revolution in 2011. The same year, the war between the two Sudan ended, and Sudan turned to Ethiopia to negotiate her part of the power that would be generated by the dam.

²⁸ Interviews with two Egyptians public Officials in Paris, January 20, 2020 and February 20, 2020.

²⁹ "Joint Statement of Egypt, Ethiopia, Sudan, The United States and The World Bank | U.S. Department Of The Treasury". 2020. *Home.Treasury.Gov*. <https://home.treasury.gov/news/press-releases/sm907>.

Traditionally Sudan was close to Egypt, Saudi Arabia, and the United Arab Emirates since it receives investments from these countries and participated in the war in Yemen. On July 8, 2018, Ethiopia and Eritrea made peace after two decades of conflict. It is worth mentioning in this context that the Russians offered to mediate the conflict.³⁰

The mediator's motivation, identity, rank and relationship to parties: President Trump is believed to be a close friend of Egyptian's president Abdel-Fattah Al Sissi. The choice of the Treasury Department instead of the State Department to conduct the mediation has brought a new actor into the negotiations as it is the Bureau of Oceans and International Environmental and Scientific Affairs who was usually in contact with the parties. It thus marks a shift from the administration's previous policy. The technical assistance provided by the World Bank in the negotiations enhances the neutrality and impartiality perceptions.³¹ President Trump's presence at the first meeting signaled a strong political involvement on behalf of the United States.

CONCLUSION

Comparing the three cases on the United States' mediation effectiveness leads to several observations. In the case of the Johnston mediation over the Jordan River, the failure of the mediation was due to the perception of the parties vis-a-vis the mediator and the strategy used by the mediator. In fact, the Johnston mediation could be seen as an attempt to separate water from politics through adopting a purely technical approach. Johnston was perceived as partial and failed at gaining the trust of all parties and even if the plan was technically sound, the Arab leaders were not in a position to accept such a solution. The money and technical assistance that was offered was not enough to make the agreement acceptable. In the Wazzani case, the mediator Charles Lawson was welcomed by both parties and was able to gain their trust and push for a solution. However, the differences in legal basis between the two countries led to a preferred mediation by the United Nations and the European Union who had the credibility to act as arbitrators in the dispute. In addition, the technical approach was given preeminence after the political issues had been discussed. The good knowledge of the region's water issues by Mr. Armitage as well as the expertise of Mr. Lawson helped in building trust and credibility between

³⁰ Ibid.

³¹ World Bank official, Washington D.C, November 11, 2019.

the mediator and the parties. As for the Nile basin, the close ties between President Trump and Egyptian President Al Sissi has surely played a role in the positioning of the United States as the best suitable mediator in this case. The presence of the World Bank helped in securing a neutral environment with the necessary technical expertise and financial resources.

To conclude, this research paper tried to put forward an analytical framework for understanding the U.S. mediation effectiveness in the field of water. Through the analysis of three case-studies it aimed at understanding the key conditions affecting the U.S. mediation outcome. The United States' involvement in conflict resolution over water in the Middle East has proved its unique effectiveness in bringing important improvement in technical and political discussions between the parties. Although its mediation efforts did not always lead to a full settlement or agreement between the parties, it has nevertheless prevented escalation and prepared the ground for subsequent discussions around the issue of water and beyond.

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WINDOW DRESSING: APPLYING THE RASCLS FRAMEWORK IN FOREIGN POLICY

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This project's goal is to explore the feasibility and application of using the RASCLS framework in agent recruitment as a framework for foreign policy. This project seeks to explain the RASCLS framework, demonstrate its use throughout history, and then explore ways in which it could be implemented today. The project's design will explain the individual tenets of the RASCLS framework, explain how it has been utilized and the state and international levels, and how it could be applied when dealing with adversarial foreign countries, such as the Russian Federation. Through this research it is apparent that the RASCLS framework has been a well-used tool at the state level throughout history, and is fully applicable in contemporary international relations as framework for national doctrine regarding foreign policy.

INTRODUCTION

The greatest theories are said to work across time and space, across gender and culture, across religions, environments, and anything else that may make two things distinct. However, the scope of the theory is often forgotten, as theories are often applied on the level at which they were first conceived. This could be an individual level, a regional level, a state level, and all the way up unto the global level, and yet still the greatest of theories will transcend even this. One such theory is the RASCLS framework, applied in agent recruitment within the human intelligence discipline. This theory is applied on an individual level, when an intelligence officer is seeking to recruit an agent for the purposes of espionage. However, if RASCLS is truly a great theory, we might be able to apply it to the international level as well, not as a framework for agent recruitment, but as a framework for foreign policy and interstate interaction.

The tenets of the RASCLS framework are as follows: Reciprocation, Authority, Scarcity, Commitment, Consistency, Likeness, and Social Proof. One need only look to America's first foreign policy document, the Declaration of Independence, to see pieces of the RASCLS framework present at the international level. Therein, the founders spoke of the authority of government, the unfair reciprocation suffered, and the social proof that is offered as evidence.

The British lost the allegiance of their citizens for having violated parts of the RASCLS framework, not in words, but in deeds. By analyzing this episode, and others, perhaps this framework could be altered, so that through foreign policy and global interaction one state might be able to win over the hearts and minds of the people of another state, even against that foreign government's wishes, and in spite of that government's best counter-efforts.

This reinvention of the RASCLS framework is designed for the strategic level. This is not simply propaganda, but a carefully constructed ploy, an international psychological game, to manipulate entire states. Explaining this theory will be done through seven sections, mirroring the RASCLS tenets, and ultimately laying the ground work for a new approach to International Relations. Presenting this theory is done in the hopes that it will be a strategy for creating and maintaining an enduring peace, knowing that the art of peace need not be peaceful, only successful. It is the supreme art of peace to subdue an enemy by befriending them.

ACT 1: RECIPROCATION

Reciprocation is the art of returning in like kind: a compliment for a compliment, a blow for a blow. Individuals seek out relationships that are mutually beneficial, a parasitic relationship is avoided, but each has reciprocation in common. Mutually beneficial relationships exist because that benefit is reciprocated: each party works for the whole group, not just themselves. Parasitic relationships are avoided, as the benefit received by one party is never reciprocated. Like individuals, states seek out relationships with other states that are beneficial, with these benefits being reciprocated.

At the international level, beneficial reciprocation can be seen in trade negotiations and military treaties, such as the cost-sharing formula based on Gross National Income that determines the size of each contribution to NATO.¹ Reciprocation is not only useful in economic decisions. Negative reciprocation – though reciprocation nonetheless – can be seen in foreign policy and military decisions, such as Mutually Assured Destruction, which by its very name indicates that any attempt at assured destruction will be mutually reciprocated.² Using reciprocation at the strategic level is a form of selfish altruism. In implementation, we would

¹ NATO, *Funding NATO*. June 2018. https://www.nato.int/cps/ro/natohq/topics_67655.htm

² Lawrence Freedman, *The Evolution of Nuclear Strategy*. Third Edition (Palgrave Macmillan, 2003), 234-236

help others, so that they are obligated to help us. It can be anticipated that an adversarial government will take the benefit and not realize the inescapable trap it walked into. Failure to reciprocate will leave them dealing with a public relations nightmare on the international stage, as America could easily lambast that government as a global parasite. However, reciprocating the benefit – especially on a continual basis – leaves them vulnerable to other tactical or operational level tenets of the RASCLS framework, such as Likeness and Social Poof. Continued reciprocation also leaves the target vulnerable to increased traditional intelligence operations and strategic level RASCLS tenants, such as Authority.

Reciprocation should not be considered as only applicable in the theaters of economics, trade, or defense. Essentially anything could be used to set the reciprocation trap, such as national identity. Take the 75th anniversary of D-Day, which was held June 6, 2019, as an example. A day which celebrated the anniversary of the invasion to liberate France from Nazi Germany was held, with many world leaders in attendance, including Germany. However, Russia had not been invited. The Second World War holds a special place in the collective Russian identity, and their contributions to the war effort had been wholly dismissed by their former allies at this anniversary. It stands to reason that such a dismissal would resonate with Russians that hold fast to that identity.³ Perhaps it is not surprising, therefore, that the day after the anniversary a Russian frigate dangerously maneuvered about an American battleship in a clear display of aggression, making international headlines in hours.⁴

At first glance, the West seems to have lost a perfect opportunity diplomatically, but it is doubtful that all of the Western countries simply “forgot” to invite Russia. No, this was almost certainly agreed upon, probably to attack the Russian identity by dismissing their military. However, this dismissal was then negatively reciprocated with the Russians harassing the American military that following day. This demonstrates that reciprocation is constant – both negative and positive types – and every decision must be carefully weighed in terms of the trap being set. Will the adversary be forced to reciprocate the benefit, or will they be free to reciprocate the detriment? The media firestorm that arose in the aftermath of Russia’s actions at sea was predictable. The United States had practically lambasted the Russians as international

³ BBC, “D-Day anniversary: Putin says lack of invitation ‘not a problem’” *BBC*. June 6, 2019. <https://www.bbc.com/news/world-europe-48548200>

⁴ Sam LaGrone, “Russian Destroyer Puts U.S. Cruiser At Risk With ‘Unsafe’ Maneuver” *USNI News*. June 7, 2019. <https://news.usni.org/2019/06/07/navy-russian-destroyer-put-u-s-cruiser-at-risk-with-unsafe-maneuver>

parasites, and Russia's official stance was a complete denial of the events as portrayed by the United States. Of course that was Russia's stance! Russia's hand was ultimately forced, as they could not justify their actions with a "why did you not invite us to your party yesterday?" That argument would only make Russia look petty and childish.⁵

To achieve constant positive reciprocation, and implement the rest of the RASCLS framework, a closer analysis of each action, its perceptions, and its consequences, must be conducted. This is especially true in fragile military relationships, where unintended negative reciprocation can prove fatal.

ACT 2: AUTHORITY

Authority inspires obedience, and without obedience there would be political instability. Therefore, safeguarding the authority of the state is a priority for practitioners of national security, however a challenge exists in that authority itself is an abstract concept. What causes the notion of authority to take hold in the minds of the citizens? What might destroy that notion? It is one thing to market the American government to a target population, but true success will only be found when the adversarial regime collapses so that a more favorable one can be rebuilt.

Based on concepts developed by sociologist Max Weber, there are three types of authority to target: traditional, legal-rational, and charismatic.⁶ Generally, these types work together, but one can see in modern times what happens when these pillars collapse. The Trump administration is an example of a political authority which does not reflect Weber's ideas at all. Traditionally, this administration is unprecedented. Trump never held office before; even Reagan was the governor of California before becoming president. On a legal-rational basis, the fact that Trump did not win the popular vote in the election concerns those who erroneously believe the United States to be a direct democracy, and not a republic. On a charismatic basis, the Trump administration has purposefully crafted an image against this. Rather than the smooth-talking politician, as people of all nations are accustomed too, the Trump campaign and administration purposefully designed Trump's image as an average person. Such rejection of Weber's concepts has left the administration open to criticisms, which are easily conveyed to a mass audience.

⁵ Известия, "Появилось видео опасного сближения крейсера США и корабля ВМФ РФ" *Известия*. 7 июня 2019. <https://iz.ru/886738/2019-06-07/poiavilos-video-opasnogo-sblizheniia-kreisera-ssha-i-korablia-vmf-rf>

⁶ Max Weber, *Basic Concepts in Sociology*, trans. H.P. Secher (New York: Greenwood Press, 1969), 81-83

Successful criticism of authority undermines the legitimacy of the entire political body and its effectiveness in foreign policy. When such criticisms can be relayed to the public, unrest will brew in the disillusioned masses. In dealing with this rising unrest, the state will be distracted from implementing effective foreign policy. This was the case in 1970, when Chairman Andropov of the Committee for State Security – or KGB – sent a request to the Central Committee of the USSR to support the Black Panthers in their militant struggle against the American government. This was to “distract the attention of the Nixon administration from pursuing an active foreign policy.”⁷ It should be noted that this attempt at undermining the Nixon administration’s effectiveness by exacerbating pre-existing domestic tensions took place in the middle of the Vietnam War. At the conclusion of that conflict, the United States ultimately failed its foreign policy objective of containing communism in South East Asia.

These attempts of undermining authority were not limited to supporting militant groups like the Black Panthers, but also in altering public opinion in general. For example, Gus Hall, General Secretary of the American Communist Party, wrote to the Soviet Union for assistance in granting Jesse Jackson an honorary doctorate in history from Moscow State University. Hall requested this conferral, as Hall understood that Jackson being able to claim “Dr.” as a title would help to increase his status as an individual authority in American political circles. To the unaware observer this title would elevate Jackson, and thus his leftist leanings, to seemingly equitable authoritative status as other political leaders of the era. Whether or not Hall’s request was approved is unknown. However, it shows that communist strategists worked to undermine the authority of the American government by using saboteurs to change perception of legal-rational authority entirely, not simply to cause disruption and distract the political authority.⁸

Learning to create such political instability for others will help America bring down adversarial regimes. Stability exists when the actions of the authority are legally and socially accepted. A stable authority exists so long as there is strong correlation between the actions and expectations of government, but if that correlation falters instability arises.⁹ No government has a perfectly correlated line; at some point the justification and acceptance diverge, and that is where

⁷ Vladimir Bukovsky, *Judgement In Moscow: Soviet Crimes and Western Complicity*, trans. Alyona Kojevnikov (Ninth of November Press, 2019), 28

⁸ Bukovsky, *Judgement in Moscow*, 27

⁹ J. Eli Margolis, “Estimating State Instability” *Studies in Intelligence* 56, no. 1 (March 2012): 16-18.

<https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol.-56-no.-1/pdfs-vol-56.-no.-1/Studies%2056-1%20Extracts-25April.pdf#page=21n>

the faults in the perceptions of authority can be exploited. Once those areas are found, covert campaigns could be waged to cause internal disruption and sway public opinion. At the tactical and operational levels, agents could be trained as saboteurs to continually disrupt a government's effectiveness in the day-to-day operations, much like what the Office of Strategic Services intended for the French in the Second World War.¹⁰ The strategic level will necessitate broader campaigns against the authority itself, such as by attacking the political system or the face of the regime directly.

ACT 3: SCARCITY

Scarcity, by definition, is the opposite of abundance, however at the strategic level what is scarce is more abstract than material objects. What must be crafted in the application of Scarcity is the notion that some abstract concept in the minds of the people, such as security, is difficult to achieve due to its lack of abundance. In purposefully crafting such notions, both the target government and the target population can then be manipulated through various means. As a result of that manipulation, the actions of the targets can be exploited to support the applications of the prior two tenets: Reciprocation and Authority.

Scarcity must be applied in three parts, beginning at the tactical level, and working up to the strategic level. Beginning at the tactical level, tactical instruments can help to create the illusion that certain prospects and securities are scarce. Sanctions, for example, are tactical instruments which can help to craft the illusion that economic security is scarce. Consider for a moment that in 2019 the United States put sanctions on the Russian Federation with practically no fanfare or announcement. Although written a year ago, the lack of media attention when the sanctions were imposed took Russians by surprise.¹¹ The esoteric realities and consequences of such sanctions are extremely difficult for the target government to explain to the target population, and after the sanctions will fade from the collective memory of the target population. Once the collective memory has faded, additional sanctions can be applied, and then once the

¹⁰ Office of Strategic Services, *Simple Sabotage Field Manual: Strategic Services Field Manual 3*. Washington, DC. 1944. https://www.cia.gov/news-information/featured-story-archive/2012-featured-story-archive/CleanedUOSSSimpleSabotage_sm.pdf

¹¹ Kenneth Rapoza, "Russia's Latest Sanctions A Year In The Making But Surprise Everyone" *Forbes*, August 2, 2019. <https://www.forbes.com/sites/kenrapoza/2019/08/02/russias-latest-sanctions-a-year-in-the-making-but-surprises-everyone/#244380ce5de3>

memory of those sanctions has faded, additional sanctions can be applied, and that cycle can continue for as long as needed. Eventually, the target population will begin to believe that their scarce chances at achieving economic security are either of natural occurrence or due to the incompetence of the target government. Once the reality of desperation begins affecting the target population, and the notion that such scarce economic stability has been solidified in the minds of the population, the next stage in the application of Scarcity can begin.

Depending on the popular opinion – whether the target population believes that their situation was naturally occurring or they blame the target government – directs the next step in the process. Determining the target population’s perceptions could be conducted by surveys and analyzing media publications (essentially HUMINT and OSINT collection and analysis). If the target population blames the target government, then Scarcity will compliment Authority by giving another angle of attack for undermining the perceptions that the target government is a legal-rational authority. If the target population believes that their situation is naturally occurring, using prospect theory to manipulate the target population to turn against the target government is the next step. Prospect theory basically states that individuals value gains and losses differently. Losses have an emotional impact, and are thus avoided more. Gains, even the smallest of gains, are more preferred, and therefore when presented with a loss and a gain, the target can be expected to choose the gain, even if that decision will ultimately work to the detriment of the target in the long-term.¹² There is no way for a target government to win in this situation, once scarcity has been properly applied. Either the reciprocation trap will lead to further exploitation, or the authority will be targeted in some way.

Take West and East Germany as examples, whose proximity to Western and Soviet power and importance to military partners made chances at surviving hostilities from either side scarce. It is not surprising, therefore, that the German Socialists – seizing the initiative – were the first to advocate the policy of *Détente*, which was then quickly reciprocated by West German authorities. Lacking advancements in the reciprocation trap, the Soviets opted to destabilize the West German government by exposing the Nazi past of Chancellor Kiesinger. It was understood that if Kiesinger did not cooperate due to blackmail, his NATO partners would advocate for his removal from office in adhering to *Détente*. Kiesinger resigned from office within a year of this

¹² Amos Tversky and Daniel Kahneman, “Advances in Prospect Theory: Cumulative Representation of Uncertainty” *Journal of Risk and Uncertainty* 5 (Kluwer Academic Publishers, 1992): 297-323

plan being implemented.¹³ The Soviets also exploited the reciprocation trap in the United States after Scarcity was applied via Détente. For example, in 1970 Soviet delegations were instructed to “further contacts with liberal and opposition circles” and “criticize as widely as possible the obstacles set by the USA along the path to improved relations” as the delegation operated within the United States.¹⁴ Détente was the smokescreen. Scarcity was the strategy.

In summary Scarcity, as a strategy, is a supporting tenet to assist in setting the reciprocation trap, or to undermine authority, and provides the subtlety that RASCLS requires.

ACTS 4 & 5: COMMITMENT AND CONSISTENCY

The notion that an adversary can commit to any course of action, and act consistently in any interactions, are extremely important factors accounted for when one government seeks to work with another in any capacity. A government that is seen as non-committal may be too weak to work with. A government that does not act consistently may be somewhat irrational and impossible to work with. When attempting to undermine an adversary one should look for ways to make them appear non-committal and inconsistent to other states and to the adversary’s own citizens, while attempting to make oneself appear as committed and consistent. Commitment and consistency are applied in either a state of conflict, or a state of cooperation, respectively.

To deal with a conflictual scenario, one must be able to commit. Think of this in terms of the game of chicken, in which two parties are in a natural state of conflict. Imagine it as two cars driving down the road with a head-on collision being inevitable unless one of the cars swerves, but that driver will be branded a “chicken.”¹⁵ No better example of this exists than the Cuban Missile Crisis. After the failed Bay of Pigs invasion in 1961, Cuba requested that the Soviets place nuclear missiles to dissuade the Americans from attempting anything of the sort again. Khrushchev agreed, but when American U-2 Spy planes discovered the missiles the Kennedy administration formed a naval blockade, issued an ultimatum that it would not permit any additional shipments to reach Cuba, and demanded that the missiles already in Cuba be removed.

¹³ Bukovsky, *Judgement in Moscow*, 296-297

¹⁴ Bukovsky, *Judgement in Moscow*, 331

¹⁵ Lawrence Freedman, *The Evolution of Nuclear Strategy*, Third Edition (New York: Palgrave Macmillan, 2003), 176

The crisis carried on for 13 days, and it was clear that Kennedy would commit to his word and fire on any ship that attempted to run the blockade. Tense negotiations followed and at the conclusion of the crisis the Soviet Union would pull all nuclear missiles back from Cuba if the United States gave a public declaration that it would not attack Cuba. The United States also agreed to remove its missiles from Turkey, but this agreement was kept secret. Therefore, to the entire world it appeared as if the Soviet Union coming to the aid of a close ally refused to commit its assistance. It was a national embarrassment for the Soviets.¹⁶ The Kennedy administration's ability to commit to their course of action more than the Soviets were willing to played out on a world stage, leaving lasting perceptions of the will of each government. In the end, the Kennedy administration successfully employed commitment as a strategy – knowingly or unknowingly – by making the United States appear as if it was willing to stand firm, while the Soviet Union was not, not even by its allies.

On a cooperative basis, consistency must be employed. It is best to think of this in the famed anecdote of the Prisoner's Dilemma. In this hypothetical scenario two prisoners are separated, and each is aware that if they confess and incriminate the other, they will receive a lighter sentence, but if the other confesses and incriminates them they will receive a harsher sentence. When the scenario plays out once or twice, one prisoner will confess, but played out multiple times the prisoners will learn that if neither of them says anything neither of them can be convicted. As such the prisoner's dilemma shows that when two parties are thrown into a natural state of conflict, cooperation is the best way to alleviate conflict.¹⁷ So how did Khrushchev know that cooperation with Kennedy during the Cuban Missile Crisis was possible? Because it was proven only a few months prior during the Berlin Crisis of 1961.

After the Soviet Union constructed the Berlin Wall and issued an ultimatum for the removal of Allied forces from West Berlin in 1958, and the Allies refused. By 1961, just before the Cuban Missile Crisis began, a tank standoff was taking place at Checkpoint Charlie between the Allies and the Soviets. Kennedy and Khrushchev cooperated directly and reached an agreement that the Allies would not be so hardline on Berlin if the Soviets backed their tanks up first. Khrushchev agreed, and slowly all the tanks dispersed. The Berlin Wall remained, but so did the Allies, clearly in contrast to the Soviet ultimatum. However, the precedent that the

¹⁶ William Taubman, *Khrushchev: The Man and His Era* (W.W. Norton & Company, 2003), 579.

¹⁷ Freedman, *The Evolution of Nuclear Strategy*, 175-176

Kennedy administration set by showing its ability to be consistent in both its commitments and cooperation may have saved the world only a few weeks after this incident.

Commitment and Consistency, as strategies in the RASCLS framework, are connected in a cycle, such as yin and yang. Commit to a stance that will invoke conflict, and then consistently seek to lessen that conflict via cooperation which only works to the adversary's detriment. As a result, the adversary will slowly begin to appear on the world stage as uncommitted to its role, inconsistent in its actions, and inept in its performance. This result will only make other tenets of the RASCLS framework more easily applicable.

ACT 6: LIKENESS

Distinctions divide two things from one another, likeness blurs those distinctions and thus shortens the divide. Likeness is what draws us to other people that are fundamentally distinct from ourselves. Humans are drawn to other humans who have similar interests, appearances, hobbies, cultures, and philosophies to their own. It is natural, therefore, that as groups of humans develop into systems, and systems develop into states, likeness continues playing out as a force of attraction at the strategic and political levels within international relations. Indeed, the Diplomatic Peace theory within the field of international relations argues that democracies, alike in their political systems, do not wage war against each other due to their likenesses.¹⁸

The art of applying Likeness, as a strategy, entails pushing the narrative that two fundamentally distinct entities are not so different, by emphasizing whatever abstract likenesses they may share. Consider the relationship between the United States and the Soviet Union. As distinct as the USA and USSR were, and as adversarial the nature of their relationship was, there were some glaringly obvious likenesses between the two countries. First, both countries modernized themselves through a revolution by the intelligentsia class against their respective domestic monarchies to bring about their respective visions of the ideal government. Second, both countries were allies in the Second World War. Third, both countries were technological pioneers. Fourth, neither nation truly wished to begin a nuclear war with one another. The

¹⁸ Karen A. Mingst, and Ivan M. Arrenguín-Toft, *Essentials of International Relations*, 7th Edition (New York: W.W. Norton & Company, 2017), 161

overarching difference, however, was the ideal that each nation worked towards, and the importance of their respective ideals was a difference that seemed insurmountable.

Looking back in history, it may seem overly hopeful, or perhaps delusional, that to extend an olive branch in such a way could have any positive effect for the future. However, no one should forget the failure of accepting the such an olive branch that the OSS wished to do during its mission to Indo-China near and after the end of the Second World War. There, OSS officers met with Viet Minh leader Ho Chi Minh, who deeply respected the United States. Ho Chi Minh attempted to use Likeness as a strategy to win over American support, going so far as to compare himself to George Washington.¹⁹ Ho Chi Minh even used the phrase “all men are created equal” and several other direct allusions to the United States’ founding document in his own speech declaring the independence of the Democratic Republic of Vietnam.²⁰

Ho Chi Minh’s pleas fell on deaf ears. His correspondence to the United States was through the OSS, which saw themselves as covert military advisors more than they did diplomats. The United States refused to work with the communist, who was in open conflict with the French. The position of the United States was made perfectly clear to Ho Chi Minh when America sold France 160 million dollars in military equipment to put down Viet Minh resistance. Regardless, the French were beaten back at Dien Bien Phu, and Vietnam would soon become America’s conflict as well. The importance of having persons trained in the RASCLS framework in more diplomatic roles was shown here.

Likeness does not only have to be applied with an individual leader or a small group of influential people, but also on a massive scale. By breaking borders via mediums that do not recognize international boundaries, such as radio waves, one can push the narrative of likeness further than an adversarial government would want such a narrative to go. For example, one could use previously established white propaganda methods, such as Voice of America, to push a likeness narrative in a foreign language by a foreign speaker to a target population. This operation may assist in cultivating a public opinion abroad, ultimately bringing about notion (the strategic goal) that the likenesses between the target population at the American population is stronger than the target government asserts it is.

¹⁹ Richard Harris Smith, *OSS: The Secret History of America’s First Central Intelligence Agency* (Guilford: Lyon Press, 2005), 308

²⁰ Ho Chi Minh, *Selected Works* Vol. 3, (Hanoi: Foreign Languages Publishing House, 1960–62), 17–21.
<http://historymatters.gmu.edu/d/5139/>

Naturally, as with any soft power policy or implementation of public diplomacy, the success of these operations will be extremely difficult to measure. In fact, it may be impossible to ever accurately measure the success of many of the tenets of the RASCLS framework as they are applied at the strategic level. However, that should not dissuade the United States from implementing them into foreign policy. Eventually something will work.

ACT 7: SOCIAL PROOF

Social Proof is the art of creating a false narrative so that the target audience feels obligated to take action due to their misperceptions. At the individual level, a common example of this is “salting the tip jar.” This is done when a business places its own money into the tip jar to make it appear as if tips are expected from the customer, and that other customers have tipped before them. This false narrative pressures the customer to tip so as not to break from the social norm, a social norm which does not actually exist. On a mass scale, narratives – both true and false – about what is socially normal are conveyed through various forms of media. Consider for a moment any family movie. Regardless of the plot, the reality of life in that country and in that culture are reflected as the true objective reality that a mass audience will accept and resonate with. Media that reflects social ideals will pressure the masses to pursue those ideals. Media that reflects social problems will pressure the masses to fix those problems.

As a strategy, Social Proof is quite straightforward. Social Proof will be successfully applied when a foreign audience believes that all aspects (social, governmental, etc.) of the American World Order surpass any other global order, and that the foreign audience feels pressured to adhere to the American World Order despite their governments disagreements. Quite a clear strategy, but this strategy is difficult to apply as in past decades due to a lack of the one thing needed to make this strategy work at the lower levels: mass communication. Indeed, it is easy for a government to ban films, books, art, and music to control the concept of social norms that their citizenry holds fast to. The embargo on such media and suppression of counter-culture was relatively easy to achieve when mass communication was not as common place. However, considering the technological revolution in the past two decades, Social Proof as a strategy can finally be acted on.

Recently, the perfect tactical and operational tool was invented that can assist the Social Proof strategy: Social Media. Indeed, in only the past few years social media platforms have transitioned from fun interactive websites to highly dangerous political weapons. In the modern world, two realities exist: the physical reality, and the virtual reality, and anyone with a smartphone can live in either. The television, which used to serve as a black mirror most hours of the day, is now a 24 hour view of the entire world. With such mass media constantly present in modern society, it is no surprise that it has turned into an absolute battleground for social proof.

The weaponization of social media as a political instrument to disrupt social cohesion has already been demonstrated by Russia in America's 2016 Presidential Election. In the election cycle, Russian bots directly retweeted President Trump 468,537 times. Twitter ultimately concluded that Russian propaganda had reached real users 454.7 million times. Facebook concluded that approximately 126 million users received Russian propaganda.²¹ This is a clear attempt of a foreign government to alter the public opinion, and to construct a social narrative that a foreign population—the American population—would feel pressured to adhere to.

Additionally, as if an echo from the past, a spike in anti-Semitic language was seen during this time as well, with the perpetrators being bots, rather than people.²² The effect that this has is that it creates a narrative to convince real people that certain ideas are more acceptable than people originally believed. Such an alteration of reality – more specifically of virtual reality – can have steep consequences in the physical world. Even if people disagree with what is presented to them as socially normal, their false notion that their social ideal is shared by the minority keeps them from speaking out. People will draw their conclusions of reality based on the social proof that they believe is accurate, and then act accordingly. Consider the Islamic State as an example in military terms: what they lacked in manpower, equipment, and territory they made up for in marketing via social media. The execution of James Foley, for example, practically changed American public opinion of war in the Middle East overnight.²³ Compared to the public's much lesser reaction to Daniel Pearl's execution in 2002, the spectacle made of Foley's execution demonstrates the extreme effects that social media has on creating a narrative.

²¹ P. W. Singer and Emerson T. Brooking, *LikeWar: The Weaponization of Social Media* (New York: Houghton Mifflin Harcourt Publishing Company, 2018), 144

²² Singer and Brooking, *LikeWar*, 146-147

²³ Singer and Brooking, *LikeWar*, 151-152

Social media is the tool that will allow for the art of Social Proof to be applied at a strategic level. A television, a smartphone, and a computer monitor are nothing but windows into the world. These windows are tinted, or tainted, with algorithms that relay content to massive audiences. With the application of artificial intelligence, this will only become easier, and more deadly. This particular tenet is of extreme importance, as without it the other tenets are doomed to fail. Any successful application of reciprocity, authority, scarcity, commitment, consistency, or likeness hinges on whether or not such tenets could be publically proven, or at least seem to be. In an age of disinformation, disruption, and deceit, proof is of paramount importance. These screens are windows ready to be dressed, but first we must learn how to dress them.

CONCLUSION

In theater, an iron curtain is a device which is meant to protect the audience and the rest of the theater from a fire, should one start on stage. In the meantime, while the theater is safe, the actors in their costumes, in their masks, dance about and entertain the audience. All the while that which is happening behind stage, in the shadows and in the dressing rooms, is kept from sight. If a fire starts, the actors scatter, the iron curtain falls, and then even the stage itself is hidden from view. Such a phenomenon has been seen in the real world in recent times, when autocratic governments have constructed barriers to protect their theaters from a fire which could be spread by truth.

The story that is often told on the world stage, especially from authoritarians, can be undermined. But if the iron curtain exists as a failsafe, then we cannot simply go set fire to their theater to end the show. They will risk losing the audience, as members seek to leave the theater, and they will do everything they can to keep that from happening. The show must go on, but that is not to say that the show cannot be stolen. This paper has given seven acts which can be performed in order to acquire the favor of the audience, and to undermine the regime: Reciprocity, Authority, Scarcity, Consistency, Commitment, Likeness, and Social Proof. If applied properly at the strategic level, on the international stage, the owners of the theater may not recognize what is being done until it is too late, and their audience is already against them.

In order to do this, however, we must understand the foreign audience in order to connect with them. We must understand the other actors in order to outperform them. We must conduct

ourselves subtly enough so that all of our actions to both the foreign audience and actors seem completely genuine. If this is not accomplished, then the plays performed by authoritarians will continue, perhaps forever. The iron curtain was pulled back 30 years ago. The window dressing still remains. That is not to say that it cannot be removed, or be made to work in our favor. It can be, and so it will be, with this new strategy for preserving peace and freedom in the world.

“Look at this window: it is nothing but a hole in the wall, but because of it the whole room is full of light.

So when the faculties are empty, the heart is full of light.

Being full of light it becomes an influence by which others are secretly transformed.” – Chung Tzu²⁴

²⁴ Juliana Pilon, *The Art of Peace: Engaging a Complex World* (New Jersey: Transaction Publishers, 2016), 355-356

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A PECULIAR DILEMMA: CONGRESS' HISTORICAL SHIFT FROM AID TO FINANCE

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In 2018, Congress passed the BUILD Act with sweeping bipartisan support. This piece of legislation marked the most recent step in a long process which has seen Congress cede its role in foreign aid to the private sector. What does this bill indicate about Congress' trajectory with regard to taking an active role in foreign assistance? To answer this question, this paper will perform a historical analysis on landmark foreign assistance legislation with the goal of understanding the long-term arch of congressional deferral of involvement in foreign aid. In the process, the paper will develop the notion of a Foreign Aid Dilemma, whereby foreign aid's simultaneous lack of public support is kept in tension with its efficacy as a tool of soft power. It is this dilemma which best explains foreign aid's trajectory over the past eighty years and will continue to define its path moving forward.

On October 5, 2018, President Trump signed into law the Better Utilization of Investments Leading to Development (BUILD) Act.¹ In an age of increasing polarization, The BUILD Act passed through the House with sweeping bipartisan support to the tune of 393-13.² In its passage, the United States now finds itself equipped with a reinvigorated development finance arm viz. the United States International Development Finance Corporation (USIDFC). Beyond bolstering the United States' capacity to promote development finance, the act serves to counter China's Belt and Road Initiative (BRI) which has come to be viewed as a threat to American soft power influence abroad.³ The BUILD Act is the most recent development in an eighty-year path which has seen development assistance transition from a primarily state-driven and congressionally funded venture, to an increasingly privatized industry wherein the Congress cedes more of its control over the development apparatus to executive and even private entities. To understand the BUILD Act's place in this trajectory, this paper will examine it alongside the

¹ "BUILD Act | Private Sector Engagement | U.S. Agency for International Development," December 10, 2018, <https://www.usaid.gov/work-usaid-private-sector-engagement/build-act>.

² "H.R. 302 (as Amended), FAA Reauthorization Act of 2018," accessed December 3, 2019, <https://www.rpc.senate.gov/legislative-notices/hr-302-as-amended-faa-reauthorization-act-of-2018>.

³ "All Roads Lead to China: The Belt and Road Initiative, Explained," FRONTLINE, accessed January 19, 2020, <https://www.pbs.org/wgbh/frontline/article/all-roads-lead-to-china-the-belt-and-road-initiative-explained/>.

Economic Cooperation Act of 1948 and the Foreign Assistance Act of 1961, two other historically significant pieces of foreign assistance legislation, to understand what drives American foreign assistance and what the BUILD Act indicates about Congress' role in the future of this endeavor.

THE 1948 ECONOMIC COOPERATION ACT

On April 3, 1948, the Economic Cooperation Act, now known primarily as The Marshall Plan, passed into law. Now widely considered to be the paragon of foreign assistance legislation, its passage was anything but guaranteed at the time. Conversely, when then Secretary of State George Marshall proposed such a plan during his 1947 Harvard commencement address, it was met with insults including that it would cost every American \$129 and served as a socialist blueprint.⁴ Over the course of a year, Secretary Marshall turned this plan from an enigmatic and unpopular initiative to a strategically crafted and widely applauded piece of legislation which passed the House in a landslide 329-74 vote.⁵ The Marshall Plan illuminated foreign aid's peculiar unpopularity in the face of its efficacy. It would be this dilemma which would define the trajectory of U.S. foreign aid policy moving forward. The bill's painstaking road to approval yielded two important lessons for future lawmakers: foreign aid is most easily passed when infused with a narrative that emphasizes its role in countering a threat and minimizing cost to the taxpayer.

“Our friend Marshall is certainly going to have a helluva time down here on the Hill when he gets around to his ... plan.”⁶ These were the words relayed by Senator Arthur Vandenberg upon his first review of the proposed bill. The road to passage was paved not only with opposition, but widespread unfamiliarity of the plan's existence. According to a Gallup poll in 1947 on the matter, only 68% of Americans had even heard of the plan and of those who had, only half approved.⁷ Thus, Marshall's problem was twofold: he first had to increase awareness of

⁴ Greg Behrman, *The Most Noble Adventure: The Marshall Plan and How America Helped Rebuild Europe*, Reprint edition (New York: Free Press, 2008), 114–66.

⁵ “The Marshall Plan: Design, Accomplishments, and Significance,” accessed January 19, 2020, <https://www.everycrsreport.com/reports/R45079.html>.

⁶ Arthur H. Vandenberg, *The Private Papers of Senator Vandenberg* (Westport, Conn: Greenwood Press, 1974), 379.

⁷ Gallup Inc, “Timeline Of Polling History: Events That Shaped the United States, and the World,” Gallup.com, December 6, 1999, <https://news.gallup.com/poll/9967/Timeline-Polling-History-Events-Shaped-United-States-World.aspx>.

the plan's existence among the general populace, and he needed to rally support for the plan so that it could be more readily accepted by members of Congress.

Over the following year, Secretary Marshall worked tirelessly with Senator Vandenberg to tackle the program's lack of appeal in Congress.⁸ Simultaneously, the Truman administration went on the offensive, sending cabinet members nationwide to pitch the plan to the public, write pieces for local papers and promote the idea at every opportunity.⁹ Nonetheless, economic overextension continued to be a dominant preoccupation in the public mind and thus that of congress. Not deterred, the administration continued to test new selling points until it found its most compelling one: containing the spread of communism. In February of 1948 when communists overtook the Czechoslovakian government in a coup, the Marshall Plan received the necessary push to facilitate the bill's sweeping passage.¹⁰

Through the tug-of-war that surrounded the bill's passage, a story emerges which bears two lasting pieces of wisdom regarding the complex relationship between Congress and foreign aid. The first lesson which emerges is that the American populace is hesitant, at best, with regard to footing the bill for foreign economic assistance. This tension played out in the various revisions made to Secretary Marshall's original proposal as to make it more politically palatable. Marshall's plan, proposed to congress by President Truman in December of 1947, called for a 4 ¼ year program to sixteen West European countries.¹¹ Conversely, when Representative Charles Eaton, chairman of the House Committee on Foreign Affairs, proposed the administration bill he abbreviated the timeline from 4 ¼ years to fifteen months and from \$17 billion in funding to \$6.8 billion.¹² By the time the bill became law in April of 1948 it provisioned \$5.3 billion for one year.¹³ While the dollar amount drops considerably, it stays relatively constant when accounting for the shortened horizon; it is the shortened allotted time which speaks to the public's weariness of foreign economic aid. The bill's feasibility was, at that point, thoroughly established within

⁸ Walter Isaacson and Evan Thomas, *The Wise Men: Six Friends and the World They Made*, Reissue edition (Simon & Schuster, 2013), 424.

⁹ Ibid.

¹⁰ "Special Feature: A History of American Public Opinion on Foreign Aid," Devex, August 15, 2017, <https://www.devex.com/news/sponsored/special-feature-a-history-of-american-public-opinion-on-foreign-aid-90732>.

¹¹ "The Marshall Plan."

¹² Ibid.

¹³ "Economic Cooperation Act of 1948 (Marshall Plan), April 3, 1948," U.S. Capitol Visitor Center, accessed January 22, 2020, <https://www.visitthecapitol.gov/exhibitions/legislative-highlights/economic-cooperation-act-1948-marshall-plan-april-3-1948>.

congress, which had received a total of 185 witnesses filling 3,735 pages between House and Senate hearings.¹⁴ The yearly provision allowed increased oversight viz. control of the purse strings. In the context of a war-weary public, who had seen nearly \$11 billion in loans and aid go to Europe since the war's end, a desire to maintain centralized and constant control over the program seems feasible.

It is important to note that the underlying tension, namely the bristling of public opinion to devotion of domestic funds for foreign aid, still lingers. While centralized and constant control of such initiatives by way of annual examination and reallocation is one possible route by which to alleviate that tension, it is costly in terms of both legislative time and money. But given the program's finite duration of four years and considering the fact that 90% of expenses came in the form of grants which would be more politically risky than loans, this tightly controlled approach makes sense. It does not, however, provide a compelling enough narrative to warrant such a strong victory in both houses of congress. It is because of this gap that we must turn our attention to the second piece of enduring wisdom regarding foreign economic assistance: it requires a narrative infused with national security as its *raison d'être*.

In 1947 The Truman Doctrine, which adopted containment against the USSR's expansion globally, became America's driving foreign policy document. Within the lens of containment, the United States looked to the dilapidated state of affairs and infrastructure in Europe with perceptible apprehension. From this fear emerged a motivating narrative that such an economic wasteland would be fertile ground for Soviet intervention. While Secretary Marshall announced the plan to be only in opposition to "hunger, poverty, desperation and chaos" it approached development through a capitalist lens.¹⁵ Thus the promise for America was twofold: by funding the reconstruction of Europe vis-a-vis industry, the United States could reaffirm its own identity contra that of the USSR and gain strategic allies in support of containment.

As an outlay of simultaneously strategic and moral imperative, foreign economic aid remains popular while paying for it remains controversial. It is the constant tension between these two forces that the paper will refer to from here out as the "Foreign Aid Dilemma." These two forces comprise the fundamental bounds between which foreign aid legislation is pulled.

¹⁴ "The Marshall Plan."

¹⁵ "The 'Marshall Plan' Speech at Harvard University, 5 June 1947 - OECD," accessed January 22, 2020, <https://www.oecd.org/general/themarshallplanspeechatharvarduniversity5june1947.htm>.

Both dimensions, having appeared in the Marshall Plan's passage, provide the lens by which a clearer understanding of the following eighty years of economic aid legislation is attainable.

THE 1961 FOREIGN ASSISTANCE ACT

The Marshall Plan succeeded in bolstering the recovery efforts of Western European nations in the devastating aftermath of World War II, but it was not an act equipped to serve as the backbone of the United States' development policy. Slowly, a number of initiatives regarding development began to crowd the U.S. legislative space without an overarching framework from which to base their efforts. This process continued until November 3, 1961 when newly elected president John F. Kennedy signed the Foreign Assistance Act (FAA) into law, bringing with it the establishment of the United States Agency for International Development (USAID). This comprehensive piece of legislation still serves the guiding document for American development assistance abroad. And despite the Marshall Plan's success, the FAA remained subject to the frustrating tension which proved so difficult to overcome in the Marshall Plan's path to passage. It is through the lens of the Foreign Aid Dilemma which the FAA's passage, and subsequent defining significance in the trajectory of U.S. foreign aid policy, is best understood. By establishing USAID and mandating a pivot toward the private sector, the FAA formally began the United States' march toward a more autonomous aid strategy in an attempt to escape the dilemma's economic bound. However, while the attempt began to escape the economic dimension, the national security dimension proved too integral to bypass. In the absence of robust literature as to the bill's pre-passage dynamics as is present in the case of the Marshall Plan, this section will focus primarily on how the FAA alleviated the Foreign Aid Dilemma's economic bound through its structure and implementation.

When President Kennedy took office he immediately recognized the need to overhaul the United States' foreign assistance architecture, noting in a special message to Congress that the current approach was "bureaucratically fragmented, awkward and slow" also remarking that "...its weaknesses have begun to undermine confidence in our effort both here and abroad."¹⁶ The Marshall Plan and its associated programs were not equipped, in theory or practice, to expand

¹⁶ Kennedy F John, *Public Papers of the Presidents of the United States: John F. Kennedy, 1961* (Best Books on, 1962), 203–12.

their operations to a global scale, and President Kennedy realized that the same specter which hung over the battered European states was equally present in the developing world, with its host of newly independent states.¹⁷ With the USSR's economic dynamism growing and a stated mission to support nascent communist movements in these developing nations, President Kennedy received the necessary raw material for a compelling narrative to pursue the FAA.¹⁸ However, *carte blanche* control of the national purse would not come easy, as Americans were feeling more and more that the nation spent too much on foreign aid.¹⁹ This pressure was, however, one which had been identified as endemic to such efforts and demanded a response.

Consequently, The FAA sought to create a durable identity of American aid by building the bill such that it provided greater insulation to the programs from being quashed by the tides of public opinion in two ways. The first mechanism for insulation was in its lengthening of funding horizons to five years which could then be undertaken without constantly needing reauthorization.²⁰ This insulation was not total, as congress still controlled the foreign aid budget and thus program funding. Since its beginning, congress has used the appropriations process to guide foreign aid by either standing up specific initiatives or providing general guidance for indicator and industry focus. However even as public support for foreign aid fluctuates and its popularity among congressional representatives falters, it remains largely protected by its institutionalization viz. USAID, which serves as the second insulator against the turbulence of political tides.

The FAA's single largest contribution was the creation of a number of aid programs which culminated in the establishment of USAID, an independent agency of the Executive Branch funded through the Department of State.²¹ Consolidating foreign assistance under a new executive agency ensured a greater degree of autonomy and flexibility by allowing for block authorization instead of case-by-case funding approval. While USAID's location within government insulated it somewhat from being subject to changes in public opinion viz. congressional interference, reporting to the president meant that single executives could drive

¹⁷ F, 205.

¹⁸ "SOVIET INVOLVEMENT IN AFRICA | CIA FOIA (Foia.Cia.Gov)," accessed January 26, 2020, <https://www.cia.gov/library/readingroom/document/cia-rdp81b00401r002100070030-2>.

¹⁹ "Special Feature."

²⁰ Dianne E Rennack and Susan G Chesser, "Foreign Assistance Act of 1961: Authorizations and Corresponding Appropriations," n.d., 1.

²¹ Curt Tarnoff, "U.S. Agency for International Development (USAID): Background, Operations, and Issues," n.d., 1.

appreciable shifts in policy. This was the case during the Reagan administration, where focus on private markets drove USAID to boost its private sector program funding from 4% to 13% of its total portfolio.²² In attempting to shield foreign aid from being a congressional scapegoat, the FAA's framers exposed it to a more energetic force - the executive. It remains beyond the scope of this paper to determine whether this new exposure to the volatility of the executive branch was intended or otherwise; but what is certain is that the consolidation of aid programs under a central bureaucracy of the executive, combined with the bill's language, intertwined to create the fuel which has since then propelled the move toward private capital in development. With a clear understanding of the procedural dynamics which began to catalyze the move toward privatized foreign aid, this paper will now examine the second rail upon which this momentum built steam: the bill's composition.

While not tied to any specific programs, the act's language emphasizes the importance of facilitating private investment rather than continuing to rely on congressionally appropriated funds. Of all the evidence available which suggests congress designed the FAA with an eye toward long-term sustainability of the field, this is the strongest. The act's opening sections implore development initiatives to make use of public and private resources; however heavy emphasis is given to relying on private resources in section 102(8) and 102(9) in which the act states that assistance should, to the maximum extent practical, through the private sector.²³ It is this mandate, lenient enough to allow for centralized program administration, but still clear enough in its prioritization of private capital-driven aid, served as the formal catalyst to the process we seek to understand.

The bill's structure and language both lend credence to the argument that it was designed with the Foreign Aid Dilemma, however intuitively, in mind. Seeking to bypass the tension of the opposing forces of necessity and unpopularity, its authors sought to insulate foreign aid programs from constant re-authorization and the ever-present potential to be eliminated on short notice by consolidating all constituent initiatives under the command of a centralized executive bureaucracy. In doing so, unitary executive authority plus the FAA's strong mandate to privatize helped catalyze the trajectory of foreign aid which lasts through today. The BUILD Act of 2018,

²² Tarnoff, 8.

²³ E P Luribu, "Legislation on Foreign Relations Through 2002," n.d., secs. 102(8)-102(9).

as a direct creation of these dynamics, will be examined to understand how the general principles espoused in that founding document have become concrete reality and national strategy.

THE 2018 BUILD ACT

From a grounded understanding of the FAA's intent and structure that analysis of the BUILD Act's historical significance is possible. Couched in the familiar language of great power rivalry, the BUILD Act further privatized America's development assistance apparatus by placing increased emphasis on private-led development finance efforts. With the path to privatized development efforts firmly entrenched after nearly fifty years, the BUILD Act sold itself primarily on national security grounds. In this capacity, it serves as another point from which the trajectory of American foreign aid can be drawn as a product of the Foreign Aid Dilemma. However, this section will seek to build a more historically continuous narrative that the United States has responded to the dilemma with a long-term strategy of attempting to escape its economic bound. To accomplish this, it will begin long before the BUILD Act's passage, with the establishment of the Overseas Private Investment Corporation (OPIC) in 1971.

On May 28, 1969 newly elected President Richard Nixon stood before congress to deliver a special address on the nation's foreign aid program. Embedded within this speech was a call to establish a new aid agency with a fundamentally different character than USAID, established only eight years before. This new agency, OPIC, would serve as the U.S. government's development finance institution with a mandate to "...provide businesslike management of investment incentives... so as to contribute to the economic and social progress of developing nations."²⁴ In short, the new organization, as proposed by President Nixon, aimed to give new direction to U.S. private investment abroad and thus give the nation's foreign assistance effort a new focus.

In keeping with the tension that manifested itself throughout the fight for the Marshall Plan and the Foreign Assistance Act of 1961, President Nixon's address emphasized the cost and security benefits to the American taxpayer of this new way forward. His proposal centered around three pillars, two of which aimed to reduce the burden on government for funding aid

²⁴ Richard M. (Richard Milhous) Nixon, *Richard Nixon: 1969: Containing the Public Messages, Speeches, and Statements of the President.*, 2005, 412, <http://name.umdl.umich.edu/4731731.1969.001>.

programs by catalyzing private investment; this included the establishment of OPIC and a mandate to USAID requiring it focus on “private initiative” in development.²⁵ With regard to Soviet activity in the developing world, President Nixon argued that foreign aid should be viewed as an integral part of the United States strategy to maintain a peaceful and just international order.²⁶ This order, to be pursued predominantly through private venture, would thus allow newly-formed nations to improve their lot.²⁷ While twenty years had passed since the Marshall Plan, the Foreign Aid Dilemma set the bounds from which OPIC was constructed.

For fifty years, OPIC provided access to insurance, finance, and investment funds which sought to promote U.S. private interests in developing markets at no cost to the American taxpayer.²⁸ From creation until FY1992, OPIC relied entirely on Treasury securities to fund its operations and thus bypassed a need for appropriated funds; and since 1998 they have been authorized to spend its own income to further develop the portfolio.²⁹ As a testament to OPIC’s viability sans taxpayer funding, they have returned surplus funds to the U.S. Treasury for the last thirty years and have recorded positive net income in every year of operation.³⁰ Until the 2018 BUILD Act reinvigorated the corporation’s infrastructure, OPIC served as a staple of U.S. foreign assistance by virtue of its self-sustaining model.

When President Trump took office in 2016, he had OPIC squarely in his sights to be cut. The FY 2018 OMB budget proposal targeted OPIC for elimination under the rationale that the corporation displaced private sector firms.³¹ But less than two years later President Trump was championing the largest structural reform and enlargement since the organization’s creation. What changed? Throughout his campaign, then-candidate Trump pledged to slash foreign development assistance, a program which he held to be indicative of America’s overextended foreign policy and money wasted abroad that could be used domestically. However, when pressed on the issue he also gave vaguely supportive responses to the notion of development assistance, remarking in a speech the following April that as a humanitarian nation we had an

²⁵ Nixon, 415.

²⁶ Nixon, 416.

²⁷ Nixon, 416.

²⁸ Shayerah Ilias Akhtar, “The Overseas Private Investment Corporation: Background and Legislative Issues,” n.d., 2.

²⁹ Akhtar, 5.

³⁰ Akhtar, 7.

³¹ “Budget FY 2018 - Historical Tables, Budget of the United States Government, Fiscal Year 2018 - Content Details - BUDGET-2018-TAB,” 102.

obligation to help those abroad.³² At first glance, one could make the argument that President Trump's ambivalence toward foreign assistance reflected the national view, where 66% of Americans favored aid to help needy countries, but simultaneously 62% responded they would cut the foreign assistance budget.³³ Thus, the president's posturing seemed to indicate a negative disposition toward the program, but still available to flip positions should a strategic argument present itself. As was the case in passing both the Marshall Plan and the FAA, great power rivalry and national security presented just such an argument.

More powerful than President Trump's distaste for foreign assistance was his insistence that China's growing influence be checked. While the first year of his presidency reflected a congenial approach to China, including a summit at his Mar-a-Lago estate with China's President Xi Jinping. But failing to produce substantive gains on more contentious areas like intellectual property and steel in this period, President Trump opted to adopt a more confrontational posture in 2018.³⁴ Seeking to bring China to heel, the administration implemented sweeping tariffs in March of 2018 which then escalated in a tit-for-tat trade war for the remainder of the year. In addition to bilateral relations, China's Belt and Road Initiative (BRI), an international development assistance program worth an estimated \$8 trillion, began to draw the administration's attention. A recently opened Chinese naval station, the first of its kind, within walking distance of the U.S. military's hub for Africa operations and a reclaimed port which the Chinese constructed in Sri Lanka bolstered the narrative that China was using its BRI to grow its power abroad.³⁵

With a compelling narrative of threat to American interests, President Trump changed course on development assistance in order to take action against China globally. OPICs' extensive Africa and India portfolios made it a strong platform from which to mount a formal U.S. counter to the BRI. However, President Trump was not OPIC's only opponent – congressional republicans were especially hostile toward the corporation and other agencies like

³² "Transcript: Donald Trump's Foreign Policy Speech," *The New York Times*, April 27, 2016, sec. U.S., <https://www.nytimes.com/2016/04/28/us/politics/transcript-trump-foreign-policy.html>.

³³ Steven Kull, "American Public Support for Foreign Aid in the Age of Trump," *Brookings* (blog), July 31, 2017, <https://www.brookings.edu/research/american-public-support-for-foreign-aid-in-the-age-of-trump/>.

³⁴ "Timeline: U.S. Relations With China 1949–2020," Council on Foreign Relations, accessed February 1, 2020, <https://www.cfr.org/timeline/us-relations-china>.

³⁵ Amy Cheng, "Will Djibouti Become Latest Country to Fall Into China's Debt Trap?," *Foreign Policy* (blog), accessed January 16, 2020, <https://foreignpolicy.com/2018/07/31/will-djibouti-become-latest-country-to-fall-into-chinas-debt-trap/>.

it. In 2015, after Senate Republicans blocked the U.S. Export-Import Bank from being renewed, they turned their sights toward OPIC.³⁶ As was the case in 1947 and 1961, substantial foreign aid legislation would need a security narrative commensurate to its congressional opponents' entrenchment. What the USSR provided for Presidents Truman and Kennedy China would provide for President Trump. With persistent messaging on the danger posed by the BRI, over the course of a few months congressional consensus switched. Florida Representative Ted Yoho, who ran on the promise to eliminate foreign aid, became one of the BUILD Act's most staunch allies – even convincing the traditionally anti-aid Freedom Caucus to accept the proposal.³⁷ In winning over representatives like Yoho, the threat narrative proved overwhelmingly to be the most convincing. In a year which began under the uncertainty of whether OPIC would survive, the corporation went from \$30 billion in approved funding to \$70 billion and assumed control of USAID's Development Credit Authority (DCA).³⁸

At a glance, the reversal in fortunes is shocking, but when understood as a byproduct of the tensions which have defined the debate over foreign assistance in this country for eighty years, the act seems inevitable. American foreign economic assistance is not, at its core, charity. It never has been. Rather, it is an indispensable tool of soft power. However, in politics the line between soft power and charity is not easy to discern. Consequently, it becomes difficult to justify on its own. However, underneath the humanitarian optics, the dynamics of international power and influence thrive. Contrary to the idea that it is a superfluous activity of an overextended government exists the reality that it is first and foremost, a diplomatic tool. Then Secretary of Defense Jim Mattis expressed this reality in 2017 when he offered that if USAID funding were cut, that he would need to buy more ammunition.³⁹ Because of its indispensability as a diplomatic tool, it is unlikely that aid will ever be cut in the drastic proportions which President Trump advanced throughout his campaign and early in his term. While it will not be cut, privatization remains the best alternative for congressional members who tend to oppose

³⁶ “After Ex-Im Win, U.S. Conservatives Target Foreign Investment Agency,” *Reuters*, July 13, 2015, <https://www.reuters.com/article/us-usa-congress-opic-idUSKCN0PN0EM20150713>.

³⁷ Glenn Thrush, “Trump Embraces Foreign Aid to Counter China’s Global Influence,” *The New York Times*, October 14, 2018, sec. World, <https://www.nytimes.com/2018/10/14/world/asia/donald-trump-foreign-aid-bill.html>.

³⁸ “The BUILD Act Has Passed: What’s Next?,” accessed December 3, 2019, <https://www.csis.org/analysis/build-act-has-passed-whats-next>.

³⁹ Alex Lockie, “Mattis Once Said If State Department Funding Gets Cut ‘Then I Need to Buy More Ammunition,’” *Business Insider*, accessed February 1, 2020, <https://www.businessinsider.com/mattis-state-department-funding-need-to-buy-more-ammunition-2017-2>.

large government programs. It is a powerful alternative because it reaffirms the primacy of market principles in driving development while accomplishing the same objective as a centralized program.

It is for the reasons listed above that the BUILD Act's significance springs, not from any particular section or policy, but rather from the trajectory to which it commits. In the grand scheme of development assistance, \$70 billion dollars does not seriously challenge China's footprint abroad and despite doubling its size, the USIDFC is still but one agency tasked with providing foreign assistance. It does, however, lend credence to the notion that foreign aid in the United States is actively moving toward a privatized approach as a byproduct of negotiations between parties who both recognize its efficacy, but need a compelling narrative which will allow them to sell the program to their constituents. With extrapolation, consideration will now be given to the possible future for development assistance as defined by the parameters of privatization and national security.

CONCLUSION

Throughout the previous three case studies, the Foreign Aid Dilemma's two at-tension bounds of economic and national security shaped the dialogue surrounding America's foreign economic assistance. Furthermore, the United States' attempt to reconcile this dilemma through a longstanding commitment to the privatization of aid illuminates the program's possible future. The first theme, the economic bound, constitutes the more volatile and potentially destructive edge of the dilemma. Foreign aid will always have its detractors both in government and outside it; for those individuals it is often not enough to simply reduce the foreign aid budget – it is less than 1% of the United States' GDP after all – these opponents often call for its complete elimination.⁴⁰ For this reason, foreign aid will appear on the chopping block at various times, some calls with more momentum than others. The likely outcome is that calls for elimination, when vocal enough to be met, will be able to achieve further privatization of the initiative, but not its elimination. The primary reason these calls from the economic bound will fail to eliminate the program is due to the dilemma's second, stabilizing bound: national security.

⁴⁰ Marian L Lawson and Emily M Morgenstern, "Foreign Aid: An Introduction to U.S. Programs and Policy," *Foreign Aid*, n.d., 36.

As evidenced by Secretary Mattis' remarks in conjunction with the joint service general officers' letter, foreign aid's efficacy as a tool of national soft power is appreciated across the United States' foreign policy apparatus. So long as China, vis-a-vis the Belt and Road Initiative, remains the primary soft power competitor globally the US will seek to retain strategic influence abroad in whatever way possible. As the 2018 BUILD Act indicated, the national security narrative has time and again proven compelling enough that it can turn foreign aid's most staunch opponents into allies, even if only momentarily. Given the BUILD Act's magnitude, absent some drastic development in China's strategic position it seems unlikely that more landmark aid legislation will pass. Thus, for the foreseeable future it appears as though the United States foreign aid apparatus will remain in stasis, adjusting to its new entity and mobilizing private capital to invest in emerging markets.

Public officials seeking to address foreign economic assistance will likely always face the dilemma of reconciling its efficacy as a tool of soft power with the public's general unwillingness to pay for it. Only time will tell if the move toward privatization will lessen the ease with which it becomes a symbol for bloated bureaucracy and overextended foreign policy. With advances in communications and financial technology, there is genuine room for innovation within aid that may yet bypass the program's economic tension. Until those advances come to pass however, it is likely that the foreign assistance apparatus will continue to privatize in fits and bursts, driven forward in the language of national security. Consequently, it remains likely that Congress will stay largely quiet on the matter, happy to defer responsibility until it becomes salient once again in great power dialogue.

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ADAPTING TO THE MOMENT: HOW CRISES SHAPE THE NSC

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

This paper examines how international and domestic crises have shaped the functions and structure of the National Security Council (NSC). Created by the National Security Act of 1947, the simultaneous establishment of the Department of Defense, the CIA, and the Air Force has overshadowed the NSC. Charged with the responsibilities of advising the President on national security matters and coordinating policy between departments and agencies, the advisory council is crucial to the national security apparatus of the United States. Research on how the NSC has changed over time emphasizes the power of presidential preferences but fails to explain the extent to which global events and crises force presidents to alter their NSC. Examining some of the most historic global events over the past thirty years provides missing pieces to the evolution of the NSC and the U.S. national security apparatus.

INTRODUCTION

The Department of Defense, the Central Intelligence Agency (CIA), and the Treasury Department are at the heart of the United States' national security apparatus. Whether it is the unparalleled American military power, advanced and sophisticated intelligence capabilities, or overwhelming economic prowess, the general public's understanding of the facets of the American national security web oftentimes misses a key component: The National Security Council (NSC). This phenomenon is reasonable, as the American military is always visible, the CIA is shrouded in secrecy and lore created by Hollywood blockbuster films and series, and the talk of economic sanctions imposed onto malign states is a constant feature of the news. The NSC, however, is not as visible or well-known. Its relative obscurity creates an aura of bureaucratic expertise, separated from the political dimensions that consume the White House. Instead, solely the individual charged with leading the council's large staff, known to the public as the National Security Advisor, is widely recognized.

The recent turbulence in Washington has thrust the NSC into the spotlight with the impeachment inquiry testimonies of former NSC Director Lieutenant Colonel Alexander

Vindman and former Senior NSC Directors, Dr. Fiona Hill and Tim Morrison. This insertion of the NSC into the crosshairs of an impeachment inquiry highlighted the public's limited grasp of who works in the NSC, what the functions of the NSC staff are, and the expansive scope of the NSC's responsibilities. The NSC's duty to provide the President with refined policy recommendations and coordinate the implementation of presidential directives underscores its importance as a critical piece to the American national security apparatus and warrants the public's attention.

Understanding the creation of the NSC helps grasp its expansive role in the national security process. Legislatively established in the years immediately following World War II, the initial idea for the NSC spawned from the combined works of the Chief of Staff of the Army, General George C. Marshall, and the Secretary of the Navy, James V. Forrestal, in the waning years of the conflict. In response to the "administrative chaos" of the Roosevelt administration and inspired by the success of the Combined Chiefs of Staff and the British Committee of Imperial Defense, Marshall and Forrestal managed to create the de facto Joint Chiefs of Staff, along with the State-War-Navy Coordinating Committee (SWNCC) in late 1944.¹ An awareness of the importance of coordinating the various services and departments spurred by the pandemonium of the multi-front war gradually rose toward the tail-end of the conflict. Combined with the uncertainty surrounding President Truman's sudden ascension to the presidency, political and military elites began advocating for the creation of an advisory council that not only could coordinate directives, but also aide the President as he faced a host of post-war problems.

The confluence of challenges presented to President Truman created a policy window that opened the way for a radical national security transformation.² Passed in July of 1947, The National Security Act (NSA) represented a complete upheaval and recreation of the American security apparatus. Unifying the Departments of War and the Navy, the establishment of the Department of Defense ushered in the modern era of service branch coordination. A new branch additionally came into existence through this legislation, as the Army Air Corps officially became the Air Force. Besides these massive changes, the NSA created the Central Intelligence

¹ Anna Kasten Nelson, "President Truman and the Evolution of the National Security Council," *Journal of American History* (September 1985): 361.

² This paper refers to the concept of a "policy window" as outlined in John W. Kingdon, "How Do Issues Get on Public Policy Agendas?" in *Sociology and the Public Agenda*, ed. William Julius Wilson (Newbury Park: SAGE Publications, 1993): 41.

Agency (CIA) and replaced the intelligence organization that stemmed from the renowned and famous Office of Strategic Studies (OSS) during World War II.³ These substantial changes largely overshadowed the NSA's creation of the NSC, and President Truman's early distrust of the council left it unused until the eruption of the Korean War.

Delineated within the NSA are two specific NSC duties. First, the NSC's primary function is of an advisory nature, providing the President advice with respect to all facets of national security.⁴ In addition to this primary role, the NSA articulates the NSC's responsibility to coordinate policy directives and functions of the other various governmental agencies and departments.⁵ It is up to the President, however, to decide how or if to use the NSC. As such, the role, power, influence, and structure of the NSC has changed with each subsequent administration. Seventy-three years removed from its founding, the NSC has grown to include a staff numbering over 200. A multitier hierarchical organization has developed, stemming from the original NSC that solely consisted of the executive agency level tier, chaired by the President and comprised of secretary-level statutory members (such as the Secretary of State, Secretary of Defense, and so on).

Much research on the NSC has delved into how its morphing is shaped by personal presidential preferences. Different personalities led to the increasing or decreasing of the council staff, varying levels of utilization, and even the transformation of the council into an operational agency. What often is overlooked, however, is how pertinent issues at the onset of or during an administration affects the structuring of the NSC. Structural and functional changes after crises is indicative of a president's ability to react and can add an additional layer to the preexisting knowledge of how presidential preferences affect the structuring of the NSC. This paper seeks to conduct a historical analysis of recent cases of reconfigurations of the NSC in response to geopolitical and national security crises, including the Iran-Contra affair, the dissolution of the Soviet Union, and 9/11. I dissect these moments of institutional change through presidential directives and executive orders that demonstrate the resounding and widespread affect that crises have on the formulation of the NSC.

³ Central Intelligence Agency, "History of the CIA," Accessed January 23, 2020, <https://www.cia.gov/about-cia/history-of-the-cia>.

⁴ United States Congress, *The National Security Act of 1947*, 80th Cong., 1st sess., Public Law 253, 2 (1947).

⁵ *Ibid.*, 3.

PRESIDENTIAL POLITICS AND THE NSC

Change has been the constant theme for the NSC, and past archival analysis and historical accounts highlight unique periods in the NSC's history. The contrast in NSCs that can occur from administration to administration began at its onset, as Dwight D. Eisenhower's radically institutionalized a system that had hardly been used under Harry Truman. Truman, fearing the possible erosion of presidential decision-making power, initially refrained from convening the NSC often. His fear of a subversive NSC forced him to rely heavily on a small group of close advisors until the onset of the Korean War. The magnitude of the war forced Truman's hand, creating a necessity of coordinating national security policy matters within the NSC.⁶

Eisenhower, with his extensive military experience, had other ideas. From the onset of his administration, the former Supreme Allied Commander made extensive structural changes to the NSC to aid its ability to plan and develop national security advice. The inclination toward a strict structure and hierarchical system for strategic planning represented a drastic departure from how Truman's NSC functioned and resulted in two revolutionary operational and planning boards. Eisenhower's Planning Board, staffed by assistant secretaries, set the agenda for the NSC and prepared a vast quantity of policy papers on pressing national security issues.⁷ After the NSC made final policy decisions, Eisenhower's Operations Coordinating Board (OCB) handled the implementation of new policies and sent summaries back to the NSC.⁸

Richard Nixon's desire for a similar strict, hierarchical NSC structure spurred conversations with Eisenhower at the onset of his presidency. Emphasizing the need to rebuild a weakened NSC and restore its planning capabilities, Nixon created a robust, policy creating NSC system. A constant stream of policy papers was developed and vetted through multiple levels before reaching the executive level of the NSC. The lowest level of the new system consisted of Regional Interdepartmental Groups (focused on geographic areas) and Functional Interdepartmental Groups (dealt with issues such as foreign aid, economics, and more). These interdepartmental groups were responsible for preparing policy papers, initiating contingency

⁶ Nelson, "President Truman and the Evolution of the National Security Council," 373.

⁷ Fred I. Greenstein and Richard H. Immerman, "Effective National Security Advising: Recovering the Eisenhower Legacy," *Political Science Quarterly* 115, no. 3 (Autumn, 2000): 340.

⁸ *Ibid.*, 343.

plans for potential crisis areas, and resolving issues appropriate to the assistant secretary level.⁹ The second tier consisted of the NSC Review Group, which screened the policy papers and created the agenda for NSC meeting. Cumulatively, the added structural layers fostered greater rationale for national security policy and better interagency cooperation.¹⁰

Presidents Kennedy and Johnson were essentially opposite from Eisenhower and Nixon. Both favored personal relationships and small group discussions over a bureaucratized national security policy process. Kennedy insisted that deinstitutionalizing after the Eisenhower administration would lead to a more flexible and personal advisory system.¹¹ His national security advisor, McGeorge Bundy, immediately replaced the OCB with the National Security Action Memorandum (NSAM) series and dissolved the Planning Board, reassigning these NSC staffers to focus on geographic regions.¹² These changes gave NSC staffers increased flexibility and access to the President, as the Planning Board previously had to reach consensus on policy papers before passing proposals up the bureaucratic channels.¹³ With the public figure of George Bundy at the helm, Eisenhower's institutionalized NSC and robust policy-making process ceased to exist.

President Johnson had similar tendencies as his predecessor, as he favored small groups. What developed during his two terms, however, was an even greater degradation of the capabilities and use of what remained of the NSC staffing structure. No longer did those staffers have easy access to the President. Instead, Johnson relied on informal "Tuesday lunches," whereby the President met with a select few trusted advisors. The NSC staffers were effectively eliminated from the national security policy creating equation as Johnson primarily consulted with Bundy (until 1966 when Walt Rostow replaced him), the Secretaries of State and Defense, the Chairman of the Joint Chiefs of Staff, the Director of the CIA, and the Press Secretary. Powerful personalities of Dean Rusk and Robert McNamara dominated Johnson's inner circle, leading to the increased reliance on the State Department for policy creation, resulting in "little or no long-range planning" during the escalations of U.S. efforts in Vietnam.¹⁴ Johnson's

⁹ Edward A. Kolodziej, "The National Security Council: Innovations and Implications," *Public Administration Review* (November/December 1969): 574.

¹⁰ *Ibid.*, 576.

¹¹ Zbigniew Brzezinski, "The NSC's Midlife Crisis," *Foreign Policy*, no. 69 (Winter, 1987-1988): 85.

¹² Andrew Preston, "The Little State Department: McGeorge Bundy and the National Security Council Staff, 1961-65," *Presidential Studies Quarterly* 3, no. 4 (December: 2001): 644.

¹³ *Ibid.*, 638.

¹⁴ Gordon R. Hoxie, "The National Security Council," *Presidential Studies Quarterly* 12, no.1 (Winter, 1982): 110.

transference of planning responsibilities to State and disregard for the NSC as an advisory council exemplifies how presidential preferences continually morph the council.

The contrast between the strict, hierarchical style of Presidents Eisenhower and Nixon versus the informal and deinstitutionalized preferences of Presidents Kennedy and Johnson could not be clearer. These differences in structural preferences, however, are not the sole factors that may transform the NSC. President Reagan, for instance, was more detached from national security policy decisions because of a disinterest in the detailed nuance of policy formulation. Left with little guidance, the early Reagan NSC transformed itself into an operational agency under the leadership of national security advisors Robert McFarlane and his successor Vice Admiral John Poindexter. An absent president allowed for these individuals to devise and carry out the infamous Iran-Contra affair in the wake of the national security threats of the Sandinistas in Nicaragua and the new anti-American Iranian regime.¹⁵ There is a specific instance that displays the negative impact of Reagan's detachment from the policy process, wherein he failed to advocate for the thorough vetting and analysis of a proposal to sell arms to Iran in the hopes of freeing imprisoned Americans.¹⁶ It is only one example of an initially "peculiarly detached decision maker" that forced national security advisors and other administration officials to make decisions based primarily off of loose presidential policy views.¹⁷

The importance of presidential preferences on the structuring of the NSC cannot be understated. Eisenhower and Nixon's preference for a strict system created a machine-like policy system. Conversely, Kennedy and Johnson's preference of personal relationships over a standardized and institutionalized bureaucratic NSC structure led to the dissolvment of the work done by Eisenhower. Differences in the level of interest in the details of foreign policy can also alter how the NSC operates. Reagan's absence within the details of foreign policy decisions is the notable example, leading to the operationalization of the NSC. Cumulatively, the influence of presidential preferences and interests have on the structure of the NSC is evident. What is not observed is how crises at the onset of or during administrations have forced presidents to transform the NSC to address the issue at hand, a situation drastically different than changing a

¹⁵ American Foreign Relations, "National Security Council – The Reagan, Bush, and Clinton Years," Accessed January 21, 2019, <https://www.americanforeignrelations.com/E-N/National-Security-Council-The-reagan-bush-and-clinton-years.html>.

¹⁶ George C. Edwards III, Kenneth R. Mayer, and Stephen J. Wayne, *Presidential Leadership: Politics and Policy Making*, 10th ed. (New York: Rowan & Littlefield, 2018): 250.

¹⁷ *Ibid.*, 251.

structure based upon a personal preference. The modern NSC structure largely emerged during the transition from Reagan to George H.W. Bush's administration. Focusing on the developments and changes to the NSC from the Reagan era to the present offers several impactful global events that had resounding ramifications for the NSC. Diving deeper into these events provides a glimpse into how the global and domestic events during an administration, not solely presidential preferences, significantly alter the NSC's structure and use.

IRAN-CONTRA AFFAIR

Reagan's initial disinterest in the details of foreign policy is evident in his "National Security Decision Directive – Number 2" (NSDD – 2). This document set the stage for the loose guidance that enabled the widespread growth of the Reagan NSC and transformed it into an operational agency. Within the NSDD – 2, Reagan empowered the Secretaries of State and Defense and the Director of the CIA by having each department chair a Senior Interagency Group (SIGs) (Foreign Policy, Defense, and Intelligence). What created the exponential growth was the dictation that directed each SIG, at their own discretion, to create regional and functional interagency groups to support policy formulation and implementation.¹⁸

Left without supervision, the NSC exploded in size and grew in its operational capacity. Additionally, carrying over from the Carter administration, the Reagan NSC had full control over all covert operations. Their operational capacity and authority transcended to an unprecedented level, as the NSC swapped roles with the CIA when it came to handling operations in Iran. Instead of being the planning agency, the NSC took charge in operational relations with both Iran and the contras through a covert policy that had been crafted by the director of the CIA.¹⁹ Reagan's absence from the details of the Iran-Contra scandal is evident through how he authorized the arm shipments. The first authorization occurred through "oral" findings that were not authorized by intelligence statutes, the second being authorized by a "retroactive" finding generated by the CIA's general counsel, and the third being the only authorization signed by Reagan (who later claimed he never actually read it).²⁰ Neither Congress nor the majority of the

¹⁸ Ronald Reagan – The White House – "National Security Decision Directive – Number 2," January 12, 1982, 6.

¹⁹ Harold Hongju Koh, *The National Security Constitution: Sharing Power After the Iran-Contra Affair*, (New Haven and London: Yale University Press, 1990): 57.

²⁰ *Ibid.*, 60.

executive branch had any knowledge of the covert operations throughout the scandal, leading to intense scrutiny by Congress during investigative congressional committees.

Immediately following the damaging fallout of the Iran-Contra affair, Reagan authorized a complete review and reorganization of the NSC. One key flaw identified by the President's Special Review Board was the detrimental effect that NSDD – 2 had when it eliminated the hierarchical review process that had been reestablished by Nixon and continued by Carter. NSDD – 2 instead had installed the three original SIGs as parallel pieces within the NSC structure; consequently, these three separate groups did not have concrete review channels above them. The Special Review Board's findings resulted in NSDD – 276, reshaping the NSC into a hierarchical process once again and decreasing its size that had grown to include twenty-two additional SIGs and fifty-five interagency groups in the five years since NSDD – 2.²¹ The changes within the NSDD – 276 represent a departure from the “presidential preferences” narrative that dominates the discussion revolving around presidential structuring and staffing of the NSC. A severe crisis, erupting from the combination of a removed executive decision maker and explosive structural growth and operational capacity, forced Reagan to reevaluate his NSC.

The shockwaves of the Iran-Contra affair resonated with Reagan's successor, who happened to have been his Vice President for both terms. Recognizing the problems that a removed president presents to foreign policy and the proper functioning of the NSC, Bush refined the hierarchical structure that Reagan introduced with NSDD – 276. Bush's “National Security Directive – 1” (NSD – 1) created a simplified three-tier system that continues to this day. Maintaining the Principles Committee (PC) introduced at the end of the Reagan administration (directly under the NSC), Bush introduced the Deputies Committee (DC) and the system of Policy Coordinating Committees (PCCs) that at the onset included six standing regional PCC's and four functional area PCCs.²² Bush's activeness in the foreign policy realm, conjoined with the streamlined and thorough policy review process within his NSC, prepared his administration for success and avoided the pitfalls of Reagan's absent foreign policy leadership. Although it may be argued that the structural organization created by Bush derived from a presidential preference, the influence of Bush's experience from his time in the Reagan administration and the fallout from the Iran-Contra Affair is undeniable.

²¹ Ronald Reagan – The White House – “National Security Decision Directive – Number 276,” June 9, 1987, 1.

²² George H.W. Bush – The White House – “National Security Directive 1,” January 30, 1989, 3.

THE DISSOLUTION OF THE SOVIET UNION

Bush's failure to tackle critical domestic issues in large part contributed to his failed reelection campaign. The domestic realm jarred into the primary focus of the public as tectonic shifts occurred across the globe. In the heart of the presidential election season, the world watched as the United States became the sole superpower with the dissolution of the Soviet Union. The existential threat that had existed for almost half of a century began crumbling in 1990 as Soviet Republics began declaring independence. Simultaneously, the United States experienced a recession during 1990-1991. Combined, the recession and the dissolution of the Soviet Union created greater public desire for a focus on domestic issues.

President Clinton took heed of the public sentiment and vehemently campaigned on promises of focusing on domestic affairs and strengthening the American economy now that the existential threat represented by the Soviet Union ceased to exist. As such, Clinton viewed global issues during his presidency largely through the lens of internal affairs. Issues, such as trade and international economics, that had direct connections to economic and social change within the United States, consequently garnered greater attention as integral components of Clinton's foreign policy.²³ This specific viewpoint aligned with his campaign positions, as Clinton had promised to "focus like a laser beam" on internal politics in the wake of the dissolution of the Soviet threat.²⁴

An examination of Clinton's "Presidential Decision Directive/NSC – 2" (PDD/NSC – 2) underscores how the new global dynamics translated to the structure of the NSC. Instead of a specified, robust, and detailed framework that these initial presidential directives tend to provide, Clinton's PDD/NSC – 2 stripped away all preexisting lower level policy working groups, titled Interagency Working Groups (IWGs), established within George H.W. Bush's hierarchical NSC structure. Rather, Clinton's directive charged the Deputies Committee (the DC was the second-tier level of the NSC under the PC) with establishing IWGs they deemed necessary, thus granting the DCs a great deal of authority over the policy making process at the lowest levels of the NSC.²⁵

²³ Maurizio Massari, "U.S. Foreign Policy Decision-Making During the Clinton Administration," *The International Spectator* 35, no. 4 (2000): 94.

²⁴ *Ibid.*

²⁵ William J. Clinton – The White House – "Presidential Decision Directive/NSC-2," January 20, 1993, 4-5.

Clinton's Executive Order 12835 is an indication of where he directed his attention during the onset of his first term. With the elimination of the Soviet threat and the need to recover from a recession and uphold his campaign promises, Clinton created the National Economic Council (NEC) via EO 12835 on January 25, 1993. Reading the executive order illustrates how the defined functions of the NEC are strikingly like that of the NSC functions outlined in the NSA of 1947. EO 12835 charged the NEC with coordinating all economic policy-making processes and providing economic policy advice to the President, ensuring economic policy decisions were consistent with the President's goals, and monitoring the implementation of economic policy.²⁶ The order also created a senior economic advisory position, titled Assistant to the President for Economic Policy, mirroring Eisenhower's creation of the Assistant to the President for National Security (colloquially the National Security Advisor).²⁷ Clinton had established overnight a new national advisory and implementation council that operated at the same level as the NSC, underscoring the domineering domestic and economic focus of the new administration in response to the challenges of the time.

The POST 9/11 WORLD

The worst attack on American soil since Pearl Harbor shook the United States to the core. Questions over how the most sophisticated and advanced intelligence and national security services in the world could not stop seventeen hijackers from carrying out terrifying and devastating attacks bore down on a president only in his ninth month in office. Internal reviews and reports ensued, but it did not take long for President Bush to make several notable changes to his national security apparatus.

Before these changes, however, Bush had mostly remade his father's NSC system prior to 9/11. Unlike Clinton, Bush's "National Security Presidential Directive" (NSPD-1) immediately created six regional and eleven functional standing PCCs.²⁸ Carrying on the precedent set by his father, Bush also specified who would chair each PCC and dictated that an

²⁶ William J. Clinton – The White House – “Executive Order 12835 – Establishment of the National Security Council,” January 25, 1993.

²⁷ Ibid.

²⁸ George W. Bush – The White House – “National Security Presidential Directive (NSPD 1): Organization of the National Security Council,” February 13, 2001, 5-6.

NSC staffer would serve as the Executive Secretary for each PCC.²⁹ Comparing the two directives side-by-side, it seems as though Bush's NSC would seemingly operate in the same manner as his father's had a decade previously. This changed drastically less than a month after 9/11.

On October 8, 2001 Bush issued Executive Order 13228. Borrowing a page from Clinton, Bush used his executive power to create an entirely new advisory and implementation council. EO 13228 charged the Homeland Security Council (HSC), under the direction of the Assistant to the President for Homeland Security, with advising the President on all matters related to homeland security and to ensure the coordination of homeland-security related policies and activities.³⁰ Many of the same senior members of the NSC were now also members of the new HSC, but a different HSC infrastructure was created in parallel to the preexisting NSC staff. The addition of the HSC transferred some responsibility from the NSC to a new council that solely focused on homeland safety.

Once the reports and reviews concluded several years after 9/11, it became clear that a failure in the ability to share intelligence between the FBI and CIA contributed to the inability to prevent the attacks. Correspondingly, the Intelligence Reform and Terrorism Prevention Act of 2004 established the Office of the Director of National Intelligence (ODNI) to act as the intermediary between the two intelligence organizations. The act abolished the position of Director of Central Intelligence and replaced it with the Director of National Intelligence, who thereafter joined the NSC as a statutory member and provided the NSC with enhanced intelligence capabilities.³¹

Besides causing the creation of the HSC and the ODNI, both of which having direct effects on the operations of the NSC, 9/11 contributed to the exponential growth in the NSC staff and an operationalization of the council that had not been seen since Reagan. As the War on Terror progressed, moving beyond Afghanistan and into Iraq, the NSC found itself increasingly involved in the fight to promote freedom, democracy, and human rights in the world. New directorates and positions within the NSC infrastructure were created to tackle these critical issues, such as the Deputy Assistants to the President/Deputy National Security Advisors

²⁹ Ibid.

³⁰ George W. Bush – The White House – “Executive Order 13228,” October 8, 2001.

³¹ Congressional Research Service, *The National Security Council: An Organizational Assessment*, (2009): 22.

(DAP/DNSA) for Strategic Communication and Global Outreach and Global Democracy Strategies.³² The post-9/11 era launched the United States into a War on Terror that continues to this day, and serves as another historic event in time that dramatically altered the functioning and structuring of the NSC.

CONCLUSION

The passage of the National Security Act of 1947 presented a radical transformation to the security apparatus of the United States. Besides the creation of the Department of Defense, establishment of the Air Force, and the transformation of the OSS into the CIA, the NSA of 1947 created the preeminent advisory and coordination council for the President of the United States. Although the primary responsibilities of the NSC are clearly dictated within the legislation of the NSA, its actual usage has changed from administration to administration.

A primary explanation for this phenomenon is that presidential preferences tend to dominate the initial structuring of the NSC at the onset of a new term. Truman's distrust of the NSC resulted in a reliance on a small group of advisors until the eruption of the Korean War in 1950. Thrust into a major conflict, Truman understood the dire need to coordinate the actions of various departments and resorted to the NSC. Eisenhower entered the presidency with an expansive military experience. Influenced heavily by his career, Eisenhower recognized the significance and importance of the advisory and coordination council. Subsequently, he quickly institutionalized and developed the NSC into a robust policy creating body. Nixon followed suit over a decade later, as he recreated much of the system that Eisenhower first established. This action was necessary because of the differing preferences of his predecessors. Kennedy and Johnson, favoring small groups of trusted advisors and personal relationships, deinstitutionalized the NSC and dismantled much of the staffing structure that had grown under Eisenhower. Contrary to these examples, Reagan has been described as more of a removed national security policy decision maker. As such, his NSC structure greatly reflected his disinterest in the nuances

³² Alan G. Whittaker, Frederick C. Smith, and Ambassador Elizabeth McKune, "The National Security Policy Process: The National Security Council and Interagency System," *Industrial College of the Armed Forces*, (Washington, D.C., November 24, 2008): 11.

of policy formulation. This lackadaisical approach contributed to the operationalization of the NSC during the Iran-Contra affair.

Presidential preferences have a strong influence over how the NSC is used and structured by each new president. However, the tendency to overemphasize the power of preferences and not strongly consider historic events seems to result in only half of the story of the NSC's development. Three major security developments in the past forty years have radically transformed the responsibilities and the composition of the NSC. Beginning with the aftermath of the Iran-Contra affair, Reagan understood that a review and reorganization of the NSC had to occur in response to its misconduct during the covert operations. NSDD-276 recreated a hierarchal review process within the NSC that had existed after Nixon's administration and continued during Carter's tenure. George H.W. Bush, having been a witness to the disastrous situation within the Reagan administration, immediately simplified the NSC into a streamline hierarchal system that continues to this day.

The dissolution of the Soviet Union, beginning in 1990, radically transformed the security situation for the United States. No longer facing an existential threat and now facing a recession, the American people desired a focus on domestic affairs. Aware of the challenges that the United States faced domestically, Clinton set out to refocus the NSC. Global challenges were now viewed through a domestic lens, as issues were often tied to trade and economics. Clinton also took it upon himself to establish the National Economic Council, a replication of the NSC-style advisory and coordination council system focused on domestic and international economics.

Lastly, the tragic events on 9/11 resulted in the most severe and extreme national security changes since the NSA of 1947. Less than a month after the attacks, President Bush took it upon himself to establish the Homeland Security Council in EO 13228. As a result, the NSC was no longer solely in charge of domestic security affairs. Furthermore, the National Security Advisor now had an equivalent colleague in the form of the assistant to the President for Homeland Security, or colloquially the Homeland Security Advisor. HSC's structure ran parallel to that of the NSC and many members of the NSC staffers wore two hats by working for both councils. The aftermath of 9/11 also resulted in the creation of Office of the Director of National Intelligence. Replacing the Director of Central Intelligence, the Director of National Intelligence became the statutory member of the executive level and NSC. The role of the NSC also

expanded as the mission set within Iraq and other areas of U.S. involvement transitioned to democracy building and the spreading of American values.

Analyzing how historic events transform the NSC provides greater understanding into how a president reacts to crises around the world. Underestimating the influence of these crises limits the ability to understand the growth and development of the NSC in its entirety. The importance of the NSC's work is often overlooked. These staffers are the silent experts and professionals behind the scenes that formulate, implement, and direct the details of American national security policy. A greater appreciation and understanding of the NSC's origin and evolution provides a clearer picture of the entire U.S. national security apparatus.

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THE DEVELOPMENT AND FUTURE OF PRESIDENTIAL DRONE WELFARE

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

On January 3, 2020, the United States launched a drone strike to eliminate Iranian Major General Qasem Soleimani while he visited militia leaders in Iraq. Since September 11, 2001, thousands of such “targeted killings” have been executed by the United States, in which high-value terrorist targets are eliminated at the discretion of a high-ranking commander or the Commander-in-Chief himself. By approving a strike, the president can directly influence the battlefield to destroy a target in seconds. While this power is frequently exercised, it remains highly classified, creating a high degree of scrutiny from the media and international community about the legality of U.S. drone warfare policies. This paper traces the development of drone warfare during the Bush, Obama, and Trump presidencies, highlighting key events within their targeted killing policies. With this background, executive behaviors will be evaluated through the lenses of unitary executive theory and the imperial presidency, specifying the implications for presidential war power. Finally, a framework will be recommended to guide executive actions into the future, enhancing the transparency of US drone policy while reducing legal risk to the President.

President Trump’s 2020 Soleimani Strike

On January 3, 2020, the United States executed a drone strike to kill Major General Qasem Soleimani, the head of Iran’s Quds Force.¹ Put simply, the Quds is an elite branch of Iran’s Revolutionary Guard, and since 1979, “its goal has been to subvert Iran’s enemies and extend the country’s influence across the Middle East.”² As head of the Quds, Soleimani orchestrated military operations and terrorist plots for decades, which led one former CIA officer to label him as the “most powerful operative in the Middle East” who, “no one’s ever heard of”—until this year.³ Following retaliatory ballistic missile strikes against US bases in Iraq, many feared that President Trump brought the United States to the brink of war.⁴ In the midst of

¹ Joshua C. Huminski, “Soleimani—Why Now and What Next?” *Center for the Study of the Presidency and Congress* (January 10, 2020).

² Dexter Filkins, “The Shadow Commander,” *The New Yorker* (September 23, 2013).

³ John Maguire, quoted in Filkins, “The Shadow Commander.”

⁴ Dan Mahaffee, “The World, Post-Soleimani,” *Center for the Study of the Presidency and Congress* (January 10, 2020).

allegations that the Trump administration “assassinated” Soleimani, however, the legal justification provided merely stated that Soleimani posed an imminent threat to American lives.⁵

Only time will tell what the ultimate consequences of the Soleimani strike will be on the contentious relationship between the United States and Iran, but one thing is clear: the President undertakes significant political risk when authorizing a strike against a target outside an area of active hostilities. Although the intelligence that informs drone warfare is necessarily secretive, the inability of White House to effectively articulate the justification behind the strike calls into question the legality of the action under the international law of armed conflict. To understand the legal issues surrounding presidential drone warfare, it is necessary to analyze how such “targeted killings” grew into such a major tool of US foreign policy in the Global War on Terror.

Introduction to Presidential Drone Warfare

Since September 11, 2001, thousands of “targeted killings” have been executed by the United States. Law of armed conflict scholar Gary Solis defines targeted killing as “the intentional killing of a specific enemy combatant or civilian enemy fighter, who cannot reasonably be apprehended, who is taking a direct part in hostilities...in the context of an international or non-international armed conflict.”⁶ Given the asymmetrical and increasingly globalized nature of the conflict, most targeted killings take the form of drone strikes, in which high-value terrorist targets are eliminated with precise munitions at the discretion of a high-ranking commander or the president himself.

Drone strikes are one of the few ways presidents can directly influence the battlefield as Commander-in-Chief—he or a subordinate commander simply approves the request and a target is destroyed in seconds. In addition to the executive’s capability to order a high volume of strikes, he can also execute one virtually anywhere in the world. Simply put, “targeted strikes—predominately using drones—have become the operational counterterrorism tool of choice for the United States” to strike Taliban, al Qaeda, al-Shabab, and ISIS militants.⁷ At the same time, critics of the program have raised questions about the lack of transparency by the executive

⁵ Zachary B. Wolf and Veronica Stracqualursi, “The evolving US justification for killing Iran’s top general,” *Cable News Network (CNN)* (January 8, 2020).

⁶ Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, 2nd ed. (2016), 555.

⁷ Laurie R. Blank, “Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications,” *William Mitchell Law Review* 38 (5) (2012), 1655.

branch, including their withholding of memorandums from Congress, unclear legal justifications, and deaths of civilians outside active battlefields.⁸ As the executive branch defines for itself who it can strike—and where—it is evident that the role of the president in shaping this critical policy instrument through his war power has wide-reaching legal and political implications for US foreign policy.

Among Presidents Bush, Obama, and Trump, presidential policy guidance on targeting criteria, reporting requirements, and transparency to the public have differed in response to the changing nature of counterterrorism operations. However, one consequence remains consistent—each president utilized more targeted killings than his predecessor, taking out high-profile enemy with limited exposure for ground troops. Nearly two decades after the September 11th attacks in 2001, presidents continue to assert a right to neutralize borderless terrorist units, although it is “doubtful that the 9/11 attacks alone give rise to an indefinitely continuing right to use force in self-defense.”⁹ This creates tension with a largely uninformed Congress, who despite their power to declare war, has little oversight over executive power to initiate strikes throughout the Middle East and Africa. This paper will trace the development of drone warfare during the Bush, Obama, and Trump presidencies, highlighting key events regarding their targeted killing policies. With this background, executive behaviors will be evaluated through the lenses of unitary executive theory and the imperial presidency, specifying the implications for presidential war power. Finally, a framework will be recommended to guide executive actions into the future, enhancing the transparency of US drone policy while reducing political and legal risk to the President.

President Bush: Foundations for Drone Warfare in the War on Terror

The Bush Presidency introduced targeted drone killings outside active battlefields in the Global War on Terror and defined the status of the armed conflict through *Hamdan v. Rumsfeld*. Following the September 11th terrorist attacks in 2001, Congress gave the President a broad grant of authority to fight terrorism in the Authorization for Use of Military Force, providing “the President is authorized to use all necessary and appropriate force against those nations,

⁸ Louis Fisher, *Presidential War Power* 3rd ed., revised (Lawrence: University Press of Kansas, 2013), 260.

⁹ Rosa Brooks, “Drones and the International Rule of Law,” *Georgetown Journal of Ethics and International Affairs* (2013), 93.

organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks...or harbored such organizations or persons.”¹⁰ Although President Bush repeatedly cited his inherent powers as Commander-in-Chief, the AUMF was the blank check that brought his expansive war power to fruition.¹¹ After all, with the power to use “all necessary and appropriate force” against those the president “determined” to play a role in al-Qaeda’s attack, Bush had congressional support to fight a wide range of militants. In 2002, the first targeted killing was used in Yemen, killing six suspected al-Qaeda members responsible for the USS *Cole* bombing.¹² The authority to strike “nations” who “harbored such organizations or persons” allowed the president to utilize strikes against states “unwilling or unable” to prosecute terrorism within their own borders, which drew legal scrutiny domestically from the Supreme Court and internationally when the US began strikes on Pakistan in 2004.¹³

Despite President Bush’s extensive war power stemming from the AUMF, his legal justification was lacking until clarified by the Supreme Court in its 2006 *Hamdan v. Rumsfeld* decision. Although the case dealt primarily with the president’s unconstitutional military commissions, the Court also ruled that the War on Terror fell under Common Article 3 of the Geneva Conventions as a non-international conflict.¹⁴ In *Hamdan*, lower court Judge Stephen F. Williams held in his concurring opinion that non-international conflicts were best understood to refer to a conflict between a signatory nation and a non-State actor.¹⁵ While the strictly internal meaning of non-international is often misunderstood as a requirement, Common Article 3 makes no actual mention of non-international armed conflicts being limited to a single territory.¹⁶ *Hamdan* is crucial to understanding targeted killings for two reasons. First, it gives judicial backing to the President’s determination that conflict could occur within the borders of several states against nonstate terrorist groups. Second, the classification of the conflict as non-international specifies the parties in the conflict, which are “government forces” and “enemy fighters.”¹⁷ Fighting in such a conflict, the United States acts on behalf of a host government, and

¹⁰ United States Congress, “Public Law 107-40: Joint Resolution To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States” (September 18, 2001).

¹¹ Fisher, *Presidential War Power*, 209.

¹² Blank, “Targeted Strikes,” 1655.

¹³ *Ibid*, 1656.

¹⁴ United States Supreme Court, *Hamdan v. Rumsfeld* (June 29, 2006), page number unavailable.

¹⁵ *Ibid*, page number unavailable.

¹⁶ Geoffrey S. Corn, Rachel E. VanLandingham, & Shane R. Reeves, *US Military Operations* (2016), 77-9.

¹⁷ Solis, *Law of Armed Conflict*, 163-5.

thus may kill an enemy fighter participating in hostilities. With both domestic and international statutory backing, the Bush administration secured considerable power to utilize targeted killings, setting the stage for President Obama to greatly increase the scope of drone warfare in his first term.

President Obama: Expansion, Controversy, and Limited Transparency

Obama's presidency was characterized by a massive expansion in the drone strike program, legal controversy surrounding the 2011 killing of US citizen Anwar al-Awlaki, and increased but limited transparency to the American public. By the end of Obama's second term, he used ten times as many strikes as his predecessor in Pakistan, Somalia, and Yemen—a total of 563 strikes in comparison to only fifty-seven under Bush.¹⁸ He led off in Pakistan, where all fifty-four strikes took place in 2009.¹⁹ However, when strikes were expanded into Yemen in 2010, they began in catastrophe when commanders mistakenly targeted a tribe instead of al-Qaeda, killing fifty-five civilian men, women, and children.²⁰ With both enemy and civilian deaths mounting early in Obama's first term, his drone policies quickly garnered attention, criticism, and legal challenges.

The most significant challenge came from Nasser al-Awlaki, father of Yemeni-American Anwar al-Awlaki, who was an al-Qaeda leader, propagandist, and recruiter. After discovering that his son was on a US government "kill list" in late 2010, he challenged the targeted killing policy on the grounds it violated his right to a fair trial as an American citizen.²¹ While the US refused to disclose its targeting criteria, it did identify al-Awlaki as a leader of al-Qaeda in the Arabian Peninsula (AQAP), and the court dismissed the case as a "political question" reserved for the elected branches.²² For obvious reasons, al-Awlaki never appeared in US court, and infeasibility to capture him deep in Yemen led to targeted killing by drone strike in 2011.²³ Immediately, the ACLU challenged the constitutionality of the strike, arguing the "extrajudicial

¹⁸ Jessica Purkiss & Jack Serle, "Obama's Covert Drone War in Numbers: Ten Times More Strikes than Bush," *Bureau of Investigative Journalism* (January 17, 2017).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Fisher, *Presidential War Power*, 261.

²² *Ibid.*

²³ *Ibid.*

killing” of a US citizen by the government violated the Fifth Amendment right to due process.²⁴ Asserting the *Reynolds* state secrets privilege, the executive branch successfully prevented the ACLU from acquiring the legal justifications behind the strikes, claiming the legal opinion contained “information pertaining to military plans, intelligence activities, sources and methods.”²⁵

While the Obama administration was able to successfully withhold information from the courts, however, controversy stirred shortly thereafter when a sixteen-page “white paper” was leaked, “setting forth a legal framework for the use of lethal force against a US citizen in a foreign country outside an area of active hostilities.”²⁶ Despite the contentious legal proceedings, however, the American public at the time remained largely unbothered by the strikes. Even in the months immediately following release of the white paper, 69% of Americans “agreed that the program should be used for high-level targets,” while 13% of this figure thought those simply suspected of being associated with a terrorist group should be targeted.²⁷ Although the wording of such polls can easily sway answers (for instance, by mentioning “high-level targets” versus “innocent deaths” in a strike), there is general consensus that the American public was not particularly troubled by President Obama’s drone program. Thus, when federal courts leave the due process of targeted killings to be decided by the elected branches, the executive retains considerable power to avoid the public release of targeting criteria and procedures. Even so, President Obama set out to give the American public more transparency following *al-Awlaki*.

Headed into his second term, Obama and several of his advisors travelled around the country to provide greater transparency. They expressed that US drone strikes undermined enemy command, saved US lives by reducing exposure for ground troops, and utilized extremely precise camera and missile technology to minimize civilian casualties.²⁸ However, while Obama administration officials appropriately framed legal justifications in terms of the law of armed conflict, legal experts were quick to point out flaws in other justifications. One of the primary flaws existed in mixing up *jus ad bellum*, the laws to enter conflict, and *jus in bello*, the laws in a

²⁴ American Civil Liberties Union, “*Al-Aulaqi v. Panetta: Constitutional Challenge to Killing of Three U.S. Citizens*,” *American Civil Liberties Union* (June 4, 2014).

²⁵ Fisher, *Presidential War Power*, 263-4.

²⁶ *Ibid*, 264.

²⁷ Jason Linkins, “Drone Program Poll: The Public Does Not Uncritically Embrace Targeted Killings,” *Huffington Post* (February 15, 2013).

²⁸ John O. Brennan, “The Efficacy and Ethics of US Counterterrorism Strategy,” Transcript of Remarks at the Wilson Center (April 30, 2012).

conflict. A *jus ad bellum* argument would be using force in self-defense to eliminate an imminent threat, providing justification for why the US can target a terrorist in the planning process. A *jus in bello* argument, on the other hand, would include describing the particulars of a strike, such as a drone's hovering ability to make precise collateral damage calculations prior to strike. While this blurring "offers greater flexibility and potential for action" to a policymaker, however, the "mixing of legal justifications raises significant concerns."²⁹ Considering this important critique calls into question the soundness of the legal justifications that the executive branch claims they have in the courts, but refuses to release as part of the states secret privilege. After all, legal analysis is not the same as release of classified military or intelligence information, and such information could easily be redacted from legal analysis.³⁰ Regardless, Obama's drone warfare policies withstood public and legal scrutiny through the end of his second term, as strikes escalated once again in response to a rising threat from the Islamic State.

President Trump: Troubling Prospects for the Future

Thus far, President Trump's drone policies continue to expand in quantity, while his lifting of restrictions on agencies and reduction in transparency surrounding strikes is problematic. First, the raw data of drone strikes under President Trump follows the pattern of his predecessors: he made rapid expansions to drone strikes during his first two years in office.³¹ Bringing a new strategy to combat ISIS, Trump doubled the amount of air and drone strikes in Afghanistan.³² A major reason for this increase was changing guidelines for US forces, who were "given new authority to target Taliban revenue streams" in country.³³ Additionally, he reduced the number of strikes in Pakistan, while increasing them in Somalia and Yemen.³⁴

More problematic, however, are the changes President Trump made that lifted restrictions on executive agencies and reduced transparency on reported data. One major policy change was returning authority to conduct drone strikes back to the CIA, who operated the program under President Bush.³⁵ Of greater significance is President Trump's departure from Obama's 2013

²⁹ Blank, "Targeted Strikes," 1658.

³⁰ Fisher, *Presidential War Power*, 263.

³¹ Sean Lambert, "Trump's Drone Doctrine," *National Journal* (February 25, 2019).

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

Presidential Policy Guidance (PPG), which specified that “lethal action could only be taken against terrorist targets that pose a ‘continuing, imminent threat to US persons.’”³⁶ Under Trump’s “Principles, Standards, and Procedures” (PSP) document, on the other hand, the imminence requirement has been eliminated, leading some to critique that the CIA may now target “foot-soldier jihadists with no unique skills or leadership roles”—a substantial change considering that targeted killings are often meant to eliminate terrorist leaders.³⁷ Above all, the most momentous change came in a March 2019 executive order, whereby President Trump revoked the requirement to annually report civilian casualty data incident to US drone strikes.³⁸ As the number of drone strikes increase and transparency is reduced, President Trump has ensured that drone warfare moving forward will remain secretive and unaccountable to the public or Congress. Such policies by the Commander-in-Chief increase risk that the DOD or CIA will execute targeted killings that are not only politically distasteful to the American public, but also illegal under international humanitarian law.

Drone Warfare and the American Presidency

While it is difficult to evaluate the precise implications of drone strikes on the presidential war power given their classified nature, popular theories of the American presidency are useful to analyze the executive’s policies and institutional relationships with the legislature and judiciary. Foundationally, the furthest lengths of presidential war power are best understood by Bush advisor John Yoo’s unitary executive theory. Yoo argues that the Framers understood the executive power in light of the British constitutional tradition where “war was a royal prerogative.”³⁹ Additionally, he maintains that contemporary conditions, like nuclear weapons and surprise attacks from terrorist organizations, mean that “no treaty, no statute, and no coordinate branch of government could stand in the president’s way when he acts in the name of American national security.”⁴⁰ While Edelson disagrees, he points out that much of the unitary argument stems from the assumption Congress is incapable of taking prompt national security

³⁶ Luke Hartig, “Trump’s New Drone Strike Policy: What’s Any Different? Why It Matters,” *Just Security* (September 22, 2017).

³⁷ *Ibid.*

³⁸ Donald Trump, “Executive Order on Revocation of Reporting Requirement,” (March 6, 2019).

³⁹ Gene Healy, *The Cult of the Presidency: America’s Dangerous Devotion to Executive Power* (Washington, DC: Cato Institute, 2008), 21.

⁴⁰ *Ibid.*, 21-2.

action, which is not supported by the historical record in emergencies like Pearl Harbor and 9/11.⁴¹ Despite Edelson's claims that the unitary executive is "fundamentally at odds with a republican system of government," the model nonetheless offers explanatory value for wartime actions taken by the Commander-in-Chief.⁴²

Take, for instance, the legal justification by Attorney General Holder in *al-Awlaki*, which outlined a three-part test for targeted killing of a US citizen: "the administration must determine that a citizen poses an imminent threat...the citizen's arrest is not feasible, and killing the citizen would be consistent with the laws of war."⁴³ As Fisher appropriately observes, "Holder insisted that due process need not be legal process within the federal courts. It could be provided by the executive branch."⁴⁴ Here, the due process described is essentially a unilateral executive determination: presidential policy determines who constitutes a threat, decides whether they can be captured, and ensures that killing the citizen is compatible with the law of armed conflict. The harshest critics would contend this is an example of the president acting as judge, jury, and executioner, bypassing a court's determination about the individual's guilt or innocence. Proponents of the unilateral theory, however, would point to the court's determination in *Hamdan v. Rumsfeld* that the United States is engaged in a non-international armed conflict across the borders of several states, thereby granting the executive permission to target within the scope of *jus in bello* laws in war.⁴⁵ After all, in an armed conflict, a state need not give its target due process: their status as an enemy fighter meets the burden to be targeted, and positive identification is sufficient due process to pull the trigger. Taken along with Congress's grant of power to the president in the AUMF to "determine" himself which persons conspired to commit terrorist acts against the US, this unitary president may—at his worst—operate under Yoo's "royal prerogative" to justify targeting citizens.

Rudalevige's "imperial presidency," on the other hand, offers a perspective on the concentration of war powers in the presidency and the assertion of privilege in federal courts. Rudalevige describes the imperial presidency as concentrated executive authority designed to circumvent the separation of powers, "grounded in its ability to grab the public spotlight and to

⁴¹ Christopher Edelson, *Power Without Constraint: The Post-9/11 Presidency and National Security* (Madison: University of Wisconsin Press, 2016), 15.

⁴² *Ibid.*

⁴³ Fisher, *Presidential War Power*, 262.

⁴⁴ *Ibid.*

⁴⁵ Solis, *Law of Armed Conflict*, 163-5.

set the agenda, in the commander-in-chief power, in its potential control over regulations and policy implementation, and in its veto leverage.”⁴⁶ Viewing Congress as “sluggish” and “fragmented,” there exists “an inherent ability of the president to take unilateral action in the absence of legislative authority.”⁴⁷ The president, empowered by Congress through the AUMF, has centralized the authority to determine his own targeting practices and strike locations independent of oversight from Congress or the judiciary. Part of this is pragmatic—after all, the executive cannot simply release information on where the US will strike next, or else many potential targets will get away. Nonetheless, the ability to launch drone strikes outside active battlefields has troublesome implications for Congress’s power to declare war: the president can launch a strike against a terrorist target in a state US forces are not deployed to, and such use of force could enrage the host state’s government if executed outside its consent. Further, the power to determine who is targeted highlights the president’s power over regulations. As demonstrated in President Trump’s recent maneuver to revoke the civilian casualty reporting requirement, the ability to set drone strike regulations with no congressional input can quickly become concerning. While it is appropriate that the president wields a majority of power over drone strikes as commander-in-chief, the line ought to be drawn where he refuses to release drone strike data until years after the fact.

Similarly, the assertion of the state secrets privilege to avoid releasing legal justifications in court falls in line with the imperial president’s tendency to keep information to himself. Rudalevige points out that “Presidents since Watergate have resisted probes for information and have asserted ‘executive privilege’ over a wide range of records.”⁴⁸ During the *al-Awlaki* proceedings, the government successfully withheld legal justifications from the court by asserting the *Reynolds* state secrets privilege, identifying the classified nature of military operations, intelligence, and targeting criteria as reasons the case was nonjusticiable.⁴⁹ Because Congress cannot oversee what they do not know, keeping targeting frameworks hidden through the state secrets privilege is one way presidents can centralize more power in the Oval Office. Although most drone strike data and policy will come to light eventually, it will not be until

⁴⁶ Andrew Rudalevige, *The New Imperial Presidency: Renewing Presidential Power After Watergate* (Ann Arbor: University of Michigan Press, 2006), 8.

⁴⁷ *Ibid* 9, 13.

⁴⁸ *Ibid*, 9.

⁴⁹ Fisher, *Presidential War Power*, 263.

years later when the damage is already done. Furthermore, while there are ways for courts to view classified documents “in camera” while redacting information that may not be disclosed, courts are cautious to violate the *Reynolds* privilege for fear of disrupting US national security.⁵⁰ As President Trump continues to develop regulations that reduce oversight, his power to impact war and foreign policy through drone strikes will remain unrestrained.

Framework for Future Presidential Drone Warfare

Given the inherent secrecy of the drone program, charting a path forward that enhances transparency for presidential policy is difficult, but not impossible. Although solutions could be provided to force the executive to turn over more classified information in the courts, governmental privileges, like *Reynolds*, are likely to remain a substantial barrier. Rather than seeking to make change through the courts, however, it is better to reevaluate presidential drone policies from the source: the targeting frameworks themselves. The reason the public desires oversight is because of concern that drone strikes are being used unlawfully—killing too many civilians, occurring in too many states, or striking US citizens without due process of law. Therefore, a law of armed conflict framework that specifies the appropriate variables to be considered in a strike reduces the risk that the president or a subordinate commander will authorize a strike that is unlawful or politically disastrous. Further, it ensures that presidential lawyers are not incorrectly blurring the distinction between *jus ad bellum* and *jus in bello* laws, upholding a strong legal justification for strikes. For *jus ad bellum*, the primary consideration is the locality of the strike, while the most essential *jus in bello* considerations relate to distinction and proportionality. Each variable is assessed on a scale from “low legal risk” to “high legal risk,” with a middle ground where situational factors must be considered.

“Locality” describes the location of a strike, including whether the strike will occur in an “area of active hostilities” and if the host state has consented to a strike. On the low end of legal risk is a targeted killing within an area of active hostilities with consent of a host state. One example is Afghanistan, which has been an active battlefield for US forces since 2001, and the government has officially requested US air support to combat terrorism.⁵¹ In the middle lies

⁵⁰ Ibid.

⁵¹ Purkiss & Serle, “Obama’s Covert Drone War in Numbers.”

states like Yemen—US conventional forces are not deployed on the ground, but Yemen’s inability to fight terrorism in its ungoverned space means they consent to US drone strikes.⁵² Legally, the most dangerous locality is a state outside an area of active hostilities where the state has not consented, but their “unwillingness” gives the US the ability to strike within the state’s borders to stop an imminent terror threat. The best example is Pakistan, who has not given valid consent, but has done so “apparently forthcoming in secret” based on leaked documents from 2007 to 2011.⁵³ Lack of consent is dangerous, because it is possible a state could consider a drone strike on its territory to be an armed attack by the US, thereby initiating armed conflict.

If the strike occurs in legally tenable territory, the next analysis relates to the distinction and proportionality of a specific strike given the hover capability of the drone. In the law of armed conflict, distinction means that states must always “distinguish between the civilian population and combatants,” while proportionality prohibits attacks “expected to cause incidental loss of civilian life...which would be excessive in relation to the concrete and direct military advantage to be gained.”⁵⁴ Because drones have the capability to hover over a suspected target for an extended period of time, their ability to strike in the ideal “window of opportunity” means strikes must be held to a higher standard under the law of armed conflict.⁵⁵ Thus, low legal risk exists when the target’s identity is certain and there are no civilian casualties, while a “signature strike” against an individual, whose pattern of life suggests terrorist activity, poses a high legal risk of targeting a civilian. In the middle would be a high-level terrorist target surrounded by civilians. While collateral damage is almost certain from the strike, the military value of the target must be weighed against the civilian loss of life.

Drone warfare has proven itself to be a weapon of choice in presidential prosecution of the Global War on Terror, especially outside areas of active hostilities. As one of the few ways the Commander-in-Chief can influence the battlefield directly, the classified nature of strikes and broad executive power to control regulations and procedures make drone strikes one of his most valuable tools in contemporary conflicts. Bush’s presidency introduced drone strikes in large scale, and he seized expansive power through the 2001 AUMF to launch strikes with

⁵² Max Byrne, “Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for US drone strikes in Pakistan, Somalia, and Yemen,” *Journal on the Use of Force and International Law* 3 (1) (February 29, 2016).

⁵³ *Ibid.*

⁵⁴ International Committee of the Red Cross, “Additional Protocol I,” *Geneva Conventions*, Article 48, 57.

⁵⁵ Brennan, “The Efficacy and Ethics of U.S. Counterterrorism Strategy.”

congressional backing. Meanwhile, the *Hamdan* case clearly defined the legal categorization of the conflict, providing the baseline legal justification to fight a nonstate actor in several states. Soon thereafter, President Obama widely expanded the scope of drone warfare, using powers as an imperial president to withhold data in *al-Awlaki*. Even so, political pressure forced his administration to increase transparency on drone data and targeting practices throughout his second term. This was soon reversed by President Trump, who revoked reporting requirements and delegated expansive authority to subordinate agencies, making it easier to authorize strikes. To best mitigate troublesome decision-making in the executive, there must be a return to basic law of armed conflict principles used in determining the legality of strikes. Only time will tell whether the US can continue to use drone warfare in an appropriate and legal manner, but the executive's will to provide transparency to the public will be the ultimate determinant of success.

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DEALER-IN-CHIEF: AN ANALYSIS OF PRESIDENTIAL ARMS EXPORT POLICY TO THE MIDDLE EAST/NORTH AFRICA FROM 1981-2018

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I will focus my paper on the role of Congress and the presidency in arms export policy toward the Middle East/North Africa (MENA) region from the Gulf War in 1990 to the present day. The MENA region receives the most US security assistance of any other; kinetic conflict, development objectives, and economic motivations have contributed to sustained American involvement in the region. This paper will serve a dual purpose, presenting both a historical analysis of the intersection of Capitol Hill and the White House with a significant aspect of foreign and defense policy, as well as testable hypotheses to explore trends over time. In this research paper, I set out to analyze how arms transfer policy to the Middle East/North Africa region has changed over presidential administrations from Reagan to Trump. I will quantitatively analyze published data on weapons exports to the region, explore both continuity and change in American foreign policy, and highlight trends in the interaction between the executive and legislative branches on this issue.

INTRODUCTION

In May 2017, President Trump took his first foreign trip to Saudi Arabia, defying precedent and becoming the first president in the history of the United States to travel to the Middle East for his first international visit.¹ Why? To cement a security relationship with a proposed \$110 billion arms sale.² The sale, however, was *not* without recent precedent—despite significant differences in foreign policy toward the Middle East, \$115 billion in arms sales to Saudi Arabia took place during President Obama's administration, as well.³

The Constitution clearly establishes the U.S. president's role as commander-in-chief, but the Framers could not have predicted the evolution of military technology enough to establish guidance on the interaction between Congress and the president concerning international arms

¹ Eliza Mackintosh, "How Trump's first foreign trip compares with past presidents," *CNN*, May 20, 2017, <https://www.cnn.com/2017/05/19/world/donald-trump-first-foreign-presidential-trips/index.html>.

² Javier David, "US-Saudi Arabia seal weapons deal worth nearly \$110 billion immediately, \$350 billion over 10 years," *CNBC*, May 20, 2017, <https://www.cnbc.com/2017/05/20/us-saudi-arabia-seal-weapons-deal-worth-nearly-110-billion-as-trump-begins-visit.html>.

³ Mark Landler, Eric Schmitt and Matt Apuzzo, "\$110 Billion Weapons Sale to Saudis Has Jared Kushner's Personal Touch," *New York Times*, May 18, 2017, <https://www.nytimes.com/2017/05/18/world/middleeast/jared-kushner-saudi-arabia-arms-deal-lockheed.html>.

transfers. Instead, as defense technology developed, so too did American policy on arms transfers to other countries as a form of military aid, strategic deterrence, and development. An often under-analyzed aspect of American foreign policy, arms export policy—particularly toward the Middle East/North Africa (MENA)—shapes U.S. engagement with the region, contributes to manifestations of interstate rivalries (whether intentionally or unintentionally), and even spurs animosity between Congress and the executive branch.

Arms transfers are the purview of the executive branch, but Congress plays an important role in the review and approval process of large sales.⁴ Indeed, in recent years, several members of Congress and the president have clashed over arms export policy to the MENA region as the effects of these sales appear to manifest in the Saudi/UAE coalition involvement in the humanitarian crisis in Yemen. Some of the few instances of bipartisanship in the present administration include the House and Senate's repeated efforts to halt military aid to certain Gulf nations, including Saudi Arabia, over irresponsible weapons usage in the Yemeni proxy war.⁵ These bipartisan rebukes have, however, been consistently vetoed. If American arms export policy provides such fodder for presidential-congressional clashes, it surely provides just as much for research and analysis of trends over time.

In this research paper, I set out to analyze how arms transfer policy to the Middle East/North Africa region has changed over presidential administrations from Reagan to Trump. I will quantitatively analyze published data on weapons exports to the region, explore both continuity and change in American foreign policy, and highlight trends in the interaction between the executive and legislative branches on this issue.

LITERATURE REVIEW

The need for Congress to understand its role in arms export policy necessitates a wealth of reporting on the trends of American policy in this realm, much of it produced by the Congressional Research Service. While few of these sources specifically differentiate between presidential administrations, much of the information is useful for understanding the strategic

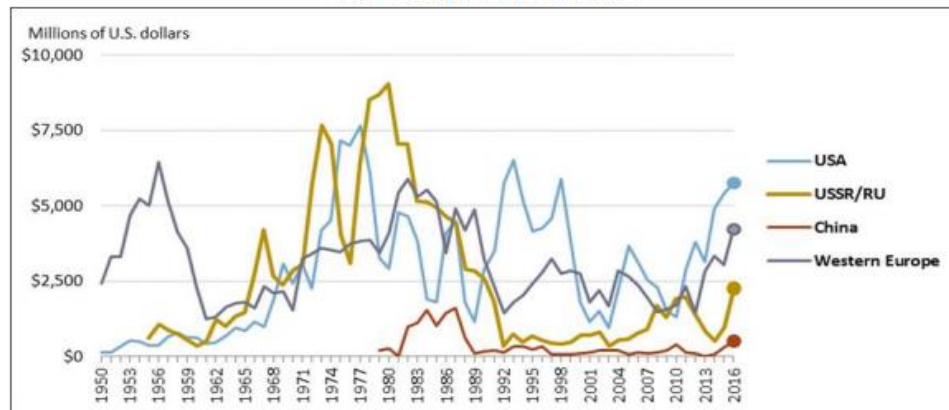
⁴ "Congress' Role: Reviewing Individual Arms Sales," <https://fas.org/asmp/library/handbook/Congressrole.html>.

⁵ Catie Edmondson, "Senate Votes to Block Trump's Arms Sales to Gulf Nations in Bipartisan Rebuke," *New York Times*, June 20, 2019, <https://www.nytimes.com/2019/06/20/us/politics/saudi-arms-sales.html>.

objectives of arms export policy and, more generally, the impressive magnitude of sales to the region.

One of the most useful publications for understanding the scope of arms export policy to the region is Clayton Thomas' 2017 report, "Arms Sales in the Middle East: Trends and Analytical Perspectives for U.S. Policy," produced for the Congressional Research Service. In it, Thomas highlights recent arms transfers between the United States and seven specific case study governments: Israel, Egypt, Saudi Arabia, the UAE, Iraq, Turkey, and Qatar.⁶ Thomas succeeds in portraying the critical importance of arms sales to broader U.S. foreign policy goals, including the establishment of security partnerships, strategic deterrence of a regional adversary (for instance, arming Saudi Arabia to counter Iran), and development of defense infrastructure in a partner nation.⁷ The main value of Thomas' report is his statistical comparison between arms sales from the United States and those from other major exporters. The figure below, which draws on data published by the Stockholm International Peace Research Institute, demonstrates American superiority in the arms export arena from 1950 to 2016.

**Figure 1. Arms Deliveries to the Middle East:
Value, by Supplier, 1950-2016**
Figures in millions of U.S. dollars



Source: Stockholm International Peace Research Institute (SIPRI), importer/exporter total trend-indicator value (TIV) tables. Figure created by CRS.

Notes: Total exports by supplier to all Middle Eastern states.

In 2008, William Newmann wrote a piece for *Presidential Studies Quarterly* comparing the approaches of three different presidential administrations to arms control processes. Though

⁶ Clayton Thomas, "Arms Sales in the Middle East: Trends and Analytical Perspectives for US Policy," *Congressional Research Service*, October 11, 2017, <https://fas.org/sgp/crs/mideast/R44984.pdf>.

⁷ *Ibid.*

Newmann's "Causes of Change in National Security Processes: Carter, Reagan, and Bush Decision Making on Arms Control" does not specifically focus on the Middle East/North Africa region, it provides a useful framework for studying change over time with respect to presidential administrations and arms transfers. The author's main point is that "adjustments in policy are the impetus for adjustments in process," showing in three specific cases—Carter's Strategic Arms Limitations Talks, Reagan's arms reduction proposal, and Bush's Strategic Arms Reduction Talks—how each president's political goals shaped the arms export policies of their administration.⁸

True to its name, the journal *Arms Control Today* is an authority on arms control negotiations and agreements around the world. Though published by the Washington, D.C.-based Arms Control Association, this journal is a valuable source of information on the global arms transfer trade, exploring ramifications of American policy as well as those of other major exporters and importers. In Ethan Kessler and Jeff Abramson's coverage of the United States' and United Kingdom's highly contentious arms sales to Saudi Arabia during the peak of the Yemeni Civil War, the authors highlight the interaction between the lawmaking branches and the executive ones that are responsible for policymaking in this realm. Kessler and Abramson's piece, "Saudi Arms Sales Hit Hurdles in U.S., U.K." is more than a news report of legal challenges to the government. By including the historical context of the "emergency authority" invoked by the United States Secretary of State to complete the sales, and by analyzing the opposition of Senate Foreign Relations Committee members—the most vocal of whom include Senator Bob Menendez and Senator Eliot Engel—Kessler and Abramson clearly lay out one of the most significant conflicts between the executive and Congress in the current administration.⁹

One of the key perspectives in the conflict studied by Kessler and Abramson is that highlighted by Bruce Riedel, Senior Fellow at the Center for Middle East Policy and Director of The Intelligence Project. In his piece, "After Khashoggi, US arms sales to the Saudis are essential leverage," published by the Brookings Institute, Riedel argues that the importance of American arms exports to Saudi Arabia provides key advantages when contemplating how to

⁸ William Newmann, "Causes of Change in National Security Processes: Carter, Reagan, and Bush Decision Making on Arms Control," *Presidential Studies Quarterly*, July 7, 2008, <https://doi.org/10.1111/j.0360-4918.2001.00157.x>.

⁹ Ethan Kessler and Jeff Abramson, "Saudi Arms Sales Hit Hurdles in U.S., UK," *Arms Control Today*, July-Aug. 2019, p. 31+, *Gale General OneFile*, https://link.gale.com/apps/doc/A596060616/GPS?u=acd_galeaccess&sid=GPS&xid=eb29ece1, accessed 29 Nov. 2019.

react to human rights concerns such as the murder of journalist Jamal Khashoggi.¹⁰ In fact, Riedel also questions the validity of media statistics on arms transfers, urging his readers not to simply look at the value of initiated arms deals, but those that have been *completed*.

HYPOTHESES

In this paper, I will analyze several hypotheses to explore the role of arms export policy in presidential agendas from the Reagan to the Trump administrations. The first analyzes arms transfers through the lens of political party affiliation. I hypothesize that Republican administrations initiate and complete more arms sales to Middle East allies as opposed to Democratic administrations.

I would also like to explore whether the economies of arms importers from the US play a role in American arms export policy. I hypothesize that both Republican and Democratic administrations authorize more arms exports to oil-producing countries in the Middle East than to non-oil-producing countries.

Finally, I hope to gain insight on the interaction between Congress, which requires thirty-day notification of “government-to-government foreign military sale of major defense equipment valued at \$14 million or more [and] defense articles or services valued at \$50 million or more” for non-NATO allies (fifteen calendar days for NATO member states).¹¹ Though Congress “is free to pass legislation to block or modify an arms sale at any time up to the point of delivery of the items involved,” a president can easily veto such legislation—the override of which is difficult to achieve.¹² With regards to legislative-executive interaction, I hypothesize that congressional rebukes of arms sales to certain MENA countries only occur in divided governments (when the House or Senate are of the opposite party as the president).

¹⁰ Bruce Riedel, “After Khashoggi, US arms sales to the Saudis are essential leverage,” *Brookings Institute*, October 10, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/10/10/after-khashoggi-us-arms-sales-to-the-saudis-are-essential-leverage/>.

¹¹ “Arms Sales: Congressional Review Process,” *Congressional Research Service*, August 14, 2019, <https://fas.org/sgp/crs/weapons/RL31675.pdf>.

¹² *Ibid.*

METHODOLOGY

To evaluate my hypotheses, I will rely most heavily on the publicly available databases generated by the Stockholm International Peace Research Institute (SIPRI), which “[contain] information on all transfers of major conventional weapons from 1950 to the most recent full calendar year.”¹³ The flexibility of the Institute’s importer-exporter table generator means that one can input desired parameters to analyze specific relationships between MENA partner countries and the United States. By specifying the period from 1981 to 2018 and the exporter as the United States, I am able to generate data on all the countries to which the United States exported weapons during this time. The data is displayed in terms of Trend Indicator Values, or TIVs expressed in millions, which are based on an algorithm intended to show the magnitude of arms sales to a particular recipient.¹⁴ I will then analyze change or continuity over administrations by paying attention to the year the data was collected.

SIPRI’s databases are unparalleled resources in the field of arms export policy, but one significant limitation of research in this field is the classified nature of many of the specific line items in an arms sale. Though arms exports are a responsibility of the executive branch, the State Department’s Office of Regional Security and Arms Transfers carries out administration policy according to the Arms Export Control Act and the Conventional Arms Transfers Policy. Much of the data on specific arms sales is classified “secret” for national security reasons, and reporting from sources like the Congressional Research Service “only counts major ‘conventional weapons’ and not ballistic missiles or the intelligence, communications, and battle management systems that are becoming a critical part of modern warfare.”¹⁵ Despite lacking certain aspects of the information due to its sensitivity, I will still be able to extensively analyze the major patterns relevant to our study of the presidency and its relationship to arms export policy.

Another limitation is the fact that we are not analyzing arms exports to the region in a vacuum—more than the aspects explored in our hypothesis, to include party affiliation and MENA country economy, the status of geopolitical conflicts and war determines the extent of

¹³ “SIPRI Arms Transfers Database,” Stockholm International Peace Research Institute, accessed November 29, 2019, <https://www.sipri.org/databases/armstransfers>.

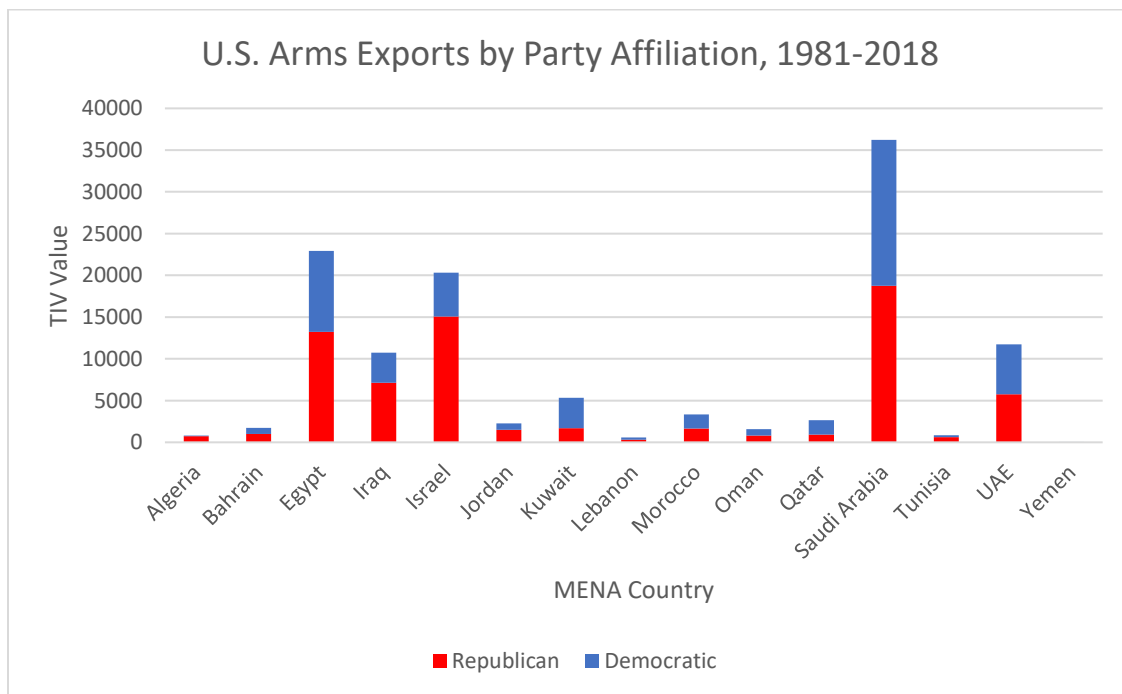
¹⁴ Ibid.

¹⁵ Anthony Cordesman, “The Changing Patterns of Arms Imports in the Middle East and North Africa,” *Center for Strategic and International Studies*, February 5, 2016, <https://www.csis.org/analysis/changing-patterns-arms-imports-middle-east-and-north-africa>.

arms transfers during a particular administration. Therefore, it is important to be prepared to find little to no association between such parameters as party or economy and arms exports, given the turbulent nature of conflict in the Middle East/North Africa region.

ANALYSIS OF FINDINGS

The first hypothesis I will be testing involves whether or not Republican administrations initiate more arms transfers to the MENA region than Democratic ones. For the purposes of my analysis of SIPRI's generated database, I am considering the MENA region to be those countries bounded by Morocco to the west and Iraq to the east. The dataset used displays export data from the Reagan administration in 1981 to the first two years of the Trump administration. After grouping findings by country, administration, and then party, I was able to generate this graphic to compare the extent of arms transfers to the MENA region by party administration.



It is important to note that over the period from 1981-2018 (the last year the data was available), the country experienced twenty-two collective years under Republican administrations and sixteen under Democratic ones. Thus, one should expect generally higher numbers of arms exports initiated by Republican administrations collectively. The data shows, however, that there is not a very strong correlation between party preference and arms export

(TIV) values. A few noteworthy statistics stand out, however. The TIV value for Trump administration sales to Saudi Arabia, at 6599, only accounts for the first two years of President Trump's term and is already nearly as high as the total sales (6871) during both of President Obama's terms. Despite six more years of Republican administration during the test period, however, the TIV values between Republican and Democratic sales to Saudi Arabia are approximately equal (18,738 and 17,508, respectively). Finally, the Obama administration ushered in a sharp increase in arms exports to Qatar, presumably due to regional tensions between Qatar and its neighbors during this period. Ultimately, despite resulting in some interesting observations about the nature of arms transfers, I do not feel confident enough in the data to say that the evidence supports my initial hypothesis that more arms transfers occur during Republican as opposed to Democratic administrations.

My next hypothesis theorized that both Republican and Democratic administrations authorize more arms exports to oil-producing countries in the Middle East than to non-oil-producing countries. To study this, the graphic used to evaluate the first hypothesis still proves useful, as we can look at the TIV totals, regardless of party affiliation, for oil- and non-oil-producing countries. After looking at the top oil producers in the Middle East, Saudi Arabia, Iran, Iraq, the United Arab Emirates, and Kuwait rank in the top five places respectively.¹⁶ According to SIPRI data, the top five arms recipients in the region from 1981-2018 are Saudi Arabia, Egypt, Israel, the UAE, and Iraq. While three of the five countries overlap, this is hardly large enough of a margin to consider my hypothesis a general rule. American security partnerships with Egypt and Israel satisfy different foreign policy objectives than oil security; while oil may motivate many of our sales, there is not enough evidence to assert that they motivate *most* of them.

Finally, I hypothesized that congressional rebukes of arms sales, or Arms Export Control Act (AECA) Resolutions of Disapproval, to certain MENA countries only occur in divided governments (when the House or Senate are of the opposite party as the president). According to a Congressional Research Service report from August 2019, there have been five significant instances of AECA Resolutions of Disapproval since 1981.¹⁷ Four of the five of these AECA

¹⁶ "Oil Production in the Middle East in 2017, by Country," *Statista*, April 2, 2019, <https://www.statista.com/statistics/218302/oil-production-in-key-middle-eastern-countries/>.

¹⁷ "Arms Sales: Congressional Review Process," *Congressional Research Service*, August 14, 2019, <https://fas.org/sgp/crs/weapons/RL31675.pdf>.

Resolutions of Disapproval have concerned sales to Saudi Arabia, to include two sales during President Reagan's administration (in 1981 and 1986), and three sales during President Trump's administration (in March 2016, 2017, and 2019). Indeed, in 1981 and 1986, Democrats controlled the House and Republicans ran the Senate.¹⁸ However, in 2016 and 2017, Republicans controlled both houses of Congress as well as the presidency until a divided government issued a bipartisan congressional rebuke of President Trump's proposed sales to Saudi Arabia in the summer of 2019.¹⁹ It seems, therefore, that congressional resolutions of disapproval have less to do with party affiliation than the actual politics of the decision at that particular moment in time—which should actually be encouraging. Congressional frustration with the president is rarely, but should (in theory) be, bipartisan, particularly when discussing some of the most significant foreign and defense policy maneuvers.

CONCLUSIONS

Arms transfers constitute some of the most contentious yet least understood aspects of foreign policy. Though the president is responsible for dictating arms export policy, he delegates this responsibility to the State Department, and Congress plays an important role in the congressional review process for most significant sales. Two detailed pieces of legislation—the Arms Export Control Act of 1976 and the Conventional Arms Transfers (CAT) Policy—dictate American arms export policy, which encompasses government-to-government foreign military sales (FMS) and industry-to-government direct commercial sales (DCS). Despite this, there are still notable holes in arms transfer legislation, like the fact that in all eighty-seven pages of the Arms Export Control Act of 1976, the phrase “human rights” does not appear once. Despite containing provisions such as the one detailed in Section 3, Paragraph (f), which prohibits sales to countries that have been determined to breach provisions of the Nuclear Proliferation Prevention Act of 1994, the AECA fails to address arms sales to countries that systematically violate human rights.²⁰

¹⁸ “Congress Profiles,” History, Art, & Archives: U.S. House of Representatives, accessed December 8, 2019, <https://history.house.gov/Congressional-Overview/Profiles/114th/>.

¹⁹ Ibid.

²⁰ Arms Export Control Act: [Public Law 90-629], <https://legcounsel.house.gov/Comps/Arms%20Export%20Control%20Act.pdf>, page 9.

It should be striking that over the thirty-seven-year period addressed in this paper, from 1981 to 2018, the largest recipient of American weapons systems has also produced the most controversy (and four out of the five most significant AECA Resolutions of Disapproval). The United States government's relationship with the Kingdom of Saudi Arabia remains one of the most interesting yet sparsely studied subjects in political science circles. As I completed my data collection and analysis for this paper, I found myself wondering why I did not, instead, focus my analysis purely on the U.S.-Saudi relationship.

In reality, so many factors affect arms transfers that it proves difficult to glean valuable conclusions despite a wealth of unclassified data. Admitting insufficient data to support any of my hypotheses was humbling, but valuable. Perhaps with more time and an even greater volume of data, we would be able to more effectively analyze the proposed relationships between arms transfers to the MENA region and American political conditions. The current world order has been irreversibly shaped by US involvement in the Middle East and North Africa, whether through kinetic conflict or diplomatic engagement. U.S. presidential policy toward both our allies and our adversaries in this region, as well as congressional reactions to it, have profound implications across many sectors, from the military to the defense industrial complex. Demystifying the arms export process is one way to understand American foreign policy and, more importantly, hold leaders accountable for human rights both at home and abroad.

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THE POLITICS OF EQUALITY: HARRY TRUMAN AND THE INTERSECTION OF RACE AND FOREIGN AFFAIRS IN THE AMERICAN PRESIDENCY

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Although often seen as independent of each other, the American presidency has frequently served to unite the fields of U.S. foreign policy and domestic race relations. By analyzing the presidency of Harry Truman, this paper examines these links at a critical juncture in both American foreign policy and race. As the Cold War became a focal point of American politics, the United States worked to maintain a reputation as a standard-bearer of democratic institutions. The persistence of segregation in the United States, however, became increasingly at odds with America's international objectives. Through public rhetoric, military policy, and legal advocacy, the Truman administration focused on promoting American civil rights to aid in the fight against communism.

EXECUTIVE POWERS AND THE START OF THE COLD WAR

The overlap between American foreign policy and race relations has often been overlooked. The two fields are mostly seen as independent of each other—the former purely international in its focus, the latter purely domestic. But for much of the 20th century, America's foreign policy directly impacted the country's approach to race relations—and it did so, most prominently, through the personage of the presidency.

Constitutionally enshrined as the leader of American diplomacy, and acting as a proxy on national opinions on race, the presidency provides a unique intersection on the issues of race and international affairs. Throughout history, a president's approach to one has often been intimately impacted by his approach to the other. Here, the administration of Harry Truman provides a perfect microcosm. During a period of crucial flux, when America's global position was expanding as never before, and civil rights issues were entering the forefront of national politics, Truman's Presidency displays the intersection between diplomacy and race with unique prominence.

At the end of World War II, the United States emerged as the leader of a reconfigured system of global politics—one defined by the founding of the United Nations (UN) and by a

language of global equality and opportunity.¹ Bolstered by a revitalized economy, unparalleled military, and successful wartime coalition, the United States wielded unprecedented influence on the post-war international order. Almost immediately, however, the United States began to slide into a new period of conflict and confrontation with the Soviet Union, who provided an ideological and military counterbalance to American global predominance.

Against this backdrop, American civil rights rose to new levels of importance in U.S. foreign policy. Increasingly, American diplomats and strategists began to worry about the ability of Soviet propaganda to undermine the United States' reputation as a beacon of democracy given the continued dominance of Jim Crow laws in the United States.² Writing on February 5, 1946, American diplomat George Kennan telegraphed to the Secretary of State to report the consistent presence of reporting on "racial and political discrimination" in the Soviet news, noting that local newspapers drew on examples of prejudice wherever they could find them (even publicizing racial tensions at local track meets in the South).³ American diplomats could say little in response.⁴ Such concerns were only increasing on the home-front as well, as American civil rights groups began capitalizing on America's international posturing to push racial discrimination front and center in American politics. Using the UN as a forum for such appeals, groups like the Civil Rights Congress openly accused the United States of committing "genocide" against its black citizens to global ambassadors.⁵ Meanwhile, the NAACP made frequent note of America's failure to "practice what it preaches" in its new international commitments to equality.⁶ Such complaints were quickly picked up on by Soviet officials and echoed as evidence of American hypocrisy in promoting democratic governance.⁷

It should, thus, be unsurprising that civil rights reform was central to the Truman administration's foreign policy in the aftermath of World War II. It had become increasingly evident that America's global posturing had a critical weakness so long as its domestic civil

¹ Thomas Borstelmann, *The Cold War and the Color Line: American Race Relations in the Global Arena* (Cambridge: Harvard University Press, 2003), 41.

² *Ibid.*, 75.

³ George Kennan "February 5, 1946 Telegram to the Secretary of State," in *Documentary History of the Truman Presidency - Volume 7: The Ideological Foundation of the Cold War, the "Long Telegram," the Clifford Report, and NSC 68*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 62.

⁴ Borstelmann, *The Cold War and the Color Line*, 75.

⁵ "U.S. Accused in U.N. of Negro Genocide," *New York Times*, December 18, 1951.

⁶ "Negroes to Bring Cause Before U.N.: Statement Charges that South Offers Greater U.S. Threat than Soviet Activities," *New York Times*, October 12, 1947.

⁷ "Rights of Negroes Cited," *New York Times*, February 3, 1952.

rights record lagged behind its global rhetoric.⁸ As historian Michael Gardner emphasizes, the Truman administration was well aware that a failure to act on civil rights would “rob the United States of its ability to serve as a credible global standard-bearer for democracy in a devastated postwar world.” Thus, for Truman “the volatile domestic and political issue of civil rights reform was inextricably tied to the struggle for democracy and human rights in the new world order.”⁹ The intersections between Truman’s thinking on foreign policy and his promotion of civil rights is evident in almost every aspect of his presidency. In his public rhetoric, his military policy, and in his legal advocacy, Truman constantly framed the promotion of civil rights in the context of the fight against communism.

PRESIDENTIAL RHETORIC

First, and most intuitively, the rhetoric of the Truman administration frequently displayed the influence of foreign policy on the president’s approach to race. Truman’s Presidency saw a massive rise in public declarations of the importance of civil rights, with the administration vocalizing the need for equality in a way unprecedented since the time of Lincoln.¹⁰ One of the earliest and most notable instances of such declarations came early in Truman’s first term in office, when he stood on the steps of the Lincoln Memorial in June of 1947 and delivered the first address to the NAACP ever given by an American president.¹¹ With over 10,000 people in attendance, Truman took the stage to announce to the crowd that “recent events in the United States and abroad have made us realize that it is more important today than ever before to ensure that all Americans enjoy [equal] rights.” As he continued:

The support of desperate populations of battle-ravaged countries must be won for the free way of life. We must have them as allies in our continuing struggle for the peaceful solution of the world’s problems. Freedom is not an easy lesson to teach, nor an easy cause to sell, to peoples beset by every kind of privation.... Our case for democracy should be as strong as we can make it. It should rest on practical evidence that we have been able to put our own house in order.¹²

⁸ Borstelmann, *The Cold War and the Color Line*, 76.

⁹ Michael R. Gardner, *Harry Truman and Civil Rights: Moral Courage and Political Risks* (Carbondale: Southern Illinois University Press, 2002), 86, 95-6.

¹⁰ David McCullough, *Truman* (New York: Simon & Schuster, 1992), 569-70.

¹¹ Alonzo L. Hamby, *Man of the People: A Life of Harry S. Truman* (Oxford: Oxford University Press, 1995), 433.

¹² Harry Truman, “Address before the National Association for the Advancement of Colored People,” (speech, Washington D.C., June 29, 1947), *American Rhetoric*, <https://www.americanrhetoric.com/speeches/harrystrumannaacp.htm>.

As Truman spoke, this pragmatic statement of the need for civil rights reform was being broadcast globally. He was speaking, not just to the NAACP and the citizens in attendance, but also to a global audience increasingly doubtful of America's democratic commitments.¹³ When Truman returned to his seat after speaking, he remarked to the president of the NAACP, Walter White, that he had meant "every word of it."¹⁴ His future correspondence with the NAACP testify to the sincerity of that conviction. Writing to leaders in the NAACP over the following years, Truman continued to tout the importance of racial equality in the fight against communism abroad. As he wrote to White, "this country and its people have one great goal in the conduct of our national affairs... the development of a moral order based on freedom and equality. That is the only way in which lasting peace can be brought to the world."¹⁵ Truman's message to the leaders of the early civil rights community was clear. America had an interest in ensuring the equality of its citizens. The post-war order depended upon it, and American foreign policy couldn't be allowed to falter based on its domestic shortcomings.¹⁶

Truman would follow up his NAACP speech with his famed civil rights speech to Congress on February 2, 1948. Speaking on his legislative agenda and the new priorities of his administration in civil rights, Truman echoed many of the themes he had evoked on the steps of the Lincoln Memorial. "The position of the United States in the world today makes it especially urgent that we adopt these measures to secure all our people their essential rights." The modern world was "faced with a choice" between "a form of government which harnesses the state in the service of the individual and a form of government which chains the individual to the needs of the state." To be a beacon of freedom abroad, the United States had to embrace reforms at home.

We must protect our civil rights so that by providing all our people with the maximum enjoyment of personal freedom and personal opportunity we shall be a stronger nation.... If we wish to inspire the peoples of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining

¹³ Hamby, *Man of the People*, 433.

¹⁴ See: McCullough, *Truman*, 569-70.

¹⁵ Harry Truman, "Letter from Harry Truman to Walter White, June 19, 1948," in *Documentary History of the Truman Presidency - Volume 12: The Truman Administration's Civil Rights Program - President Truman's Attempts to Put the Principles of Racial Justice into Law, 1949-1950*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 104.

¹⁶ Harry Truman, "Letter to Roy Wilkins and the NAACP, June 29, 1949," in *Documentary History of the Truman Presidency - Volume 12: The Truman Administration's Civil Rights Program - President Truman's Attempts to Put the Principles of Racial Justice into Law, 1949-1950*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 385.

imperfections in our practice of democracy. We know the way. We need only the will.¹⁷

Truman made the thesis of his speech overt in one of its earlier drafts—writing in his notes: “our civil rights record has grave international implications.”¹⁸ It was a message Truman would repeat in his campaign speeches throughout the country, his appeals to Congress, and his private notes.¹⁹ The global and the racial were inextricably linked.

This rhetoric was far from limited to Truman’s personal statements, however, and also pervaded many of the documents produced by the Truman administration. Most notably, in December of 1946, Truman issued Executive Order 9808. Noting that “the preservation of civil rights guaranteed by the Constitution is essential to domestic tranquility [and] national security,” the order created the Presidential Commission on Civil Rights, with a mandate to study the condition of race relations throughout the country.²⁰ The Commission’s final report, *To Secure These Rights*, outlined the path forward on civil rights reforms.²¹ As the commission noted, America’s “position in the postwar world is so vital to the future” that its “smallest actions have far-reaching effects.” The country’s foreign policy had been “designed to make the United States an enormous, positive influence for peace and progress throughout the world... But our domestic civil rights shortcomings are a serious obstacle.” Indeed, the commission went on to note with intense detail the policy implications of America’s racial failings. Such shortcomings were offending “major portions of the world’s population,” they were filling the “world’s press and radio,” and “playing into the hands of Communist propagandists.” Securing better protections

¹⁷ Harry Truman, “Civil Rights Message to Congress of February 2, 1948,” in *Documentary History of the Truman Presidency - Volume 11: The Truman Administration’s Civil Rights Program: The Report of the Committee on Civil Rights and President Truman’s Message to Congress of February 2, 1948*, ed. Dennis Merrill (Washington D.C., University Publications of America, 1996), 681.

¹⁸ Harry Truman, “Document 129: Private Note on Draft of February 2nd Address to Congress,” in *Documentary History of the Truman Presidency - Volume 11: The Truman Administration’s Civil Rights Program: The Report of the Committee on Civil Rights and President Truman’s Message to Congress of February 2, 1948*, ed. Dennis Merrill (Washington D.C., University Publications of America, 1996), 665.

¹⁹ Harry Truman, “Address in Harlem, New York, October 29, 1948,” in *Harry S. Truman: American Presidents Reference Series*, ed. Robert H. Ferrell (Washington: Congressional Quarterly Press, 2003): 94; *Public Papers of the Presidents of the United States: Harry S. Truman, 1949* (Washington, D.C.: U.S. Government Printing Office, 1964), 1-2, 4-7; Kenneth M. Birkhead, “Memorandum on The Negro Vote and the President’s June 3rd Trip, May 21, 1948,” in *Documentary History of the Truman Presidency - Volume 12: The Truman Administration’s Civil Rights Program - President Truman’s Attempts to Put the Principles of Racial Justice into Law, 1949-1950*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 98.

²⁰ Exec. Order No. 9808, December 5, 1946.

²¹ *To Secure These Rights: The Report of the President’s Committee on Civil Rights* (Washington: United States Government Printing Office, 1947).

against racial discrimination, the Commission reasoned, would more effectively appeal to “the good opinion of the people of the world.”²² Truman made his approval of the Commission’s report and its findings immediate and public.²³ As he noted, the report captured an undeniable reality: “every time the rights we claim for all are denied any one of us we provide grist for the mills of the totalitarians. We cannot be strong nor inspire the free world to defend itself against dictatorship unless we are true to our American principles.”²⁴ As Truman would later affirm in his memoirs, “we could not endorse a color line at home and still expect to influence the immense masses that make up the Asian and African peoples. It was necessary to practice what we preached.”²⁵

DESEGREGATING THE MILITARY

The impact of the Cold War on Truman’s approach to race, however, was far from limited to rhetoric. Indeed, Truman oversaw a wide variety of policy initiatives that sought to put his proposed civil rights reforms into practice. The most famous of these was his effort, under Executive Order 9881, to desegregate the nation’s military.²⁶ Such reforms had been called for in *To Secure These Rights* and were aimed at aligning the military with “the highest standards of democracy.”²⁷ Yet, again, the international implications of the current state of American civil rights were a primary consideration in the policy change.

America’s military was the most likely forum of interaction between the world and the United States—serving as a physical representation of the nation’s values and goals in its outposts throughout the globe. Resultingly, its continued segregation after World War II served as a global embarrassment.²⁸ Indeed, quickly after issuing Executive Order 9881, the President’s

²² *To Secure These Rights*, 146-8.

²³ Harry Truman, “Statement by the President, May 22, 1950,” in *Documentary History of the Truman Presidency - Volume 31: The Truman Administration’s Civil Rights Program, the Desegregation of the Armed Forces*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 768.

²⁴ Harry Truman, “Document 150: Papers of Harry S. Truman - Memoirs File on ‘To Secure These Rights,’” in *Documentary History of the Truman Presidency - Volume 11: The Truman Administration’s Civil Rights Program: The Report of the Committee on Civil Rights and President Truman’s Message to Congress of February 2, 1948*, ed. Dennis Merrill (Washington D.C., University Publications of America, 1996), 761-2.

²⁵ Harry Truman, *Memoirs by Harry S. Truman: Volume II - Years of Trial and Hope* (New York: Doubleday & Company, Inc., 1956), 183.

²⁶ Exec. Order. No. 9881, July 26, 1948.

²⁷ *To Secure These Rights*, 162; Exec. Order. No. 9881.

²⁸ Jacob J Javits, “Memorandum by the President’s Committee on the Equality of Treatment and Opportunity in the Armed Forces, January 12, 1950,” in *Documentary History of the Truman Presidency - Volume 31: The Truman*

Committee on the Equal Treatment and Opportunity in the Armed Forces released a memorandum outlining the intended interpretation of the order: “At a time when the United States is exhibiting itself to the world, its democracy is a farce as long as it limits any man because of his color or religion.” The order’s goal was simple and clear—to aid in the nation’s ability to retain its “place of leadership in the world” by removing one of the blots on its reputation.²⁹

But concerns with a segregated military went beyond just image. As World War II came to a close, it became increasingly clear that a racially divided military was an inefficient one. As historians Richard Yon and Tom Lansford have described, the growing challenges of the Cold War forced Truman to implement “dramatic reorganizations of the nation’s defense and military structures.” Chief among these reforms was the push for military integration.³⁰ As Truman saw it, integration was a method of increased efficiency. Segregation resulted in redundancy and repetition.³¹ Indeed, these considerations were outlined in the original recommendations of the *To Secure These Rights* report. As the Commission wrote, “by preventing entire groups from making their maximum contribution to the national defense, we weaken our defense... [and] impose heavier burdens on the remainder of the population.”³² Such findings built on the earlier recommendations by the War Department, in its study, *The Utilization of Negro Manpower in the Postwar Army Policy*. Published in April of 1946, the report noted that a major lesson of WWII had been the need for efficiently mobilizing the nation’s manpower. Such utilization was impossible when 10% of the potential fighting force was restrained by racial prejudice.³³ As such, the War Department declared its goal to be the utilization of “Negro manpower in the

Administration’s Civil Rights Program, the Desegregation of the Armed Forces, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 665.

²⁹ “Memorandum by the President’s Committee on the Equal Treatment and Opportunity in the Armed Forces Concerning the Interpretation of the President’s Order Establishing the President’s Committee on Equality of Treatment and Opportunity in the Armed Services,” in *Documentary History of the Truman Presidency - Volume 31: The Truman Administration’s Civil Rights Program, the Desegregation of the Armed Forces*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 331-2.

³⁰ Richard M. Yon and Tom Lansford, “Political Pragmatism and Civil Rights Policy,” in *The Civil Rights Legacy of Harry S. Truman*, ed. Raymond H. Geselbracht (Kirksville: Truman State University Press, 2007): 105-8.

³¹ *Ibid.*, 106, 108.

³² *To Secure These Rights*, 162.

³³ “War Department Circular: Utilization of Negro Manpower in the Postwar Army Policy, 27 April 1946,” in *Documentary History of the Truman Presidency - Volume 31: The Truman Administration’s Civil Rights Program, the Desegregation of the Armed Forces*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 56.

postwar Army” at an unprecedented scale.³⁴ Such changes were needed to “increase the efficiency of the armed forces of the nation” and to ensure that the army could “function efficiently and effectively under the stress of modern battle conditions.”³⁵ Truman often affirmed this pragmatic and diplomatic view of desegregation as the key motivation for the policy of military integration.³⁶

This reality was made all the more apparent by the emergence of the Korean War. The initial response of many in the military to the order for desegregation was reluctant at best, and hostile at worst. Many throughout the military establishment did all in its power to slow the process of integration, with the Army in particular maintaining segregation long after its cessation had been ordered.³⁷ As the president’s committee charged with executing integration (referred to as the Fahy Committee) would report, the Army intended to do “as little as possible towards implementing” the policy of desegregation.³⁸ Indeed, at times, it actively defied it. Notably, the Army Chief of Staff declared just the day after Truman issued the order that “the Army is not out to make any social reforms... [and would] put men of different races in different companies.” They would change this policy only when “the nation as a whole change[d] it.”³⁹ Meanwhile, the Secretary of the Army took the initiative of mailing letters to state governors urging them to maintain segregated units in their National Guard based on their state rights.⁴⁰ When polls were conducted of military personnel, 61% of enlisted men said they were “definitely opposed to complete integration.”⁴¹ Some soldiers went so far as to comment that “civil war” would ensue if the government insisted on a policy of integration in their military units.⁴² Even in the tight hierarchy of the military, integration was no easy task.

³⁴ “Utilization of Negro Manpower in the Postwar Army Policy,” 58.

³⁵ *Ibid.*, 60.

³⁶ Harry Truman, “Statement by the President, May 22, 1950,” 768; Truman, *Memoirs by Harry S. Truman*, 182-3.

³⁷ Irving M. Ives, “Letter to Harry Truman, December 5, 1949,” in *Documentary History of the Truman Presidency - Volume 12: The Truman Administration’s Civil Rights Program - President Truman’s Attempts to Put the Principles of Racial Justice into Law, 1949-1950*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 419.

³⁸ See: Donald R. McCoy, *The Presidency of Harry S. Truman* (Lawrence: University Press of Kansas, 1984), 170.

³⁹ See: Robert H. Ferrell, *Harry S. Truman: American Presidents Reference Series* (Washington: Congressional Quarterly Press, 2003), 171.

⁴⁰ Clark Clifford, “Memorandum for the President, April 9, 1948,” in *Documentary History of the Truman Presidency - Volume 31: The Truman Administration’s Civil Rights Program, the Desegregation of the Armed Forces*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 171.

⁴¹ “Report No. 101: Morale Attitudes of Enlisted Men, May-June 1949,” in *Documentary History of the Truman Presidency - Volume 31: The Truman Administration’s Civil Rights Program, the Desegregation of the Armed Forces*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 577.

⁴² *Ibid.*, 588.

Yet, much of this resistance would quickly fade with the emergence of the Korean War, as integration transformed from a distant ideal to an immediate imperative. As historian Robert Shogan writes, “it was the literally life-and-death demands of the bloody three-year struggle in Korea that compelled the services... to abandon their traditions and their deep-seated prejudices to assign black fighting men without regard to their race and solely on the basis of need.”⁴³ Writing from the battle-front, American generals acknowledged the need for desegregation aboard even while still resisting its social implications at home.⁴⁴ Efficiency was slowly trumping prejudice. From start to finish, therefore, the desegregation of the U.S. military was motivated by the necessities of American foreign policy.

LEGAL ADVOCACY

Finally, the intersection of foreign policy and domestic race relations was displayed in the realm of legal advocacy for the Truman administration. While the administration’s public rhetoric could be explained away as mere political posturing, and the desegregation of the military was limited to only one aspect of society, the Truman administration’s advocacy before the Supreme Court uniquely displays Truman’s devotion to civil rights reforms in the name of national security.

Throughout his presidency, Truman dedicated an unusual number of resources to petition the Supreme Court on issues of race. In almost all of the major civil rights cases heard during his administration, the Department of Justice submitted *amicus curiae* briefs supporting the cause of racial equality and desegregation.⁴⁵ As historian Michael Gardner notes, Truman was unabashed in embracing “an aggressive amicus brief strategy to explicitly and compellingly advocate a radical course of conduct for the Court in a wide range of civil rights cases.” It was a strategy that was “unprecedented,” and marked the first time that the executive branch had taken such an

⁴³ Robert Shogan, *Harry Truman and the Struggle for Racial Justice* (Lawrence: University Press of Kansas, 2013), 160.

⁴⁴ “Letter from Lieutenant General A.C. McAuliffe to the American Veterans Committee, 5 October 1951,” in *Documentary History of the Truman Presidency - Volume 31: The Truman Administration’s Civil Rights Program, the Desegregation of the Armed Forces*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 829.

⁴⁵ Borstelmann, *The Cold War and the Color Line*, 57-8.

open stance against such well-established doctrines of legalized racism.⁴⁶ And it was deeply motivated by the country's foreign policy goals.

The first of the major cases in which the Truman administration intervened was the 1947 landmark case of *Shelley v. Kraemer* (1948).⁴⁷ *Shelley* dealt with the issue of housing covenants, addressing the question of whether white housing associations could bar black families from purchasing homes in their neighborhood.⁴⁸ Such agreements were overwhelmingly common when the case was heard by the Court in January of 1948 and were a major staple of the Jim Crow legal system.⁴⁹ The DOJ submitted a brief to the Court which unabashedly denounced the covenants as unconstitutional, and asked the Court to overturn them. But the government's brief went beyond the issues of law and into the topic of policy. Indeed, the brief began by quoting at length from a letter by then-acting Secretary of State, Dean Acheson, who had written in 1946 that:

The existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries.... The gap between the things we stand for in principle and the facts of a particular situation may be too wide to be bridged.... The Department of State, therefore, has good reason to hope for the continued and increased effectiveness of public and private efforts to do away with these discriminations.⁵⁰

This was the staple of the government's argument. Discrimination was a stain on American foreign policy, and it was the Court's duty to remove it where politics could not. It was an argument that they would reiterate throughout the brief—noting the vaulted place the United States had assumed atop the UN since the end of World War II and the need to legitimize the institution by not betraying its principles of equality.⁵¹ The argument evidently held weight, and

⁴⁶ Gardner, *Harry Truman and Civil Rights*, 173; "Document 85: Civil Rights Are Not Standing Still," in *Documentary History of the Truman Presidency - Volume 12: The Truman Administration's Civil Rights Program - President Truman's Attempts to Put the Principles of Racial Justice into Law, 1949-1950*, ed. Dennis Merrill (Washington D.C.: University Publications of America, 1996), 404.

⁴⁷ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁴⁸ Majority Opinion by Chief Justice Fred Vinson, *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁴⁹ Lawrence Friedman, *American Law in the 20th Century* (New Haven: Yale University Press, 2002), 287.

⁵⁰ *Shelley v. Kraemer*, 334 U.S. 1 (1948), Brief for the United States as *Amicus Curiae*, File Date: 12/5/1947 133 pp. Term Year: 1947, *U.S. Supreme Court Records and Briefs, 1832-1978*; Gale, Cengage Learning, Georgetown University Law Center, 29 November 2019, 19. <http://galenet.galegroup.com.proxy.library.georgetown.edu/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW101768854>.

⁵¹ *Ibid.*, 97-101.

the Court voted to overturn the legal enforcement of racial housing covenants in a unanimous decision.⁵²

As the Court began to hear more cases seeking to dismantle segregation, Truman's administration continued to submit arguments to the Court heavily focused on American diplomacy. In the case of *Henderson v. United States* (1950), which unanimously overturned segregation in railroad dining cars, the DOJ lamented that "in foreign relations, racial discrimination, as exemplified by segregation, has been a source of serious embarrassment to this country."⁵³ It furnishes material for hostile propaganda and raises doubts of our sincerity even among friendly nations."⁵⁴ The United States could not stand "before the critical bar of world opinion" if segregation, which contradicted the "high principles" of American diplomacy, was still practiced throughout the country.⁵⁵

That same year, in *McLaurin v. Oklahoma State Regents* (1950), which desegregated the University of Oklahoma's graduate school, the government would echo its arguments from *Henderson*.⁵⁶ Quoting from Truman's civil rights speech to Congress at length, the brief noted the grave consequences that would result from a Court verdict upholding segregation. "The Court is here asked to place the seal of constitutional approval upon an undisguised species of racial discrimination... one would expect the foes of democracy to exploit such an action for their own purposes." Thus, the gap "between what Americans profess and what we practice would be used to support the charges of hypocrisy and the decadence of democratic society."⁵⁷ For all of these cases, the context seemed to matter far less than the consequence: any case related to discrimination had the potential to impact American foreign policy, and Truman wanted to ensure the Court was fully aware of the impact of its decisions.

⁵² *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁵³ *Henderson v. United States*, 339 U.S. 816 (1950).

⁵⁴ *Henderson v. United States*, 339 U.S. 816 (1950), Brief for the United States as *Amicus Curiae*, File Date: 2/17/1949, 45 pp. Term Year: 1949, *U.S. Supreme Court Records and Briefs, 1832-1978*; Gale, Cengage Learning, Georgetown University Law Center, 28 January 2020, 60. <http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW101643906>.

⁵⁵ *Ibid.*, 63.

⁵⁶ *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).

⁵⁷ *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950), Brief for the United States as *Amicus Curiae*, File Date: 3/1/1949, 41 pp, Term Year: 1949, *U.S. Supreme Court Records and Briefs, 1832-1978*; Gale, Cengage Learning, Georgetown University Law Center, 28 January 2020, 11-2. <http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW102770055>.

Perhaps the pinnacle of Truman's legal advocacy efforts was reached when the Court heard *Brown v. Board of Education* (1954), ruling to overturn segregation in American public schools.⁵⁸ Although eventually decided under the Eisenhower administration, the Truman administration submitted a brief for the case in its final weeks in office—with the president himself providing input on the argument.⁵⁹ The brief echoed many of the claims made in *Shelley*, *Henderson*, and *McLaurin*, noting that it was “in the context of the present world struggle between freedom and tyranny that the problem of racial discrimination must be viewed.”⁶⁰ The damage of racism to American foreign relations that had been outlined years earlier had only “become progressively greater” in the 1950s.⁶¹ Little of this was new—indeed, for most of the Court's justices, it likely felt repetitive. But as Professor Mary Dudziak has noted in her book, *Cold War Civil Rights*, the briefs were not meant to introduce original legal arguments. They were instead “a call to arms to enlist the Court in a project it was already engaged in: safeguarding national security in the Cold War.”⁶²

The effect of the Truman administration's briefs was significant. Attorney General Tom Clark noted that the amicus briefs submitted by the government had allowed the DOJ to influence the Court even more than if it had been an actual party to the cases.⁶³ The justices gave him good reason to believe so. Notably, after reading the *Brown* brief, Earl Warren is reported to have written to then-President Dwight Eisenhower, calling the brief's arguments “outstanding.”⁶⁴ In later speeches, he would acknowledge the importance of the Court's role as an aid to American foreign policy, claiming that its defense of civil rights was a greater protection to the nation than “the number of hydrogen bombs we stockpile.”⁶⁵ The journals and personal writings

⁵⁸ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

⁵⁹ Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2011), 90.

⁶⁰ *Brown v. Board of Education*, 347 U.S. 483 (1954), Brief of the United States as *Amicus Curiae*, File Date: 12/2/1952. 35 pp. Term Year: 1953. *U.S. Supreme Court Records and Briefs, 1832-1978*. Gale, Cengage Learning, Georgetown University Law Center, 29 November 2019, 6. <http://galenet.galegroup.com.proxy.library.georgetown.edu/servlet/SCRB?uid=0&srcht=a&ste=14&rcn=DW110062458>.

⁶¹ *Ibid.*, 7-8.

⁶² Dudziak, *Cold War Civil Rights*, 104.

⁶³ See: Gardner, *Harry Truman and Civil Rights*, 173.

⁶⁴ See: Robert F. Burk, *The Eisenhower Administration and Black Civil Rights* (Knoxville, the University of Tennessee Press, 1984), 140.

⁶⁵ “Warren Puts Hope in Ideas, Not Bomb: Justice Discounts Hydrogen Stockpile as Political Test - Dedicates Bar ‘Home,’” *New York Times*, August 20, 1954, 1.

of the justices were littered with similar statements. The logic of the Cold War had clearly had its intended effect.

HISTORICAL PERSPECTIVES AND CONCLUSIONS

Thus, across the spectrum of public rhetoric, military policy, and legal advocacy, the Truman administration serves as an exemplar of the impact of foreign policy on domestic race relations. The contingencies of the Cold War were constantly at play in the administration's efforts for racial equality—whether public or private. And the unique turbulence of the post-war years allowed such influences to be displayed with a clarity often lacking in other administrations.

It is important to put such influences in historical perspective, however. The impact of American foreign policy on domestic race relations has not always been a positive one. While the pressure to maintain a democratic reputation during the Cold War forced the United States to embrace civil rights reforms before they were socially popular, different eras in American diplomacy have resulted in different trends in race relations. Notably, periods of American isolationism and exceptionalism have often been matched by the presidency embracing a more racialized rhetoric. This was most convincingly displayed during the interwar period.

As the United States emerged from World War I, its foreign policymakers overwhelmingly spoke in a language of exceptionalism. Far from simply withdrawing from the global stage wholesale, as the common narrative goes, the United States instead embraced a “privileged detachment” from the World – engaging with global politics, but with an air of distance and distrust. This detachment was rooted in the “triumphant nationalism” that dominated the era.⁶⁶ The Treaty of Versailles was rejected, not because the U.S. wasn't up to the challenge, but because it was feared that such ties to a corrupted global community would only hinder America's undoubted cultural, social, and political advantage.⁶⁷ This view was mirrored on issues of race. From its start, WWI had been billed by Woodrow Wilson as a test of “white supremacy on this planet.”⁶⁸ It was a view he carried over after the war—when he single-handedly

⁶⁶ Adam Tooze, *The Deluge: The Great War and the Remaking of Global Order* (New York: Penguin Books, 2014), 348, 516.

⁶⁷ Michael H. Hunt, *Ideology in U.S. Foreign Policy*, (New Haven: Yale University Press, 2009), 137.

⁶⁸ Tooze, *The Deluge*, 60, 92.

vetoed a motion to recognize racial equality at the Paris Peace Conference—and that would continue on throughout the entire interwar period.⁶⁹ At a time of high racial tensions in the United States, with the Ku Klux Klan booming, recurrent race riots, and the rise of eugenics, the United States promoted a foreign policy rooted in racial exceptionalism: the United States stood above the other nations of the world, not just because of its military success or economic might, but because of its genetic superiority.⁷⁰ The State Department embraced these views. Throughout the 1920s, foreign embassies would host eugenicists as they conducted research throughout the world.⁷¹ They would send out invitations to eugenical conferences to state governors and request official diplomatic support for international gatherings on the topic.⁷² American consulates around the globe came to see themselves as the genetic gatekeepers of American civilization.⁷³ It was a view that was supported in the highest levels of the executive office. Indeed, throughout the 1920s, Warren G. Harding, Calvin Coolidge, and Herbert Hoover all endorsed a view of American foreign policy rooted in racial hierarchies and eugenical thinking. Harding and Coolidge both referred to eugenical thinking in their State of the Union addresses.⁷⁴ They often quoted near-verbatim from recommendations made by the country's leading eugenicists.⁷⁵ Meanwhile, Hoover hosted conferences at the White House that explicitly endorsed eugenic sterilization.⁷⁶ This trend towards a foreign policy defined by racial hierarchies was, unsurprisingly, most clearly expressed on the issue of immigration. During an era of intense xenophobia, when fear about immigrants from Asia and Eastern Europe 'dirtying' the American

⁶⁹ Paul Gordon Lauren, "Human Rights in History: Diplomacy and Racial Equality at the Paris Peace Conference," in *The Impact of Race on U.S. Foreign Policy*, ed. Michael Krenn, (New York: Garland Publishing, 1999), 163-79.

⁷⁰ Tooze, *The Deluge*, 347; Borstelmann, *The Cold War and the Color Line*, 22-26; Edwin Black, *War Against the Weak: Eugenics and America's Campaign to Create a Master Race* (New York: Four Walls Eight Windows, 2003).

⁷¹ Harry H. Laughlin, "Eugenics in America," *The Eugenics Review* 17, no. 1 (April 1925): 30; *Europe as an Emigrant-Exporting Continent and the United States as an Immigration-Receiving Nation, First Session, Hearings Before the Committee on Immigration and Naturalization*, 68th Cong. 1231 (March 8, 1924) (statement of Harry H. Laughlin).

⁷² Black, *War Against the Weak*, 71-2; Committee on Foreign Affairs, Ninth Pan American Sanitary Conference, H.R. Rep. Number 975 (March 14, 1932).

⁷³ *Ibid.*, 205.

⁷⁴ Warren G. Harding, "Second Annual Address to Congress, December 8, 1923," in *Supplement to the Messages and Papers of the Presidents Covering the Term of Warren G. Harding and the First Term of Calvin Coolidge* (New York: Bureau of National Literature, Inc., 1925), 9182-3; Calvin Coolidge, "First Annual Address to Congress, December 6, 1923," in *Supplement to the Messages and Papers of the Presidents Covering the Term of Warren G. Harding and the First Term of Calvin Coolidge* (New York: Bureau of National Literature, Inc., 1925), 9351.

⁷⁵ *Biological Aspects of Immigration: Second Session, Hearings Before the Committee on Immigration and Naturalization*, 66th Cong. 3-4 (April 16-17, 1920) (statement of Harry H. Laughlin).

⁷⁶ Wendy Kline, "A New Deal for the New Child: Ann Cooper Hewitt and Sterilization in the 1930s," in *Popular Eugenics: National Efficiency and American Mass Culture in the 1930s*, ed. Susan Currell and Christina Cogdell (Athens: Ohio University Press, 2006), 20-1.

racial stock were prominent, American immigration laws embraced eugenics.⁷⁷ Congress passed sweeping immigration limitations that explicitly aimed at barring ‘low-grade’ immigrants—a policy that would stay in place for the entirety of the interwar period.⁷⁸ Coolidge signed the bill into law on May 24, 1924.

The interwar period should not be seen as a historical aberration, either. Indeed, many of the trends displayed in the era of Wilson, Harding, and Coolidge are reemerging today. Following decades of warfare in the Middle East that left many Americans worried the United States was overcommitted internationally, American foreign policy has returned to the exceptionalism of the 1920s.⁷⁹ Embracing Calvin Coolidge’s mantra of ‘America first,’ the Trump administration has shifted American foreign policy away from internationalism—withdrawing from international treaties, alienating allies, and decreasing commitments to multilateral defense networks like NATO.⁸⁰ These changes have been mirrored by a corresponding increase in racial tensions at home. With immigration a primary focus, Trump’s administration has seen a rise of racialized border policies and efforts to ban ‘undesirable’ immigrants from non-European nations.⁸¹ These policies have been paralleled by a massive increase in hate crimes and sentiments of racial backsliding.⁸² The 2010s have proven eerily similar to the 1920s, with the overlaps of American foreign policy and race relations taking center stage.

Such a rehashing of past trends in both foreign policy and racial equality raises many important questions. Does the United States require periods of global scrutiny and leadership to have advancements in civil rights? Were the gains of the early civil rights period more a matter of necessity than a moment of national moral reckoning? Is this part of the reason racial tensions have been so persistent in American history? Here, the lessons of Truman’s Presidency serve as an

⁷⁷ Robert DeC. Ward, “Our New Immigration Policy,” *Foreign Affairs* 3, no. 1 (September 1924): 99-111.

⁷⁸ Nancy Ordover, *American Eugenics: Race, Queer Anatomy, and the Science of Nationalism* (London: University of Minnesota Press, 2003), 13.

⁷⁹ Ruth Igielnik and Kim Parker, “Majorities of U.S. Veterans, Public Say the Wars in Iraq and Afghanistan Were Not Worth Fighting,” *Pew Research Center*, July 10, 2019, <https://www.pewresearch.org/fact-tank/2019/07/10/majorities-of-u-s-veterans-public-say-the-wars-in-iraq-and-afghanistan-were-not-worth-fighting/>

⁸⁰ Lisa Friedman, “Trump Serves Notice to Quit Paris Climate Agreement,” *New York Times*, November 4, 2019; Peter Baker and Michael Shear, “Trump Blasts Upend G-7, Alienating Oldest Allies,” *New York Times*, June 9, 2018; Julian E. Barnes and Helene Cooper, “Trump Discussed Pulling U.S. From NATO, Aides Say Amid New Concerns Over Russia,” *New York Times*, January 14, 2019.

⁸¹ Zolan Kanno-Youngs, “Trump Administration Adds Six Countries to Travel Ban,” *New York Times*, February 3, 2020.

⁸² Adeel Hassan, “Hate Crime Violence Hits 16-Year High, F.B.I. Reports,” *New York Times*, November 12, 2019; Juliana Menasce Horowitz, Anna Brown, and Kiana Cox, “Race in America in 2019,” *Pew Research Center*, April 9, 2019, <https://www.pewsocialtrends.org/2019/04/09/race-in-america-2019/>.

important template moving forward. By studying the overlaps of American foreign policy and race relations, the United States has an opportunity to avoid the mistakes of the 20th century—to ensure that racial progress and equality are prioritized independent of the pragmatic needs of foreign policy, and that changing trends abroad don't have to equate to lost liberties at home. But to counteract such trends, we first have to understand them.

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BOSNIA, RWANDA, AND THE GLOBAL FRAGILITY ACT: UNITED STATES FOREIGN AID AND GENOCIDE PREVENTION

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This paper examines the factors that result in congressional funding and the executive branch's implementation of aid in cases of extreme conflict like genocide. I focus on the following three factors of action: international attention, strategic significance of the region, and public opinion. In order to effectively evaluate these characteristics, I conduct a historical case comparison study of U.S. actions during the genocides in Rwanda and Bosnia. I conclude by offering the Global Fragility Act, a bill currently making its way through the House and Senate, as a viable solution to these issues surrounding the funding of conflict response and peace operations abroad.

In a mere 100 days in the summer of 1994, Hutu extremists massacred an estimated 800,000 Tutsis and moderate Hutus in Rwanda. This atrocity was short, but it constituted a failure by the United States and the broader international community in upholding their commitments to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.¹ The Rwandan genocide, and the following 1995 genocide in Bosnia, hint at structural and political factors preventing timely aid from the United States government in times of extreme crisis.

People in dire need of aid cannot afford to be subject to the whims of Washington's negotiations. In order to increase the effectiveness of foreign aid, it is imperative to identify the factors that affect the appropriation and direction of funding. In this paper, I will analyze the role of the following three factors on congressional authorization and the executive branch's dispersal of United States government aid: international attention, strategic significance of the region, and public opinion. I will first examine the roles of the legislative and executive branches in foreign aid, and then use the case studies of the genocides in Rwanda and Bosnia to evaluate these factors, before finally introducing the Global Fragility Act as a potential solution to this issue. Adoption of the Global Fragility Act would lessen the impact of these factors that delay aid in times of extreme crisis, thereby making such aid more effective in mitigation of conflict.

¹ "The Genocide Convention." United Nations Office on Genocide Prevention and the Responsibility to Protect. United Nations. Accessed February 2, 2020.

THE ROLE OF THE LEGISLATIVE AND EXECUTIVE BRANCHES IN FOREIGN AID

In this paper, I will be referring to foreign aid in the context of funding provided for humanitarian purposes to prevent or mitigate the effects of genocide, or support survivors. In the United States, the appropriation and distribution of foreign aid is jointly done by the legislative and executive branches. The Constitution grants Congress the power of passing laws to appropriate funds, giving the legislative branch a clear mandate for funding of foreign aid.² Congress, however, does not have the power to implement these laws.

The executive branch has the constitutional power to administer and execute the law, allowing for the direction of foreign assistance. This has allowed presidents to freeze congressionally appropriated foreign aid, with recent examples including the delaying of security aid to Ukraine by President Trump which led to his impeachment in the House of Representatives.³ The executive branch has also cited the Supreme Court Case *United States v. Curtiss-Wright Export Corp.* to argue that dispersal of foreign aid is within the jurisdiction of the executive branch.⁴ In this decision, Justice Sutherland established the president as “the sole organ of the nation in its external relations,” creating a judicial argument for executive control of aid dispersal.⁵ In this paper, I will be focusing on the constitutionally-mandated power of the legislative branch to appropriate aid, while also accounting for the influence of the executive branch in distributing it, in order to determine the factors that influence foreign aid in cases of extreme conflict like Rwanda and Bosnia.

AN OVERVIEW OF THE GENOCIDES OF THE GENOCIDES IN RWANDA AND BOSNIA AND THE UNITED STATES GOVERNMENT’S RESPONSE

Rwanda

The Rwandan genocide occurred between April and July of 1994, claiming the lives of over 800,000 Rwandans as the Hutu majority slaughtered the Tutsi minority population.⁶ The

² U.S. Const. art. I § 8, cl. 1.

³ Cornish, Audie, and Sam Gringlas. “Why The Trump Decision To Delay Aid To Ukraine Is Under Scrutiny.” NPR.

⁴ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

⁵ *Ibid.*

⁶ Burkhalter, Holly J. “The Question of Genocide: The Clinton Administration and Rwanda.” *World Policy Journal* 11, no. 4 (1994): 48.

genocide was a culmination of a complex social structure that was exacerbated by Belgian colonizers who enforced a divided society, giving Tutsis disproportionate power.⁷ This created a system in which the Hutus saw Tutsis as the successor to their colonial oppressors.⁸ After decolonization, the fervor that swept through the majority Hutu population in Rwanda cast the Tutsis as a foreign presence who needed to be eradicated. With the encouragement from radio propaganda and the *Interahamwes*, local Hutu militia bands, ordinary Hutu farmers grabbed machetes and headed off into the swamps to hunt their Tutsi neighbors hiding there.⁹ There was no intervention or additional foreign aid on the part of the United States during the conflict, even though the Clinton administration was fully aware of what was happening. The genocide ended when a Tutsi rebel group, the Rwandan Patriotic Front (RPF), wrestled back power.¹⁰

The American response to the Rwandan genocide was best summed up by Representative David Obey (D-WI), when he expressed his support for a policy of "zero degree of involvement, and zero degree of risk, and zero degree of pain and confusion."¹¹ Congress was overwhelmingly silent during the genocide, with the exception of a handful of appeals by members of Africa foreign policy subcommittees and the Congressional Black Caucus.¹² This desire for inaction was influenced and encouraged by the Clinton administration, who did not acknowledge the conflict as a genocide even with indisputable evidence. In fact, during the genocide the Clinton administration halted aid funds that had been constant since 1964 and advocated against U.N. intervention.¹³

After the conflict, President Clinton did call for Congress to appropriate emergency funds for humanitarian assistance, but these actions are widely considered by scholars to have been too little too late.¹⁴ In the years after the genocide, Congress has routinely expressed regret towards its inaction, passing bills like S. Res. 122 as recently as March 2019 to formally recognize and address the failure of the United States in providing aid to stop and mitigate the genocide.¹⁵ The genocide in Rwanda happened just a year before another genocide broke out, over 5000 miles

⁷ Mahmood Mamdani, *When victims become killers*, 88.

⁸ Ibid.

⁹ Ibid, 89.

¹⁰ Ibid.

¹¹ Burkhalter, Holly J. "The Question of Genocide: The Clinton Administration and Rwanda."

¹² Ibid.

¹³ "History of USAID in Rwanda." U.S. Agency for International Development

¹⁴ Ibid.

¹⁵ "Resolution Observing the 25th Anniversary of the genocide in Rwanda," S.Res.122

away in Bosnia. Aid and intervention in relation to the genocide in Bosnia, however, was treated very differently than the situation in Rwanda, due to the international attention on the issue, the strategic significance of the country, and public opinion on United States involvement in the conflict.

Bosnia

The Srebrenica Massacre in July 1995 in Bosnia was a culmination of three years of extreme ethnic conflict between Serbs and Bosnian Muslims. Bosnia declared independence during the breakup of Yugoslavia, leading Serbia to launch a violent military campaign to “protect ethnic Serbs” in Bosnia.¹⁶ This invasion ended up giving Serb forces control of over half of Bosnian territory, and was the result of a history of ethno-religious-nationalist conflict dating back hundreds of years.¹⁷ In 1992, Serbs began to ethnically cleanse the area of Bosnian Muslims (Bosniaks), leading the United Nations to create “safe zones” where Bosniaks could go to be under the protection of UN Peacekeepers. The height of the conflict occurred in 1995, when Serbs targeted the safe zone in Srebrenica and slaughtered over 7000 Bosniaks that were supposedly under UN protection. This massacre was a major failure for the international community, as UN protection was usurped without a single shot being fired, and it prompted the US and UN to take concrete action to end of the conflict.¹⁸

The United States reaction to the genocide in Bosnia was markedly different than Rwanda, as it provided timely humanitarian aid as well as military intervention. The Clinton administration was hesitant to engage in the conflict, but Congress placed pressure on the President through the passage of bills to end the arms embargo on Bosnia and Serbia in order to be able to provide the poorly-equipped Bosniaks with arms (although these bills were vetoed).¹⁹ Crucially, Congress appropriated funding for humanitarian aid while the conflict was still ongoing—an estimated \$387 million in 1994. 20,000 troops were also deployed to help end the conflict, a major difference from the U.S. policy in Rwanda.²⁰

¹⁶ Nicole M. Procida, "Ethnic Cleansing in Bosnia-Herzegovina," 672.

¹⁷ Ibid.

¹⁸ Ibid, 677.

¹⁹ United Nations. “Human Rights Watch World Report 1995 - Bosnia-Herzegovina.” Refworld. Accessed February 2, 2020.

²⁰ Garding, Sarah E. “Bosnia and Herzegovina.” *Congressional Research Service*, April 2019.

The differences in foreign aid given by the United States government during and after the genocides in Rwanda and Bosnia are stark. The reason for this can be broken down into three factors: the amount of international attention on the conflict (which was influenced by the recent dialogue around the genocide in Rwanda), the strategic significance of the region, and the general public opinion on the issue.

INCREASED INTERNATIONAL ATTENTION

International attention has a significant effect on the decision to appropriate and direct aid to a conflict. Positive international attention can increase pressure to provide aid, while negative international attention surrounding similar endeavors can reduce the likelihood of American action. In the case of Rwanda, increased international attention on the region led to delay in action on the part of Congress and the President, heavily influenced by the desire to not be embarrassed again after the 1993 fiasco in Somalia.²¹

In 1993, the United States led a UN mission called “Operation Restore Hope” designed to end the civil war and humanitarian crisis in Somalia. The involvement of the international community was originally built on humanitarian aid, but this involvement transformed into a military operation. The climax came when Black Hawk helicopters were shot down, and US soldiers died in the after-fighting.²² The images of an American soldier being “dragged through the streets of Mogadishu,” were immediately shared throughout the West, creating a huge public relations issue for United States aid and intervention operations. The American public immediately called for removal of troops, and demonstrated their disapproval for involvement in similar conflicts.²³ The Rwandan genocide directly followed the failure in Somalia, and their similarity in perceived strategic insignificance and American indifference made policymakers hesitant to support increased United States involvement.²⁴ Negative attention surrounding intervention was followed by a hesitancy of Congress to appropriate funds for aid. Congressmen

²¹Helene Dieck and Richard J. Finneran, 2015. *The Influence of Public Opinion on Post-Cold War* New York: Palgrave Macmillan US.

²² “President Bush Orders U.S. Troops to Somalia.” History Channel. A&E Television Networks.

²³ Helene Dieck and Richard J. Finneran, *The Influence of Public Opinion*, 92.

²⁴ *Ibid*, 89.

did not want to risk their own political capital by advocating for aid when it was politically unpopular at the time.

International attention can also be a positive force, pressuring states into acting in cases of genocide, thereby potentially increasing the likeliness of congressional funding. In the case of Bosnia, the horror of what happened at the massacre of Srebrenica, where 8000 Bosniaks were killed in a UN ‘safe-zone,’ caused an international resolution for action to end the violence.²⁵ The United States and the broader international community were driven to end the war and provide immediate assistance to survivors. The publicity placed a moral imperative on the United States to take congressional and executive action, a different result from the media attention in Rwanda.

STRATEGIC SIGNIFICANCE AND CULTURAL PROTRAYAL

The strategic significance of a region is another major factor that impacts the likelihood of Congress appropriating, and the executive branch distributing, funding for foreign aid. Congress has released over \$1.7 billion in foreign humanitarian aid to Bosnia to date.²⁶ Congressional funding of the United States involvement in Bosnia was partially due to the close proximity of Bosnia to other NATO nations and the ensuing threat of instability, as well as the fact that Bosnia was a recently converted communist state.²⁷

These factors placed Bosnia on a high importance level to United States national security interests, which was especially relevant at the time because of the passage of President Clinton’s Presidential Decision Directive 25 (PDD 25).²⁸ PDD 25 aimed to limit United States involvement in UN peacekeeping operations, a byproduct of the failure in Somalia, by necessitating a test that United States involvement was ‘vital’ to national interests. Bosnia’s strategic location, and the potential involvement of Russia on behalf of the Serbs, therefore made it a priority while Rwanda was considered strategically insignificant to the West.²⁶

²⁵ Nicole M. Procida "Ethnic Cleansing in Bosnia-Herzegovina."

²⁶ Garding, Sarah E. "Bosnia and Herzegovina."

²⁷ Betsy Montgomery, "Explaining the Ineffectiveness of the Convention on the Prevention and Punishment of the Crime of Genocide: Leadership of the Hegemon." Thesis, Georgia State University, 2007.

²⁸ "Rwanda: Genocide and U.S. Policy." African Studies Center. University of Pennsylvania. Accessed February 2, 2020.

The difference in aid between Rwanda and Bosnia can also be attributed to cultural portrayal. It can be argued that the conflicts in Rwanda and Bosnia were characterized in very different ways. Rwanda was portrayed in a ‘native’ mindset. The conflict was seen as a faraway dispute between two ethnic groups, which was bloody but held no need for immediate aid.²⁹ Congresspeople could not see an incentive to appropriate funds to Rwanda when it was portrayed as a civil war, although the reality was a one-sided massacre.³⁰ In contrast, Bosnia was seen in the ‘barbaric’ mindset, with an obvious villain and need for immediate aid to protect the victim.³¹ This clear delineation of ‘right and wrong’ in Bosnia created more incentive for Congress to appropriate funds to provide aid. The strategic significance of these regions, and their cultural portrayal in the United States had a major impact on the amount of aid that they received.

PUBLIC OPINION

Governmental funding of aid operations is heavily influenced by the will of the American people, a sign of our strong democracy. Congress in particular is partial to constituent demands, as members represent their regions instead of the broader American people. Public opinion and domestic activism, both lobbying and grassroots organizing, can therefore be effective tools in forcing political will to fund foreign aid. Rwanda and Bosnia are pertinent examples for the impact that public opinion can have.

The conflict in Rwanda was not heavily covered in Western media before the beginning of the genocide, with only 50 news articles published on it in April of 1994, the month the genocide started.³² There was such little prior coverage, and the genocide occurred so quickly, that public opinion surrounding the conflict did not create a strong push for United States involvement.³³ Public opinion surrounding the Bosnian genocide was more significant, because of the prior media coverage of war in the region. The peak of the conflict was in July 1995 with

²⁹ Kate Roff. “Barbaric Mistakes: Western print media’s portrayal of ‘ethnic’ conflicts.” Thesis, University of Canterbury, 2013

³⁰ Ibid, 36.

³¹ Ibid, 40.

³² Myers, Garth, Thomas Klak, and Timothy Koehl. “The Inscription of Difference: News Coverage of the Conflicts in Rwanda and Bosnia.” *Political Geography* 15, no. 1 (1996): 27.

³³ Ibid, 22.

the Srebrenica massacre, but in 1994 around 950 related news articles were published in the United States in April alone.³⁴ The increased coverage of the situation in Bosnia spurred constituent concern and helped place Bosnia higher on the policy agenda for foreign aid.

Public opinion can be one of the most influential factors in governmental action. One recent example of this is the bipartisan effort to support the Hong Kong protesters who are fighting to retain their state of semi-autonomy from China.³⁵ This provision was signed into law by President Trump, authorizing sanctions on Chinese and Hong Kong officials for human rights abuses against the protestors. This is especially significant because of the political ramifications of angering China while the Trump administration is negotiating to end the ongoing trade war, which President Trump started over his dissatisfaction with Chinese trading policies. The massive domestic push for support of the Hong Kong protestors has managed to override the trade war, creating a firestorm of accountability that led to change and action by both Congress and the President.

Social media is a prominent factor that has helped to elevate the power of citizens in events like Hong Kong, in a way that was impossible during the Rwandan and Bosnian genocides. Social media allows ordinary citizens to have easier access to the news and a streamlined way to contact their representatives. We cannot, however, rely on public outcry, international attention, or strategic location alone to ensure that aid will be given effectively. Congressional action can be utilized to circumvent the untimely nature of foreign aid during extreme crisis.

POTENTIAL SOLUTIONS: THE GLOBAL FRAGILITY ACT

The inherent limits on the United States providing effective and timely funding during genocide can be reduced through the passage of legislation like the Global Fragility Act. The Global Fragility Act of 2019 (GFA), also known as H.R. 2116 or S. 727, is a bill focused on

³⁴ Myers, Garth, Thomas Klak, and Timothy Koehl. "The Inscription of Difference: News Coverage of the Conflicts in Rwanda and Bosnia." *Political Geography* 15, no. 1 (1996): 27.

³⁵ Cochrane, Emily, Edward Wong, and Keith Bradsher. "Trump Signs Hong Kong Democracy Legislation, Angering China." *New York Times*.

improving the government's response to conflict.³⁶ The bill has three important parts, and encompasses both precautionary and reactionary approaches.

Firstly, the GFA focuses on addressing the issues of long-term stability, by mandating a ten-year Global Fragility Strategy. This plan would provide a comprehensive strategy for the future of specific at-risk countries, in order to better inform how to distribute aid in a way that will mitigate future conflicts. Secondly, the GFA establishes the Prevention and Stabilization fund, which will provide funds to stabilize “conflict-affected areas and assist areas liberated from or at risk from various terrorist organizations.”³⁷ These two measures are precautionary in nature, allowing for the GFA to use humanitarian assistance as a preventative tool to halt conflict.

Finally, the GFA creates the Complex Crisis Fund as a reactionary measure. The Complex Crisis Fund would be a USAID fund of \$30,000,000 a year, from 2020-2024 with the sole purpose of responding to foreign crises. This is a crucial development, because these funds are set aside for emergency response and rapid deployment to deal with extreme crises. USAID is required to notify Congress when these funds are being used, but they are able to waive this if delay would “pose a substantial risk to human health or welfare.” This change is significant because it gives congressional approval to USAID to manage emergency foreign aid on a timely basis, which bypasses the factors of international attention, strategic significance, and domestic activism that currently cause an uneven distribution of aid.³⁸

The ongoing genocide in Burma is a perfect example of the usefulness of a bill like the Global Fragility Act. In the past few years, the genocide of the Rohingya in Burma has become a prominent human rights discussion. This international attention has led to Congress pledging over \$669 million towards helping the Rohingya.³⁹ American funding of this refugee crisis is admirable, but an act like the GFA has the potential to make it less necessary in the first place by mitigating the conflict early. The GFA mandates that the United States monitor countries like Burma, and step in with crisis funds to support efforts from grassroots organizers, global NGOs, and international institutions to lessen violence as it arises. This bill is not a comprehensive

³⁶ Coons, Christopher. The Global Fragility Act of 2019

³⁷ Ibid.

³⁸ Ibid.

³⁹ “United States Announces New Humanitarian Assistance for Displaced Rohingya and Members of Other Affected Communities in Bangladesh and Burma: Press Release.” U.S. Agency for International Development, September 24, 2019.

solution for mitigating conflict, but it paves the way for timely, effective aid from the United States.

The Global Fragility Act passed through the house as bill H.R.2116 in May of 2019. It was then introduced in the Senate, and currently has twenty-six bipartisan cosponsors and is awaiting review by the Senate Foreign Relations Committee.⁴⁰ If passed, it has the potential to significantly improve the way that the United States government is able to respond to the need for foreign aid during and after conflict. The GFA would mitigate crises as they arise, even without the factors such as regional significance, public opinion, or international attention that are currently necessary for legislative and executive action.

CONCLUSION

The factors that affected foreign aid to Bosnian and Rwanda are crucial to study because they serve as the backdrop for United States action, and inaction, today. On the anniversary of these tragedies, Congress continues to pass bills asserting “never again,” while simultaneously rejecting pleas for substantial aid in places like Burma that are currently facing mass atrocities. Critics of United States interventionism argue that Congress is right for keeping these issues low on the agenda, as American foreign aid can challenge sovereignty and has historically planted imperialistic roots. Critics also argue that foreign aid should be designated by an elected official, not a bureaucrat who does not have as much of a responsibility to the will of the people. These are important critiques, but they do not overshadow the obligation of the United States’ towards upholding human rights.

United States governmental funding of foreign aid operations has historically been dependent on the amount of international attention afforded to an issue (both positive and negative), the strategic significance of the region, and the public opinion on United States involvement. American actions in Bosnia and Rwanda are pertinent examples of the effects of these factors, highlighting the current inadequacies in our distribution of aid. The Global Fragility Act is a practical solution to the limits of our current foreign aid process. If the GFA is

⁴⁰ Coons, Christopher. The Global Fragility Act of 2019

implemented effectively, it has the potential to change the way that the United States contributes to international aid operations, paving the way for a global shift in peace work.

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