The Fellows Review

2021 - 2022

CSPC

The Fellows Review

SELECTED PAPERS OF THE
2021-2022 PRESIDENTIAL FELLOWS PROGRAM

CENTER FOR THE STUDY OF THE PRESIDENCY & CONGRESS

Editor

Kyle Flagg

The Center for the Study of the Presidency and Congress, founded in 1965, is a nonprofit, nonpartisan 501(c)(3) organization. The Center's mission is to utilize the lessons of history to address the challenges of today; serve as a strategic honest broker for discussions with leaders from government, the private sector, and the policy community; and to educate the next generation of leaders through the Presidential and International Fellows Program.

The papers in this anthology represent the Fellows' thoughts and research and CSPC in no way endorses their conclusions or positions.

The Fellows Review: 2021-2022

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Foreword

The Presidential Fellows Program began in 1970 with the mission of inspiring young people to pursue careers that would help solve our nation's most pressing challenges. The Center for the Study of the Presidency and Congress has worked over the last 50 years to develop leadership skills in talented students across the country and instill a commitment to civil dialogue and public service. While the challenges of the 1970s have evolved, we find ourselves in similarly politically divisive times. As our nation becomes ever more polarized, we at CSPC find a rejuvenated sense of purpose in imparting quality leadership traits in the next generation to build a more robust democracy and future for all.

With this sense of purpose in mind, we welcomed the 2021-2022 Presidential Fellows class to Washington, D.C. for our first in-person leadership conference since the start of the COVID-19 pandemic. For me, one of the most rewarding experiences of the Fellowship is seeing the Fellows interact with their peers and the professionals we bring together for the conference. They have the opportunity to make connections with like-minded individuals from across the country and around the world, leading to long-lasting relationships they can rely on wherever their academic and professional careers may carry them. The class of 2020-2021 was also invited to attend the conference, giving back an experience that was unfortunately upended due to the pandemic. Attendees met with staff from the White House and Congress, NGO leaders, prominent business figures, and journalists. The Fellows also attended the Center's annual awards dinner where they met with the awardees, Senators Lisa Murkowski and Angus King. The in-person experience was bolstered by virtual sessions held throughout the academic year on topics ranging from the Ukraine crisis to combatting climate change.

The cornerstone of the program is the year-long process of researching and writing a paper on a topic of importance to the presidency or Congress. In the pages that follow, we are proud to showcase twenty-five exceptional research papers produced by the 2021-2022 Fellows cohort.

Five of those papers were selected for special recognition for extraordinary research:

> Sofia Pina Jaubert from ESADE (Spain) was awarded the David M. Abshire Award for Outstanding Paper by an international Fellow for her paper entitled, "To Collaborate or Not: The Question Facing the United States-Mexico Bilateral Security Policy."

> Blaine Ravert from Westminster College was awarded the Robert A. Kilmarx Award for Best Military, Intelligence, or National Security Strategic Analysis for his paper entitled, "Presidential Control Over Autonomous Weapons."

> Katie Strickland from the University of Arkansas was awarded the Donald B. Marron Award for the Best Historical Analysis for her paper entitled, "By the Will of God' Analyzing the Intersection of Faith and the Rhetoric of Foreign Policy Within Early Twentieth Century Presidential Inaugural Addresses."

> Thomas Vilinskis from the United States Naval Academy was awarded the Richard H. Solomon Award for the Most Original Paper on Foreign Policy or Diplomacy for his paper entitled, "Abandoning Ambiguity: Should the United States Extend Diplomatic Recognition to Taiwan?"

Nicholas Mcdonald from the United States Military Academy at West Point, was awarded the James R. Moffett Award for Most Original Paper on the Modern Presidency or Congress for his paper entitled, "Securing the Ballot Box: Modern Elections and Their Consequences."

We are proud to recognize these Fellows for their outstanding work, and we congratulate all of the members of the 2021-2022 class on their successful completion of the Presidential Fellows Program.

We are grateful to the Fellowship sponsors for their generous support of the program. Without their help, we could not provide such a meaningful experience for our Fellows. We are also thankful to our partner colleges and universities for their commitment to this program and their participating students. I would like to include a thank you to the Center's interns, Yazmine-Gizelle Ali, Sofia Pina Jaubert, and Alan Liu for their hard work in putting together this year's *Fellows Review*.

Glenn C. Nye III
President & CEO
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Part 1

Foreign Policy
& National Security

CSPC

THE ROLE OF FOREIGN POLICY AND NATIONAL SECURITY EXPERIENCE IN DETERMINING PRESIDENTIAL ELECTABILITY

CAITLIN O'BRIEN
HOFSTRA UNIVERSITY

Foreign policy and national security experience can significantly help a president address international affairs. While voters may say they want to elect a candidate with military experience or at least some foreign policy experience, recent elections suggest that voters do not uphold that preference when they cast their ballots, nor do they uphold that expertise as paramount to their decisions. The assessment of two high profile elections–2008 and 2016–shows presidential candidates use a combination of their own expertise and advisers to earn voters' support, yet voters do not prioritize these appeals in making their decisions. Nearly every candidate who has won election since 2000 has had less foreign policy experience than their opponent, even when the United States faced major foreign policy issues. In the 21st century, candidates must work harder to project how their experience could inform their presidency, particularly because foreign policy issues are of consequence to U.S. voters as the country engages in world affairs.

INTRODUCTION

During the past two decades, the foreign policy and national security experience of presidential candidates has shifted away from military service. This may be due, in some part, to voluntary service taking the place of compulsory service in the United States Armed Forces. This gap is likely to grow as the country leaves foreign wars, like the War in Afghanistan in 2021. What, then, defines expertise for a president as commander-in-chief, for voters as they elect a president, and for candidates who seek to hold the nation's highest office? A close study of how 21st century presidential candidates have presented their foreign policy expertise using campaign advertisements, speeches, debates, and advisers is important for understanding how candidates and voters have prioritized military and foreign policy experience in presidential campaigns.

Unlike previous decades, the American public has become accustomed to a lack of military experience in presidential candidates. Out of the forty-five men that have served as president, thirty-one of them have served in the U.S. military. Since September 11th, 2001, only one president has had military experience: George W. Bush. The number of candidates post-9/11

that have served in the military remains low and even fewer of them fared well in presidential campaigns. The 2008 and 2016 elections provide examples where each nominee would have inherited multiple foreign policy crises–the Global War on Terror and emergence of Russia and China–where previous military experience might have been instructive.

In a world where there is still conflict, fewer Americans have served in the military, either through draft or passion. How, then, have presidential candidates and voters prioritized military experience in presidential campaigns to an electorate that lacks a common understanding of what it is like to serve in the military? To examine how candidates present their appeals and how voters respond in turn, an assessment of how candidates can gain foreign policy and national security expertise must come first. Military service is a clearly a way to get direct experience, but for many 21st century candidates, serving in Congress has been a more common way of gaining foreign policy experience. Ultimately, voters do not prioritize national security credentials when choosing a president. However, this experience can be an asset if the appeal is done correctly. Therefore, candidates must work harder to project the benefits of their experience as they simultaneously make their case for why they should serve in the Oval Office.

PRESENTING FOREIGN POLICY CREDENTIALS TO VOTERS

There are few prerequisites for running for U.S. president, and foreign policy or national security experience is not required. Even so, a resume with vast policy expertise can appeal to voters, despite not guaranteeing an electoral win.[1] For this research, experience comes from time in formal roles like military service or service on a policy committee, as these facilitate foreign policy and national security leadership and decision-making experience. If elected, this gives the commander-in-chief instructive credentials to handle the preponderance of American power.

Since the turn of the 21st century, military service for presidential candidates and civilians has dropped, despite being one of the most accessible ways to gain foreign policy and national security experience. When candidates do have these credentials, they understand more intimately how war is waged, especially when considering their specific *type* of military service. Leaders with military service, but *not* combat experience, are more likely to initiate military disputes and

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[1] Claude Berube, "Presidential Military Service: The Service Gap and the Validation Surge," War on the Rocks, Texas National Security Review, January 23, 2020, https://warontherocks.com/2020/01/presidential-military-service-the-service-gap-and-the-validation-surge/.

wage war than their counterparts with combat experience.[2] However, with combat experience, they are familiar with war's horrors and generally oppose such danger for troops and civilians.

Military experience also gives rise to restraint in how the military is used in foreign policy crises. Michael C. Horowitz and Allan C. Stam juxtapose types of military service, writing: "It is the George W. Bushes of the world, rather than the Dwight Eisenhowers, who are statistically more likely to engage in militarized behavior in office."[3] Eisenhower, a five-star general, achieved the highest military rank of any U.S. president, yet he was more restrained in his response to Cold War threats. Bush served in the Texas Air National Guard, not on active duty, and began a Global War on Terrorism in response to the 9/11 terrorist attacks.[4] A candidate with military credentials who is more reluctant to enter conflict may prove to be more comforting and appealing to voters. This conservatism may also extend to foreign policy in general–a veteran president could prove to be more deliberate in interactions on a global scale.

Despite a decline in military service, the general public still believes military leadership skills are important for governance in national security roles.[5] Voter-formed stereotypes of traits veterans possess (e.g. integrity and competence) often serve as information cues in elections.[6] When a candidate uses military service deliberately as an information cue, voters are more apt to support them if they appear competent on a defense or security issue.[7] Voters develop general opinions, such as a candidate being "trigger-happy" or "skilled at dealing with foreign leaders" based on the information cue, especially if the candidate is an incumbent. Voters noted in a Pew Research Center survey that military service is a positive asset in a candidate–even more influential than experience in Washington.[8] However, a growing number of voters say military service does not matter, and they look to other qualifications in choosing a president.[9]

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[2] Michael C. Honowitz and Allan C. Stam, "How Prior Military Experience Influences the Future Militarized Behavior of Leaders," *International Organization* 68, no. 3 (Summer 2014): 533.
[3] Ibid.
[4] George Lardner Jr. and Lois Romano, "At Height of Vietnam, Bush Picks Guard," *The Washington Post* online, July 28, 1999.
[5] Alice Hunt Friend, "A Military Litmus Test? Evaluating the Argument that Civilian Defense Leaders Need Military Experience," *Just Security* online, August 19, 2020.
[6] Monika L. McDermott and Costas Panagopoulos, "Be All that You Can Be: The Electoral Impact of Military Service as an Information Cue," *Political Research Quarterly* 68, no. 2 (June 2015): 296.
[7] Jeremy M. Teigen, "Military Experience in Elections and Perceptions of Issue Competence: An Experimental Study with Television Ads," *Armed Forces & Society* 39, no. 3 (July 2013): 430.
[8] Hannah Fingerhut, "What voters want in a president today, and how their views have changed," Pew Research Center, February 12, 2016.
[9] Henry E. Mattox, "U.S. Presidents, Military Service, and the Electorate," *American Diplomacy* online, September 1996.

Non-combat and non-military foreign policy and national security roles are instructive for candidates, despite the difficulty of attainment. Most of the examples of how presidential candidates gain experience come from election to political office. High-level federal work or even diplomatic appointments are also potential methods, even though they are rather uncommon for presidential candidates. While less common for civilians, congressional roles have become staples in 21st century presidential candidates' backgrounds instead of military service.

There is a lack of scholarly research on how foreign policy credentials, specifically military service, directly impact electability. Noting this gap, this research assesses credentials based on four main methods of appeal: campaign ads, speeches, debates, and advisers. Negative ads have tremendous magnitude in swaying voters, particularly when they hinge on salient foreign policy issues.[10] Debates and speeches force candidates to put their experience to practice in front of an audience, particularly showcasing behavior and decision making in mock high-pressure situations. Advisers with foreign policy and national security experience can also sway voters, as they can bolster messaging, close gaps in a candidate's resume and add diversity of thought in decision making. These advisors are not a failsafe for a president or a candidate, as each one comes with his or her own background and personality that can pose challenges to a president's agenda.[11]

ELECTION 2008: MILITARY EXPERIENCE FALLS SHORT

The 2008 presidential election came on the heels of major economic issues in the U.S. The Great Recession was at the forefront of voters' minds, but not to the exclusion of foreign policy issues, including trade policy, terrorism, and the War in Iraq.[12] Not only did candidates have to prove they could deal with an economic crisis, they also had to manage multiple foreign policy issues simultaneously. To meet these challenges, voters chose Senator Barack Obama and Senator John McCain as the nominees for the Democratic and Republican parties, respectively.

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[10] Denise-Marie Ordway and John Wihbey, "Negative political ads and their effect on voters: Updated collection of research," The Journalist's Resource, Shorenstein Center on Media, Politics and Public Policy, September 25, 2016.
[11] Elizabeth N. Saunders, "No Substitute for Experience: Presidents, Advisers, and Information in Group Decision Making," *International Organization* 71, Supplement 1 (2017): S219-S221.
[12] "Section 3: Issues and the 2008 Election," Pew Research Center, August 21, 2008.

EXPERTISE

Barack Obama's campaign appeals centered on his role in the U.S. Senate, where he chaired on the Committee on Foreign Relations. This put him in a prime position to deal with international affairs, specifically addressing European issues and sponsoring legislation on the War in Iraq and nuclear weapons. Other than time spent in Congress, Obama did not have military or national security experience, giving him little to draw on as he made his case to voters. Much of his appeal was based on his consistent opposition to the War in Iraq, which pushed him toward the nomination over his Democratic Party opponent Hillary Clinton.[13]

John McCain had a more extensive background to present to voters than just his time in the Senate. Before he had any political background, McCain served in the Vietnam War. While on combat duty, he was kidnapped, became a prisoner-of-war, and was tortured for years. This not only gave him firsthand experience with the plights of troops in the worst of situations, but it also allowed him to demonstrate his leadership skills in crisis. Once released, he was awarded some of the most distinguished awards in the Armed Forces. After departing Vietnam, he served in the House of Representatives on the Foreign Affairs Committee and in the Senate as an Armed Services Committee member. Here, he built a reputation as a foreign policy leader, giving him a significant body of work to make his case to voters.

PUBLIC APPEALS

Obama and McCain had different strategies when it came to using campaign ads to promote themselves and bolster their foreign policy credentials. Because Obama did not have a strong foreign policy record, he focused on showcasing himself as change from what had become the political norm. His campaign only referenced McCain in advertisements to connect him to the legacy of George W. Bush. Despite McCain having more foreign policy experience compared to his predecessor, the Obama campaign successfully pitted voters against him in the ad "Maverick No More." It spun the veteran's active-duty experience and his extensive foreign policy background into something that voters should fear as he might continue war and cause turmoil. A McCain presidency was essentially equivalent to another Bush presidency.[14]

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[13] Michael Nelson, "Barack Obama: Campaigns and Elections," UVA | The Miller Center, access date December 27, 2021.

[14] Democratic National Committee, "Maverick No More" advertisement, *Democratic National Committee*, August 7, 2008, www.livingroomcandidate.org.

McCain used ads to attack Obama's lack of a record while promoting his own. His campaign team even went so far as to predict what a McCain presidency would bring in the ad "2013." Each of the foreign policy issues that voters highlighted as major concerns during the 2008 election were effectively eliminated–the Middle East was stabilized, the nuclear terror threat was reduced, and border security was strengthened.[15] Ads purported McCain was a candidate with the tools to fix these problems.

Obama was an anti-war candidate, with a record in the Senate to support it, from the beginning and his speeches successfully portrayed him as a change from Bush. Criticisms of war in the Middle East abound throughout his speeches before he ran for president but came to their height when he accepted the Democratic Party's nomination for president. While he recognized that McCain served the United States "with bravery and distinction," he also highlighted that a modern view of defense was a key part of his role as commander-in-chief.[16] Obama called McCain's "stubborn refusal to end a misguided war" outdated and said McCain was "grasping at ideas of the past."[17] This reinforced McCain as a member of the old-guard Republican Party, continuing George W. Bush's legacy.

McCain's speeches sought to turn his level of experience into a force that would benefit foreign policy–especially the Iraq War–rather than a liability connecting him to Bush. McCain emphasized the goal of global cooperation in speeches, while making the War in Iraq seem necessary to continue to a favorable end, rather than rush to an end.[18] His appeals are moral ones, saying that withdrawing from war prematurely would hurt the Iraqi people more than staying. Consequently, the press lauded this as both a break from the Bush administration and a break from his own more aggressive approach to foreign policy.[19]

McCain's ideas about continuing war also appear in his Republican National Convention nomination speech. He portrayed all policy as a fight and said that he would "rather lose an election than see [his] country lose a war."[20] Though admirable statements for a potential commander-in-chief to make, they did not combat voter concern about the War on Terror.

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[15] Foxhole Productions, "2013," advertisement, *John McCain 2008,* May 18, 2008, www.livingroomcandidate.org.

[16] Barack Obama, "The American Promise Acceptance Speech at the Democratic Convention," August 28, 2008, http://obamaspeeches.com/.

[17] Ibid.

[18] John McCain, "Foreign Policy Speech to Los Angeles World Affairs Council," March 26, 2008, *The New York Times* online, https://www.nytimes.com/2008/03/26/us/politics/26text-mccain.html.

[19] David Jackson, "McCain foreign policy speech calls for global engagement," *ABC News* online, March 26, 2008.

[20] John McCain, "John McCain's Acceptance Speech," September 4, 2008, *The New York Times* online.

Further, McCain was able to easily promote his foreign policy goals based on his experience in Vietnam by telling his story as a POW and saying he hated war. The juxtaposition of this statement, however impactful, may have turned voters away from McCain, again perhaps because of a lack of understanding about his military experience.

During the three presidential debates in 2008, both candidates were on the defensive about hot foreign policy topics like the War in Iraq and Russia as a resurgent threat. In terms of experience, McCain described himself as a "cool hand at the tiller."[21] Not only does this follow the theory that presidents that have combat experience are less likely to engage in bloody conflict, but it also showed that he was fully aware of what combat situations entailed. Obama lacked this ability with a short record and a lack of military experience.

McCain tried to use the debates as an opportunity to break away from George W. Bush to improve perceptions of his record. He cited his own role as a "maverick," explaining that he could break away from the traditional Republican ideas in favor of the American people.[22] This did not have the intended effect–he still wanted to continue the War in Iraq and said pulling out of the war too early would be detrimental to both countries. His language was military-focused, and this may have pushed voters to support Obama who sought to end the war.

Obama, recognizing the disparity between his and McCain's credentials, preached a new foreign policy doctrine for the United States. McCain was quick to pick apart Obama's lack of a record, saying repeatedly that America did not have time for a president that needed "on-the-job training."[23] However, Obama was able to dissect McCain's record too, critiquing him about his work with Bush and saying that the country needed "fundamental change."[24] He, as a candidate who had lesser skills in foreign policy compared to someone like McCain, could still be president thanks to the American Dream.[25] This argument, along with the rest of Obama's persuasion attempts, proved successful in all three debates, as debate watchers found Obama to be the "winner" of each debate.[26]

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[21] John McCain, "Presidential Debate at Belmont University in Nashville, TN," October 7, 2008, *C-SPAN*, https://www.c-span.org.
[22] John McCain, "Presidential Debate – University of Mississippi – Oxford, MS," September 26, 2008, *C-SPAN*, https://www.c-span.org.
[23] Ibid.
[24] Barack Obama, "Presidential Debate at Belmont University in Nashville, TN."
[25] Barack Obama, "Presidential Debate – University of Mississippi – Oxford, MS."
[26] Jeffrey M. Jones, "Obama Viewed as Winner of Third Debate," *Gallup News* online, last modified October 17, 2008.

ADVISERS

On the campaign trail, Obama surrounded himself with a powerful foreign policy and national security support system rather than trying to draw attention to a gap in pre-existing credentials. The trusted figures of Bill Clinton and John Kerry backed Obama. Clinton came into the presidency with very little foreign policy experience, just like Obama, and used this as a method of support for him. He also praised Obama's foreign policy leadership skills, saying that he could turn adversaries into partners and stand up to them if that is not possible.[27] Former presidential candidate John Kerry, who was also a war hero and foreign policy expert in his own right, also supported Obama during his general election campaign. News articles from 2008 highlighted the success that Kerry's support as a strong voice on national security issues would have on Obama's campaign.[28]

Briefly a candidate himself, Joseph R. Biden became an outspoken supporter of Obama and eventually his running mate. He presented Obama as a sharp contrast to McCain and Bush. In his speech at the DNC in 2008, Biden acknowledged that McCain's experience alone was not enough to be president: "These times require more than a good soldier. They require a wise leader."[29] Biden's speech was able to successfully showcase the skills Obama did have that could benefit U.S. relations abroad, despite them not coming from military service.

McCain's advisers complemented his own experience. His large foreign policy team featured well-known names, including former Secretary of State Henry Kissinger and former Central Intelligence Agency Director R. James Woolsey Jr. The team brought a mix of voices from the realist and neoconservative camps of foreign policy to Capitol Hill-based advisers and veterans.[30] McCain's campaign aimed to highlight his diverse experience from naval service to Congress. On top of that goal, the campaign had to be able to defend McCain's desire to increase troops in Iraq, which well-versed advisers would be able to do.

However, one member of McCain's would-be administration did not follow the pattern of high-level foreign policy credentials. Sarah Palin, Alaska's governor, became McCain's running mate and lacked foreign policy experience. Her inexperience drew criticism, especially after she

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[27] William J. Clinton, "Speech at the Democratic National Convention," August 27, 2008, *NPR* online.

[28] Andy Sullivan, "Obama nabs key endorsement of John Kerry," *Reuters* online, January 9, 2008.

[29] Joseph R. Biden Jr., "Joe Biden's Acceptance Speech," August 27, 2008, *National Public Radio* online.

[30] Robert McMahon, "Foreign Policy Brain Trusts: McCain Advisers," Council on Foreign Relations, last modified October 3, 2008.

admitted on national television said she did not know George W. Bush's foreign policy doctrine.[31] Further, she could not discuss defense and Middle East policy issues in detail. For a position that relies heavily on diplomacy and is next in line to take over for the president, Palin's lack of knowledge proved to be detrimental to McCain's candidacy.

ELECTION 2016: FOREIGN POLICY CONCERNS COLLAPSE UNDER DOMESTIC DISCONTENT

After Obama's two presidential terms, the 2016 race featured a swath of candidates for both parties. The economy was still a concern, but there was room for terrorism and general foreign policy to become potentially major issues for voters.[32] The American public was also growing increasingly disillusioned with the government. 2015 Gallup polling said 75% of Americans believed government corruption was widespread, which Republican candidates in the primary and general elections used to promote their foreign policy goals.[33] After primary challenges, Hillary Clinton, a former U.S. senator and secretary of state, earned the Democratic nomination for president and businessman Donald J. Trump earned the Republican nomination.

EXPERTISE

Hillary Clinton, the first female nominee for a major U.S. party, had a storied history in foreign policy. Though she did not have experience in the military, she dealt with war and the Armed Forces firsthand. As First Lady to President Bill Clinton, she embarked on trips abroad with a particular focus on global women's rights. She served on the Armed Forces Committee in the Senate and supported intervention in Iraq through military force authorization and troop surges. After an unsuccessful campaign for the Democratic nomination in 2008, Barack Obama appointed Clinton as his secretary of state. The role was pivotal in developing her leadership skills in foreign policy, much of which came as she dealt with conflict in the Middle East.

While Clinton was a shoo-in for the Democratic nomination, Trump was an atypical nominee for the Republican Party. He did not have any political experience, let alone foreign policy experience. He also did not serve in the military–he obtained four student draft deferments

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[31] Sarah Palin, interview by Charlie Gibson, *World News*, ABC News, September 11, 2008.
[32] Leigh Ann Caldwell, "Eight Issues That Could Shape Politics in 2016," *NBC News* online, December 31, 2015.
[33] Gallup, "75% in U.S. See Widespread Government Corruption," *Gallup News* online, last modified September 19, 2015.

and then one medical deferment that disqualified him from service in the Vietnam War permanently.[34] However, this unconventional level of experience that Trump campaigned on was part of his appeal. Xenophobia and a distain for international cooperation shaped Trump's views of foreign affairs and appealed to voters that were used to candidates not espousing them.

It is important to note that Clinton's role as secretary of state and a candidate with a high level of foreign policy experience was not free from criticism. Two major controversies related to her foreign policy dealings while she was secretary of state surfaced on the 2016 campaign trail: the use of a private email messaging system and the attack on a U.S. diplomatic mission in Benghazi. The political right co-opted both issues, limiting the level of attention voters could give Clinton's credentials and discredited them. These situations could have given her a platform to demonstrate her foreign policy skill. Consequently, Trump capitalized on Clinton's failings to promote himself. He drew attention away from his lack of credentials as he disqualified his competitor's experience, allowing him to come out of Clinton's attacks unscathed. Clinton had to remain on the defensive, rather than promoting her high-level credentials.

PUBLIC APPEALS

Both candidates regularly discredited their opponents throughout 2016 campaign ads for both candidates. Trump's discreditation of Clinton relied on scandals associated with her tenure as secretary of state. His ads mostly shied away from foreign policy to focus on his skills as a businessman as a way of promoting himself as a negotiator. For Clinton, her ads used significantly more foreign policy issues connected to statements that Trump made to say he was not mentally sound enough to be president. Additionally, she appealed to voters' morals to sway them against voting for Trump.

In a Trump campaign ad that aired just days before Election Day, Trump described the Democratic Party's foreign policy as having "bled America dry."[35] His slogan, "Make America Great Again," pushed the country to look at internal issues to build strength, which was rather appealing for voters that were tired of U.S. foreign involvement. To counteract this, Clinton used Trump's own statements to discredit his ability to handle foreign policy properly. Her ad

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[34] Mark Hensch, "Trump was granted five draft deferments during the Vietnam War," *The Hill* online, August 2, 2016.

[35] Trump 2016. "Donald Trump's Argument for America" advertisement, *Trump, 2016,* November 4, 2016, www.livingroomcandidate.org.

"Sacrifice" explained that Trump does not respect veterans or the military.[36] In the ad, veterans watch television as Trump makes abhorrent statements about himself understanding sacrifice better than veterans. This approach showcased her as a caring and respectful leader.

Donald Trump's rhetoric was appealing to disillusioned Americans looking for a change from the Obama administration, both domestically and abroad. In a speech that defined the Trump Doctrine if elected, Trump said he would put "America First."[37] Regardless of the implications of his words, Trump successfully laid out his plan. Furthermore, he put aside his typical talking points about Muslim bans and immigrants in favor discussing nuclear weapons control and rebuilding the military.[38] Though he did not have the credentials to carry out these plans, this proved not to matter to voters when they ultimately elected him.

When Trump later accepted the Republican nomination, he resorted to attacks on both Clinton and Obama. He characterized the legacy and credentials of Clinton as "death, destruction and weakness" and juxtaposed himself as a new politician that would distance himself from the problems of the past.[39] His appeals rested on fear, particularly of foreigners and competition abroad. Policy-wise, this meant leaving deals with other countries and working one-on-one with countries he liked. This brought U.S. foreign policy closer to isolationism, something appealing to both xenophobic voters and those who feared growing global superpowers.

As she addressed voters, Hillary Clinton presented herself as diametrically opposed to from Trump. Her foreign policy positions of security, safety, strength, and growth were central to her campaign.[40] Furthermore, she called Trump "temperamentally unfit" for commander-in-chief due to his "dangerously incoherent" ideas.[41] Clinton highlighted her expertise by identifying Trump's lack of knowledge compared to her high level of understanding for international affairs. She gave concrete examples of how she had previously brokered peace deals and advised the president, which Trump could not do.

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[36] Hillary for America, "Sacrifice," advertisement, *Hillary for America, 2016*, September 6, 2016, www.livingroomcandidate.org.
[37] Donald J. Trump, "Donald Trump's Foreign Policy Speech," April 27, 2016, *The New York Times* online, https://www.nytimes.com/2016/04/28/us/politics/transcript-trump-foreign-policy.html.
[38] Ibid.
[39] Donald J. Trump, "Donald Trump 2016 RNC draft speech," July 21, 2016, *Politico* online, https://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974.
[40] Hillary Rodham Clinton, "Hillary Clinton on Foreign Policy" (speech), June 2, 2016, *CNN* online video.
[41] Ibid.

Clinton's acceptance speech at the 2016 Democratic National Convention promoted her credentials and successes, including supporting troops and veterans, fighting against ISIS, and working with NATO allies.[42] Again, she discussed the role of the commander-in-chief and the values–such as respect, informed and careful decision making, and calm temperament–that make a good one.[43] She made it clear that she could handle the stress of the Oval Office by explaining what Trump as a president would look like: "a man you can bait with a tweet is not a man we can trust with nuclear weapons."[44] Ultimately, this speech effectively defended her credentials against Trump who sought to discredit them, but it did not resonate with voters.

Foreign policy issues were less influential in debates, as both candidates dismissed their other's claims as lies. In line with this, Benghazi and Clinton's emails were bigger topics than any issue itself for Trump and he rarely detailed his policy goals. To counter his claims, Clinton discredited Trump's lack of experience and presented her own plans that her formal experience backed. When Trump questioned her stamina to be president, Clinton quipped,

> As soon as he travels to 112 countries and negotiates a peace deal, a cease-fire, a release of dissidents, an opening of new opportunities in nations around the world, or even spends 11 hours testifying in front of a congressional committee, he can talk to me about stamina.[45]

This was a worthy argument, as Trump did not have the experience she perceived as necessary to hold office. Trump countered weakly that Clinton did have experience, but it was "bad, bad experience" because she brokered poor deals.[46]

Just as Obama tied McCain to Bush, Trump worked to tie Clinton to the Obama administration during debates. Trump claimed that, despite her experience, "We cannot take four more years of Barack Obama."[47] Clinton could not do the same with Trump given his lack of record, which worked in his favor. Instead, she focused on her successes, including beginning Iran nuclear negotiations.[48] However, Trump, who was not privy to any of these discussions,

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[42] Hillary Rodham Clinton, "Hillary Clinton's DNC speech," July 28, 2016, *CNN* online, https://www.cnn.com /2016/07/28/politics/hillary-clinton-speech-prepared-remarks-transcript/index.html.

[43] Ibid.

[44] Ibid.

[45] Hillary Clinton, "Presidential Debate at Hofstra University" (debate, Hempstead, NY, September 26, 2016, The Commission on Presidential Debates), https://www.debates.org.

[46] Donald Trump, "Presidential Debate at Hofstra University."

[47] Donald Trump, "Presidential Debate at University of Nevada in Las Vegas" (debate, Las Vegas, NV, October 19, 2016, The Commission on Presidential Debates), https://www.debates.org.

[48] Clinton, "Presidential Debate at Hofstra University."

could easily purport that they were false or failed, which voters would be apt to believe without foreign policy knowledge. Polling showed that Clinton won the debates, yet this did not align with the election result.[49]

ADVISERS

Throughout the 2016 election, Republicans were quick to distance themselves from Trump, making it difficult for him to gather a team to bolster his lack of credentials. Republican foreign policy giants publicly said they could not vote for Trump based on his lack of experience and attitude toward foreign policy.[50] However, there were some high-profile Republicans with foreign policy and national security experience that did support Trump, including Jeff Sessions and former Lieutenant General Keith Kellogg.[51] These men were proxies for Trump, as they had high levels of experience in an area that he did not.

As Trump's running mate, Mike Pence had little to offer Trump in terms of skill set support but did offer some reassurance to voters that the administration would be able to adequately deal with foreign policy. The former congressman and Indiana governor spent time on House committees related to foreign policy but did not have any major political wins–in fact, every bill and resolution he proposed ultimately failed.[52] However, he was more experienced than Trump and brought along the traditional Republican idea ownership of national security.[53] Republicans backed up this claim about Pence; they called him "level-headed" and "steady," unlike his running mate.[54]

As with McCain in 2008, those that advised Clinton served to act as a support system, rather than a substitute for experience. The media called Clinton's adviser group a "brain trust" because it was massive.[55] The two main directors of this group (which included names like Madeline Albright and Leon Panetta) were Jake Sullivan and Laura Rosenberger. Though neither

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[49] Chris Cillizza, "Don't forget that Donald Trump lost the 2016 debates," *CNN Politics* online, September 29, 2020.
[50] David A. Graham, "Which Republicans Oppose Donald Trump? A Cheat Sheet," *The Atlantic* online, November 6, 2016.
[51] Jeremy Diamond and Nicole Gaouette, "Donald Trump unveils foreign policy advisers," *CNN Politics* online, March 21, 2016.
[52] Michael Barbaro and Monica Davey, "Mike Pence: A Conservative Proudly Out of Sync With His Times," *New York Times* online, July 15, 2016.
[53] Josh Rogin, "Vice President Pence is quietly becoming a foreign policy power player," *The Washington Post* online, March 5, 2017.
[54] Ibid.
[55] John Hudson, "Inside Hillary Clinton's Massive Foreign-Policy Brain Trust," *Foreign Policy* online, February 10, 2016.

were politicians, they brought a plethora of national security experience to support and craft Clinton's foreign policy plans. These leaders at the helm of a roughly 200-person group gave credibility to Clinton's foreign policy and provided a balance for the voters that viewed Clinton as hawkish.

Clinton's running mate, Senator Tim Kaine, had little to offer in terms of foreign policy. Much of his work as a politician focused on domestic policy. However, Kaine's experience on the Senate Foreign Relations Committee was a credential that made him a viable choice for a potential vice president.[56] Because Clinton did not need a running mate to bolster her credentials, her choice of a vice president was of little foreign policy or national security consequence.

CONCLUSION

In the past two decades, there have been very few candidates with military experience and even fewer who have won a presidential election. Military experience teaches leadership skills, particularly in crisis, and gives a presidential candidate firsthand knowledge about what the use of force entails. Not serving in the military creates a gap in knowledge, both for candidates who seek the presidency and voters who evaluate the president. Though candidates may be making foreign policy and national security experience a priority in their appeals, voters do not uphold this experience as a priority at the voting booth. For candidates who have military combat experience, voters are less likely to relate to them and their appeals and are more likely to turn to a candidate whose experience they understand better.

Negative appeals to voters–whether in ads, speeches, or debates–often work better than appeals made by a candidate in favor of him or herself. Furthermore, when the appeals stay surface level and do not dive into policy jargon, voters are more likely to relate to them. Advisers on the campaign, as well as those who may serve in a successful candidate's administration, ultimately do not play a huge role. While a figure with high level experience may provide reassurance to voters, little to no experience in a candidate has very little effect. The lack of voters understanding the military played out in 2008 when John McCain, a veteran war hero and senator, lost to Senator Barack Obama. Obama did not have firsthand experience with war to

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[56] Amy Chozick et al., "Hillary Clinton Selects Tim Kaine, a Popular Senator From a Swing State, as Running Mate," *The New York Times* online, July 22, 2016.

deal with the War on Terror. However, McCain proved to be unsuccessful because all his appeals showed him as a candidate who wanted to continue war and who had a high likelihood of being antagonistic towards foreign adversaries. In 2016, Donald Trump had no foreign policy experience to counter Hillary Clinton's significant experience. Nevertheless, the Clinton-related controversies, coupled with Trump's inherent challenge to the status quo, led to her election loss. In both years, the candidate that voters ultimately elected to the presidency was the candidate with less foreign policy experience.

The priority of foreign policy often falls behind domestic policy for voters. Further research in this area may be instructive to see what options presidential candidates with high-level foreign policy knowledge have for bringing foreign policy to the forefront of political discourse to make their appeals more effective. After the election, foreign policy is likely to become a more salient issue. Subsequent research should explore how appeals on the campaign trail translate into action as president. Assessing the translation of appeals into governing style may prove instructive for voters as they choose a candidate based on the type of governance he or she could provide and for candidates seeking how to showcase themselves to voters.

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THE IMPLICATIONS OF CHINA'S BELT-AND-ROAD INITIATIVE AS A FORM OF WORLD LEADERSHIP

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In recent years, China has risen in the ranks of the international system to become a powerful economic, military, and social force. As the United States faces relative decline from its previously undisputed position of world preponderance, the nature and intentions of China's rise have become increasingly important topics in U.S. foreign policy. This paper will seek to better understand the nature of China's current role in today's international system by critically analyzing the frameworks of the Belt and Road Initiative through the lenses of empire, hegemony, and leadership. The central question for this paper thus remains: does the BRI more closely resemble a would-be empire or hegemony that threatens U.S. preponderance? Or, does the BRI resemble a new-age style of foreign policy focused on utilizing soft power to advance Chinese leadership? This paper finds that Chinese policy through the BRI most closely resembles forms of leadership rather than empire or hegemony. While Chinese leadership poses a lower risk than empire or hegemony through the mutual recognition of state sovereignty, rising Chinese leadership through the BRI could produce a potential threat for conflict if left unchecked by decreasing U.S. leadership in the world.

EMPIRE, HEGEMONY, AND LEADERSHIP DEFINED

In order to understand China's BRI in the context of international politics, one must first define empire, hegemony, and leadership. International relations scholar Michael Doyle defines empire as "effective control, whether formal or informal, of a subordinated society by an imperial society."[1] In this respect, an empire can take two forms: 1) formal empire, in which a metropolitan state employs political and military force to control a peripheral state's sovereignty through that state's "social, economic, and cultural environments;" and 2) informal empire, in which a metropole controls another state's sovereignty by influencing coalitions and sovereign decision makers to manipulate the peripheral state's interests.[2] In both cases, a metropole utilizes direct political or military power to control a peripheral state's sovereignty.

The ancient Greek historian Thucydides' statement that "the strong do what they will and the weak suffer what they must" provides the basis for defining hegemony in international

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[1] Michael W. Doyle, *Empires*, 4th ed. (Ithaca: Cornell Univ. Press, 1996), 30.
[2] Doyle, *Empires*, 37, 135.

relations.[3] Hegemony rests on a state's military and economic preponderance within a hierarchical system, which allows the hegemon to influence international decision-making among other states through recognition of the hegemon's power and prestige.[4] Doyle's comparison of empire and hegemony provides a means to distinguish the two frameworks, where a state's "[c]ontrol of both foreign and domestic policy [of a peripheral state] characterizes empire; control of only foreign policy, hegemony."[5] A further distinction between informal empire and hegemony lies within the source of the hegemon's influence over another state. In empire, the metropole exercises direct influence over the peripheral state's sovereignty, while a hegemon's ability to influence lesser states derives from its perceived power threat within the international hierarchy.

International leadership derives from a state's use of soft power to influence the preferences of other states. Whereas empire and hegemony draw their frameworks from "command [or 'hard'] power – the ability to change what others do," leadership derives from "[c]o-optive power – the ability to shape what others want."[6] This ability to shape other states' preferences lies within the leading state's prestige. Means through which a state can increase its attractiveness as a leader include providing public goods within an international system, cultivating the ability to effectively provide such goods, and maintaining consent-based relationships with other states that recognize their equal sovereignty.[7] According to this definition, a preponderant state leads other consenting states by promoting norms of equal sovereignty, providing access to public goods, and limiting its own power through recognizing international regulations. An important distinction between leadership and the other two forms of international governing arises in the role of soft power within each case. Empire and hegemony base themselves upon hard power through the direct exertion of hard political and

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[3] Thucydides, *The Landmark Thucydides: A Comprehensive Guide to the Peloponnesian War*, newly revised ed., ed. Robert B. Strassler and Alan L. Boegehold, trans. Richard Crawley (New York: Free Press, 2008), 352.

[4] G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton: Princeton University Press, 2012), 26.

[5] Doyle, *Empires*, 40.

[6] Joseph S. Nye, *Soft Power: The Means to Success in World Politics* (New York: PublicAffairs, 2009), 7.

[7] David Lake, "International Authority," in *Hierarchy in International Relations*, (n.p., 2009), 29; Charles Kindleberger, "An Explanation of the 1929 Depression," in *The World in Depression, 1929-1939* (Berkeley: University of California Press, 1986), 288-305; Geir Lundestad, "Empire by Invitation in the American Century," *Diplomatic History* 23, no. 2 (Spring 1999):190-194; Thomas Risse-Kappen, "Cooperation among Allies: Power Bargaining or Democratic Cooperation," in *Cooperation among Democracies*, 19-20; Lake, "International Authority," 38; John Owen, "Leadership, Part I" (lecture, University of Virginia, Charlottesville, VA, September 31, 2021).

military power and through the hard power evident in preponderant status within the international hierarchy. In contrast, leadership derives from soft power.

THEORY

The BRI's significance lies within the threat China poses as a potential challenger to the United States' world preponderance. China as an empire or a hegemony directly threatens US preponderance, while China as a leader proves a lesser threat given a world leader's recognition of equal sovereignty for all states. As such, an understanding of power transitions proves essential to understanding the implications of China as an empire, hegemon, or leader.

A. F. K. Organski's power transition theory seeks to explain international conflict based on power transitions between states, wherein a rising state approaches and achieves relative power parity with a dominant, hegemonic state in an international system.[8] Organski cites three major factors as determinants for international conflict when combined. There must be a rising state that 1) possesses a greater rate of growth than the hegemon, which 2) allows the rising state to enact a power transition by achieving relative parity with the hegemon, and whereby 3) the rising challenger is dissatisfied with the current system's status quo.[9] In such circumstances, international conflict may occur through multiple means. First, if a power transition occurs and the rising state reaches military and economic parity with the dominant state, the rising state will attempt to overturn the status quo by waging a war against the former hegemon.[10] Second, war may also occur if the dominant state wages a preventative war against the rising state before a power transition occurs to preclude any such shifts in power.[11]

Similarly, Gilpin's hegemonic theory of war focuses on "broad changes in political, strategic, and economic affairs" between a hegemon and a rising state, which threatens to transform "the structure of the international system."[12] Although Gilpin does not specify which state initiates war, he outlines that hegemonic wars derive from the "distrust and uncertainty" that emerge when a stable system under an undisputed hegemon becomes unstable due to the rise

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[8] Greg Cashman, *What Causes War?: An Introduction to Theories of International Conflict*, 2nd ed. (Lanham, MD: Rowman & Littlefield Publishers, 2014), 411-412.
[9] Ibid., 412-413.
[10] Ibid., 413-414.
[11] Ibid.
[12] Robert Gilpin, "The Theory of Hegemonic War," *The Journal of Interdisciplinary History* 18, no. 4 (Spring 1988): 592.

of a potential challenger whose growth undermines the hegemon's power.[13] Gilpin further cites the "incompatibility between … the existing international system and the changing distribution of power among the states within the system" as the key element of his theory, and thus the cause of hegemonic war.

Dale Copeland's dynamic differentials theory projects that a leading state, which perceives "deep and inevitable" decline in the face of a rising power, will initiate a major war or cold war in a multipolar environment while it still retains significant military preponderance.[14] Copeland also states that the rising state may initiate conflict in a bipolar system once it has achieved near military parity with the declining leader.[15] In order for war to occur, the instigator must prefer war to the status quo – whether a potential loss of preponderance from the leading state's perspective, or a prolonged transition of power from the rising state's perspective.

UNDERSTANDING THE BELT AND ROAD INITIATIVE

The Belt and Road Initiative (BRI) began in 2013 under Xi Jinping, and serves as a transcontinental effort from China to:

> Promote the connectivity of Asian, European and African continents and their adjacent seas, establish and strengthen partnerships among the countries along the Belt and Road, set up all-dimensional, multi-tiered and composite connectivity networks, and realize diversified, independent, balanced and sustainable development in these countries.[16]

The BRI encompasses both land and sea, with the "overland Silk Road Economic Belt" spanning across Asia, the Middle East, and Europe, while the "Maritime Silk Road" includes maritime routes from China and Southeast Asia to Africa and Europe.[17] Since its inception in 2013, the BRI has extended to South America and has expanded to include 139 members, which comprises

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[13] Ibid., 593.
[14] Dale C. Copeland, *The Origins of Major War* (Ithaca: Cornell University Press, 2001), 15.
[15] Ibid., 17.
[16] Sebastian Ibold, "Belt and Road Initiative," Belt and Road Initiative, accessed November 30, 2021, https://www.beltroad-initiative.com/belt-and-road/.; Dipankar Banerjee, "China's One Belt One Road Initiative – An Indian Perspective," 5-6.
[17] Andrew Chatzky and James McBride, "China's Massive Belt and Road Initiative," Council on Foreign Relations, accessed November 30, 2021, https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative.

approximately sixty-three percent of the world's population and forty percent of global GDP.[18] During the COVID-19 pandemic, the BRI has increased its focus on technological projects through a "Digital Silk Road intended to improve recipients' telecommunications networks, artificial intelligence capabilities, cloud computing, e-commerce and mobile payment systems, surveillance technology, and other high-tech areas."[19] The BRI's outline also promotes five priorities for all states involved: 1) policy coordination between governments, 2), facilities connectivity to improve infrastructure, 3) unimpeded trade through reduced trade barriers, 4) financial integration characterized by "coordination and cooperation in monetary policy", and 5) strengthening people-to-people contacts through cultural and academic exchange.[20]

INTERNATIONAL SKEPTICISM

Despite the Chinese government's promotion of mutual benefit, mutual consent, and joint cooperation within the BRI, the initiative proves threatening in the eyes of neighboring countries and the United States. Chinese state funding for the BRI through state-owned banks lending to state-owned enterprises negates opportunity for private-sector participation, and China's refusal to join the Paris Club of major official creditors exempts Chinese banks from having to disclose certain information or cap interest rates, shrouding the BRI in an environment of "confusion and mistrust."[21] Furthermore, "BRI projects are built using low-interest loans as opposed to aid grants," which stirs worries of China using debt traps to gain influence over BRI members and

[18] David Sacks, "Countries in China's Belt and Road Initiative: Who's In And Who's Out," Council on Foreign Relations, accessed December 1, 2021, https://www.cfr.org/blog/countries-chinas-belt-and-road-initiative-whos-and-whos-out.

[19] Jennifer Hillman and David Sacks, "How Should the United States Compete With China's Belt and Road Initiative?," Council on Foreign Relations, accessed December 1, 2021, https://www.cfr.org/blog/how-should-united-states-compete-chinas-belt-and-road-initiative.; Jennifer Hillman and David Sacks, *China's Belt and Road: Implications for the United States*, report no. 79, 2, 2021, accessed December 1, 2021, https://www.cfr.org/report/chinas-belt-and-road-implications-for-the-united-states/download/pdf/2021-04/TFR%20%2379_China%27s%20Belt%20and%20Road_Implications%20for%20the%20United%20States_FINAL.pdf.

[20] Ibold, "Belt and Road Initiative," Belt and Road Initiative.

[21] Hillman and Sacks, *China's Belt and Road*, 15; Yu Jie and Jon Wallace, "What is China's Belt and Road Initiative (BRI)?," Chatham House, last modified September 13, 2021, accessed December 1, 2021, https://www.chathamhouse.org/2021/09/what-chinas-belt-and-road-initiative-bri.; Chatzky & McBride, "China's Massive," Council on Foreign Relations; Darshana M. Baruah, "India's Answer to the Belt and Road: A Road Map for South Asia" (working paper, Carnegie Endowment for International Peace, New Delhi, India, August 2018), 6-7, accessed December 1, 2021, https://carnegieendowment.org/files/WP_Darshana_Baruah_Belt_Road_FINAL.pdf.

possession of projects, pointing to hard power techniques of hegemony and empire.[22] In order to better determine the true nature of the BRI, one must analyze the BRI within the context of recent Chinese actions and power projections in the international sphere.

The Indian government harbors concerns over the BRI's potential to shift the regional power distribution and international norms, as well as to threaten India's territorial sovereignty and national security.[23] As Darshana Baruah discusses, "by helping create multiple access points via roads and ports, China is able to present an alternative to South Asian nations and cultivating the means to challenge India's role as a South Asian power."[24] The BRI poses a direct threat to the power distribution between China and India by offering China as an alternative to India for funding and support, thus diminishing India's influence toward neighboring states, as has occurred in Nepal and Sri Lanka, and isolating India.[25] Additionally, the BRI overlooks India's territorial sovereignty in areas including the China-Pakistan Economic Corridor (CPEC) and the Bangladesh-China-India-Myanmar Economic Corridor (BCIM), where Chinese workers' attempt to build a road in disputed territory in Doklam led to a military standoff in 2017.[26] Indian grievances also include the BRI's potential military threats. The possibility of a sustained Chinese military presence in Kashmir, and speculation that the Chinese government may utilize the Gwadar port in Pakistan for naval purposes prove valid security concerns for India.[27] In this respect, the BRI resembles a mechanism of hegemony or informal empire.

Nonetheless, proponents of the BRI in India welcome a China that is willing to take on "greater international responsibilities," describing China's rise as a "natural evolution."[28] Such individuals point to the BRI's potential benefits, including funding for much-needed infrastructure projects within India and among its neighbors.[29] The Indian government has also expressed that "India can neither be excluded nor by-passed in any major connectivity initiative in Asia."[30] India's decision-making toward the BRI thus proves an important factor for the success of the BRI in neighboring countries and beyond. In this respect, India's large influence

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[22] Chatzky & McBride, "China's Massive Belt and Road Initiative."
[23] Baruah, "India's Answer,"; Banerjee.
[24] Ibid., 20.
[25] Ibid., 19-21; Banerjee, 8.
[26] Ibid., 15-18.
[27] Ibid., 16; Isaac Kardon, "China's Geopolitical Gambit in Gwadar," Wilson Center, last modified October 20, 2020, accessed December 1, 2021, https://www.wilsoncenter.org/blog-post/chinas-geopolitical-gambit-gwadar.
[28] Banerjee, 7.
[29] Baruah, "India's Answer," 13.
[30] Banerjee, 4.

within the region should allow the Indian government to check Chinese influence by resisting non-desirable aspects of the BRI.

Like India, the Japanese government has also viewed the BRI through a lens of skepticism. As another close neighbor to China and a large source of funding for development projects in Asia, Japan worries that the BRI could drain Japanese influence among smaller states within the region.[31] Such views point to the BRI's potential hegemonic function by exerting Chinese power within the regional hierarchy. With continued territorial disputes over the Senkaku Islands and China's aggressive behavior in the South China Sea, the idea that the BRI might provide an avenue for expanded Chinese control of critical ports and waterways urges Japanese caution. Nonetheless, Japan's former Prime Minister Shinzo Abe signaled a willingness to support the BRI if the initiative conforms to international norms, including for "infrastructure to be open to use by all, and to be developed through procurement that is transparent and fair … [and] for projects to be economically viable and to be financed by debt that can be repaid."[32] Japanese attendance at the second Belt and Road Forum in Beijing in 2019 demonstrated a willingness to utilize "engagement rather than confrontation" to encourage China to abide by international norms in the BRI.[33] Japan's overall outlook thus proves hopeful in recognizing the BRI's potential benefits as long as countries like itself and India can effectively use their influence in East Asia to assure that China follows international norms and standards.

The BRI poses similar threats to some Americans, who believe the BRI increases China's ability to project its power across the world, creates debt crises due to debt trap diplomacy and a lack of economic transparency, and seeks to shift global economic and power trends away from the United States and Western states.[34] One of the BRI's core goals has been to provide opportunities for Chinese industry to export its manufacturing surpluses while also seeking profit in new markets outside of China.[35] American analysts claim that these frameworks create an unfair advantage for Chinese companies, which can buy excess Chinese goods and materials at a

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[31] Baruah, "India's Answer," 25; Suresh Nanwani, "Belt and Road Initiative: Responses from Japan and India – Bilateralism, Multilateralism and Collaborations," in *Global Policy*, 2-3, no. 2 (March 2019), accessed December 1, 2021, https://doi.org/10.1111/1758-5899.12666.

[32] Nanwani, 2; Andrea A. Fischetti and Antoine Roth, "Japan's Belt & Road Ambivalence," Tokyo Review, last modified May 14, 2019, accessed November 30, 2021, https://www.tokyoreview.net/2019/05/sino-japanese-review-japans-bri-ambivalence/.

[33] Fischetti and Roth, "Japan's Belt."

[34] Hillman and Sacks, *China's Belt and Road*.

[35] Ibid., 9 and 21-24.

lower rate than foreign countries, allowing Chinese companies to offer cheaper rates than Western companies.[36] Considering China's economic growth continues at a relatively high level compared to that of the United States, which now faces relative economic decline, the BRI's potential to boost the Chinese economy and crowd-out other states from international markets disturbs many Americans. [37]

American concerns also center on the BRI's potential to overwhelm participating states with great debt burdens that they cannot repay. Critics of the BRI cite the Hambantota Port in Sri Lanka as an example. Because the government of Sri Lanka could not pay back the Chinese loans that funded the project, Sri Lanka relinquished the port to the Chinese under a ninety-nine-year lease.[38] Such an example proves alarming in American eyes, seeing as, from this perspective, the BRI provides a means through which the Chinese government can directly exercise influence and control over foreign territory, paralleling the frameworks of the BRI with those of empire. Chinese actions in Djibouti and Italy have likewise stirred American fears of the potential for the BRI to shift international power distributions and security interests. In the African state of Djibouti, strategically located along the Bab el Mandeb Strait between the Red Sea and the Gulf of Aden, China harbors its only overseas military base.[39] While the Chinese naval base itself may not be part of the BRI, China has funded ports adjacent to their naval base in Doraleh, causing skeptics to worry that China might utilize Djiboutian debt as leverage to spread military presence in the strategic location, directly threatening U.S. security interests. [40] Additionally, the spread of the BRI among U.S. allies in Western Europe alarms some analysts. Particularly as a Group of Seven (G7) country, Italy joining the BRI in 2017 exacerbates worries that, as powerful U.S. allies adopt the BRI, the initiative will provide China with an expanding group of international supporters through increased leveraging power, acting as a hegemonic tool to shift the current U.S.-led international system to a new, Sinocentric model.[41]

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[36] Hillman and Sacks, *China's Belt and Road*, 21-24.

[37] Brantley Womack, "Convergence and Asian Re-Centering" (lecture, University of Virginia, Charlottesville, VA, September 30, 2021).

[38] Hillman and Sacks, *China's Belt and Road*, 16; Jie and Wallace, "What is Chinas Belt and Road"

[39] Hillman and Sacks, *China's Belt and Road*, 62-63; Lauren Ploch Blanchard and Sarah R. Collins, *China's Engagement in Djibouti*, September 4, 2019, accessed December 1, 2021, https://sgp.fas.org/crs/row/IF11304.pdf.; Pearl Risberg, "The Give-and-Take of BRI in Africa," Center for Strategic and International Studies, accessed December 1, 2021, https://www.csis.org/give-and-take-bri-africa.

[40] Blanchard and Collins, *China's Engagement in Djibouti*.

[41] *Exporting the China Model: Hearings Before the U.S.-China Economic and Security Review Commission* (statement of Elizabeth C. Economy).

REALITIES OF THE BRI AS LEADERSHIP

While critics of the BRI may cite the initiative's potential to endanger member states' sovereignty and shift the world order in favor of China, a closer analysis of BRI trends reveals a system based on the frameworks of leadership, rather than those of empire or hegemony. Revisiting the case of the Hambantota Port in Sri Lanka uncovers a less-menacing situation than many critics might claim. Although the ninety-nine-year lease that China now has on the port paints the BRI as a scheme for China to build an international empire, the port itself was not a Chinese idea.[42] Rather, the Sri Lankan government initiated the idea for the port, and the project's failure derives largely from factors including Sri Lanka's massive pre-existing debt, civil war, and the government's decision to privatize state assets, which allowed China to bid on the port.[43] The terms under which Sri Lanka entered the BRI were consent-based and the port fell into China's possession due to the Sri Lankan government's incompetence. The origins of the Sri Lankan port thus align more closely with the definition of leadership. Although China now possesses the rights to the Hambantota Port, Chinese government recognition of joint-cooperation and mutual sovereignty with Sri Lanka formed the basis of the original agreement rather than coercion through direct force, or fear of China's power.

Italy's involvement with the BRI reveals similar themes. Italy's explicit desire for involvement in the BRI points to a framework centered on soft power, in which Italy wanted to join based on the prospect of mutual benefit, rather than a framework where Italy found itself coerced to join the BRI due to direct coercion or hierarchical pressures. Italy's membership in the BRI remains largely symbolic, stemming from hopes that the Italian government could leverage its status as the first G7 member of the BRI to attract more attention and investment from China.[44] Italy also holds no contractual obligations toward China as of now, having set out a non-binding memorandum of understanding (MoU) with China in 2019, which stresses "mutual respect, equity, and justice."[45] Italy's ability to resist China in certain areas, such as excluding the Chinese technology corporation Huawei from the development of 5G internet

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[42] Jie and Wallace, "What is Chinas Belt and Road."

[43] Jie and Wallace, "What is Chinas Belt and Road"; Hillman and Sacks, et al., "China's Belt and Road," 28.

[44] Hillman and Sacks, *China's Belt and Road*, 53.

[45] *Memorandum of Understanding between the Government of the Italian Republic and the Government of the People's Republic of China on Cooperation within the Framework of the Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative*. Rome, March 2019. PDF, https://www.governo.it/sites/governo.it/files/Memorandum_Italia-Cina_EN.pdf (Accessed Dec. 1, 2021).

capabilities in Italy, supports this idea.[46] The MoU further highlights each party's cooperation "[g]uided by the purposes and principles of the UN Charter" and ensures respect of "domestic laws [and] international obligations," showing China's willingness to abide by international norms and regulations.[47] Through the strong emphasis on mutual cooperation, recognition of Italy's sovereignty, and the Chinese government's projected willingness to follow international norms in its relationship with Italy, the BRI serves as a mechanism for international leadership.

Reassessing Djibouti, one must recognize the distinction between the Chinese naval base and BRI projects. While skeptics worry that such projects provide an opportunity for a result similar to that in Sri Lanka, "Djiboutian officials insist they have no intent of ceding control of the port to China."[48] In addition, as is the case in many other participating BRI countries, Djibouti openly welcomes the opportunities that the BRI provides, with officials stating "[w]e thank the Chinese for our infrastructure development, and we want our other [international] partners to help us – not just tell us about the Chinese debt trap."[49] While reinforcing the consensual basis of the BRI, this statement also reveals the opportunity for continued partnerships with other foreign states besides China. While critics might tout the exclusive nature of the BRI as a means for China to gain leverage over participating states, Djiboutian officials' continued eagerness to work with other countries implies the broader reality that there remain opportunities for the United States and other Western states to maintain close relationships with BRI member states. Having established that the BRI in Djibouti also fits within the mold of leadership, the fears surrounding the potential militarization of BRI projects in Djibouti therefore appear to derive from outside forces of great power politics.

Overall, the above case studies affirm China's role as a leader through the BRI. China's consistent emphasis on member states' sovereignty and utilization of soft power techniques to spread the BRI through foreign states' own volition highlight the initiative as a means to fill the world's infrastructure needs rather than reshape the international system. Inevitably, the expansion of the BRI will include an expansion of military defense. Yet, following the definition of leadership, leaders must possess the economic and economic capacity to lead and provide public goods to other states, encapsulated by the Djibouti naval base's purpose as "a

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[46] Francesca Ghiretti, "The Belt and Road and Italy: 2 Years Later."
[47] Ibid.
[48] Blanchard and Collins, *China's Engagement in Djibouti*.
[49] Ibid.

supply center for [China's] peacekeeping and humanitarian missions in the region."[50]
Particularly as China projects a continued willingness to accept more international norms, as
evidenced in its MoU with Italy and Xi Jinping's 2019 comments stressing a commitment to
"infrastructure of high quality, sustainability, risk resilience, reasonable pricing, inclusiveness,
and accessibility," the BRI serves as a form of Chinese world leadership.

THE BELT AND ROAD CONTEXTUALIZED IN GREAT POWER POLITICS

While other world powers such as the United States, India, and Japan express worries of
Chinese aggression through the BRI, one must also contextualize China's role within
international relations. As China re-emerges to a central role in the world, Chinese policymakers
face a security dilemma in which they must maintain certain military standards to effectively
defend against potential threats. The "Malacca Dilemma" highlights this idea, as China fears
that India or the United States could cut off key trade routes through the Malacca Strait in the
event of a conflict, necessitating a strong Chinese naval presence to maintain open trade.[51]
While critics point to territorial disputes as evidence of Chinese aggression, such disputes stem
from the People's Republic of China's original territorial claims, which have not shifted during
the existence of the People's Republic of China.[52]

Given China's greater economic growth in the face of U.S. economic decline, a power
transition appears very likely between the United States and China. While this idea seemingly
fulfills parts of power transition theory, hegemonic stability theory, and dynamic differentials
theory, understanding China as an aspiring world leader, rather than a hegemon or an empire,
provides a less threatening outlook. In 2014, Xi Jinping outlined a goal "for the people of Asia
to run the affairs of Asia, solve the problems of Asia, and uphold the security of Asia."[53] While
these remarks appear to challenge the status quo, China's demonstration of a potential
willingness to abide by international norms through the BRI implies China's acceptance of the

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[50] Abdi Latif Dahir, "How a tiny African country became the world's key military base," Quartz Africa, last
modified August 18, 2017, accessed December 1, 2021, https://qz.com/africa/1056257/how-a-tiny-african-country-
became-the-worlds-key-military-base/.
[51] Baruah, "India's Answer," 23.
[52] Womack, "Convergence and Asian Re-Centering."
[53] Baruah, "India's Answer," 7.

international system. In this respect, China does not fulfill the requirement within all three theories of great power conflict that the rising state must challenge the international system.

Professor Qin Yaqing of China Foreign Affairs University suggests that "China's re-centering will not create a bipolar hegemon-challenger model [of international politics]."[54] Instead, global governance will flatten the hierarchical system to a "multi-nodal world" in which there is no central power and states experience mutual sovereignty.[55] China thus remains a leader in world politics, and while such leadership does not threaten great power conflict with the United States, the potential for China to change the status quo of leadership within the East Asian and international political spheres remains a critical factor to consider for future U.S.-China relations. With the BRI seemingly standing alone as the only feasible means for many developing countries to gain infrastructure development, such countries face the choice between joining the BRI or foregoing access to infrastructure. Such a decision therefore leaves open the potential for coercion to form through a Chinese monopoly if the United States and other countries do not provide other large-scale opportunities to obtain infrastructure.

POLICY APPLICATION

Taking the above ideas into consideration with U.S. initiatives toward recent developments in East Asia provides the means to shape successful policy. In a speech in Jakarta, Indonesia on December 14, 2021, U.S. Secretary of State Antony Blinken outlines the United States' strategy to maintain a "free and open Indo-Pacific," according to the "shared vision" of the "[p]eople and governments of the region."[56] According to Blinken, such a vision centers on openness, transparency, and "free[dom] from coercion."[57] Currently, the Biden administration's initiative to compete with the Belt and Road Initiative takes form under the Build Back Better World (B3W) Partnership. Led by the United States and G7 partners, the B3W "will orient development finance tools toward the range of challenges faced by developing countries, including in resilient infrastructure and technologies to address the impacts of climate change;

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[54] Womack, "Convergence and Asian Re-Centering."
[55] Ibid.
[56] Antony J. Blinken, "A Free and Open Indo-Pacific" (speech, Universitas Indonesia, Jakarta, Indonesia, December 14, 2021).
[57] Ibid.

health systems and security; developing digital solutions; and advancing gender equality and education." [58]

However, the realities of such "market-led" projects may likely prove deficient in providing a viable alternative to the BRI, particularly in developing countries with low international credit or unstable governments. Due to its ability to exploit China's material surpluses, the BRI remains less affected by market influences. The government-funded nature of China's BRI provides China with an inherent advantage in providing international funding, given that "BRI investment projects have to be debt funded, often in difficult business environments, and financial difficulties can result." For instance, "the BRI [includes] [$]101.8 billion of troubled assets," including situations where liabilities outweigh collateral value of the investment, loans default, or a country's internal strife prevents completion of a project.[59] In this respect, the B3W's apparent reliance on private-sector investment, which relies on market influences, will likely fall short of producing a sufficient level of investment to challenge that of the BRI. In order to create an international infrastructure program that provides an effective alternative to the BRI, the United States and other countries participating in the B3W should expand the scope of the projects that their governments and private sector partners would be willing to fund.

Two important requirements thus arise when considering how the U.S. government should pursue the B3W in order to provide developing countries with a viable alternative to the BRI. First, the United States should continue to stress the aspects of the B3W that China cannot guarantee through the BRI. These aspects include a commitment to democratic values of good governance, multilateral participation from a network of other democratic countries and private-sector participants that promotes mutual accountability, and a climate-friendly approach to projects.[60] Second, the U.S. government and other state governments participating in B3W should increase their own willingness to provide funding to developing countries that may pose a greater risk for investment and also provide incentives for private-sector participants to invest in

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[58] European Council of the European Union. "2021 G7 Leaders' communiqué: Our shared agenda for global action to build back better." Press release, (June 13, 2021).

[59] Organization for Economic Cooperation and Development. "The Belt and Road Initiative in the Global Trade, Investment and Finance Landscape." In OECD Business and Finance Outlook (Paris: OECD Publishing, 2018), 29.

[60] "FACT SHEET: President Biden and G7 Leaders Launch Build Back Better World (B3W) Partnership," Whitehouse.gov, last modified June 12, 2021, accessed February 25, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/12/fact-sheet-president-biden-and-g7-leaders-launch-build-back-better-world-b3w-partnership/.

such countries. In this manner, the B3W would likely expand its scope to include countries that would otherwise only be able to obtain infrastructure through the BRI while also guaranteeing openness and fairness through a promotion of democratic values.

CONCLUSION

Based on the above analysis, the BRI currently falls under the category of leadership due to its continued emphasis on mutual consent and joint cooperation as well as China's alleged willingness to follow international standards. Thus, perceived threats from China derive from its rising influence as a leader, yielding little potential for conflict with the US in the near future. However, the possibility remains for the BRI to evolve into a form of hegemony or empire if other powers do not provide viable alternatives, because an endogeneity crisis may develop should the BRI serve as the only viable option for improving infrastructure and connectivity. Such a scenario exceeds the scope of this paper and provides an opportunity for further research. That being said, one may draw some inferences toward the future from the above analysis of the BRI. While states arguably enter the BRI out of their own volition, the potential reality may be that such willingness derives from a "lack of alternatives." [61] Through its decreased participation in international organizations and a "retreat from providing global public goods," the United States has contributed to, if not created, a "vacuum" of alternatives to the BRI for struggling countries that might prefer not to join the BRI.[62] If successful and viable alternatives to the BRI do not arise soon, the BRI will likely become more hegemonic in nature by forcing a state to choose between new infrastructure or none at all. Given that no other powers "can challenge Beijing's advantages in connectivity financing," the United States and its allies should pursue the B3W to a greater extent than currently outlined by broadening the program's scope through a willingness to provide financially riskier investment. Although such a shift in investment philosophy may initially appear financially riskier for the United States, the long-term benefit of avoiding a global crisis, which China's ascension to a more dominant role in world leadership could likely spark, far outweighs such costs.

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[61] Baruah, "India's Answer," 5.
[62] Hillman and Sacks, *China's Belt and Road*, 19.

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SPACE DEBRIS' DIPLOMATIC OPPORTUNITY

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What international norm is necessary to reduce the likelihood of international incidents in space? Rhetoric is already heating up between major global powers leading the 21st century space race— namely between the United States, Russia, and China—surrounding the topics of anti-satellite tests, debris generation, and the placement and transit of weapons in orbit. As a result, calls for the formal establishment of international normative behaviors in space are increasing. This research focuses on a brief review of the dangers presented by the creation and presence of space debris and surveys past international agreements that established norms in the domains of air, sea, and land. Drawing from this analysis, and as an urgent matter of global security, the United States must champion a moratorium on kinetic energy anti-satellite tests. Such tests are not only responsible for much of the debris in orbit, but the international incidents which debris collisions could produce could also contribute to destabilizing international relations between space faring countries.

INTRODUCTION

For astronauts aboard the International Space Station (ISS) on November 15, 2021, NASA Mission Control in Houston, Texas gave to order to execute safe haven procedures, which meant the station and the crew members' lives could be in grave danger. It also meant that they would need to quickly take shelter in their SpaceX Crew Dragon Capsule. Russian cosmonauts also on board the ISS took shelter in their Soyuz capsule, too. Only hours prior to the event, the Russian government launched a surfaced based missile at one of its dead satellites, Cosmos-1408, successfully destroying it in a KE-ASAT test.[1] In doing so, the crews, capsules, and station became sitting ducks for the resulting debris field now numbering thousands of uncontrolled pieces, now missiles themselves. Crews waited either for an all clear from NASA or for pieces of Cosmos-1408 to either hit the station or capsules, possibly both. Thankfully, the debris passed by the ISS, though the orbiting debris field forced the crews to repeat the safe haven procedures another time that day.[2]

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[1] Referred to herein as KE-ASAT tests.

[2] John L Stoll, ed., "Nov-14-15-2021_Capcom-to-ISS-Call-for-Shelter-in-Place," Internet Archive (NASA, 2021), https://archive.org/details/Nov-14-15-2021_CAPCOM-to-ISS-Call-For-Shelter-In-Place. The crews were awoke

The Cosmos-1408 incident demonstrated how quickly a debris field generated by a KE-ASAT test can devolve into an international incident, to say nothing of the potential impacts on the lives and families of ISS astronauts and cosmonauts as well as China's Tiangong space station taikonauts. The incident also may have served to provide some impetus to placing a moratorium on such activities, to the benefit of all served by and serving in the human space environment.

The widely adopted 1967 United Nations Outer Space Treaty (UNOST) prohibits placement or tests of weapons of mass destruction in space, however the earth's gravity holds millions of fast-moving objects in its orbit capable of catastrophe. A few of those objects are the controlled satellites we think of as relaying phone calls or our TV's channel signal. Yet, much of what is in orbit is also capable of destructive outcomes. The average speed of most of orbital debris is six miles per second, or around twenty thousand miles per hour.[3] Orbital collisions between satellites, missiles, or existing debris can disrupt global internet connectivity, stock markets, civil and military communications systems, aircraft and maritime tracking, planetary defense surveys, and national infrastructure systems around the world.[4] Debris from orbital collisions can be smaller than a grain of sand, which makes them too small to be trackable.[5] The debris that is softball-size-or-larger objects still number in the tens of thousands. Of the thousands of satellites still in operation, many are maneuverable and, if given enough advanced notice, can spend available fuel to avoid collisions with uncontrolled objects referred to as space debris.

Space debris is generated, not only by KE-ASAT tests, but also by events like non-ASAT rocket launches, the expiration of an operational satellite, waste disposal from space stations, and the accidental collision between two satellites. Before Cosmos 1408, space debris had already

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from sleeping to take shelter and told that if the capsule was hit they should get back into the ISS rather than return to earth in the damaged capsule.

[3] Judy Corbett, "Micrometeoroids and Orbital Debris (MMOD)," NASA (NASA, September 17, 2015), https://www.nasa.gov/centers/wstf/site_tour/remote_hypervelocity_test_laboratory/micrometeoroid_and_orbital_debris.html.

[4] Center Pocket Casts, *Pocket Casts* (American Foreign Policy Council: Space Strategy podcast, February 3, 2022), https://pca.st/episode/6b9d14c0-4557-45bd-8669-5481fe6a85b1?t=333.0. Sokolski is the Executive Director of the Nonproliferation Policy Education Center. In this interview Sokolski qualified space as being the modern nervous system for the U.S. military.

[5] Mark Garcia, "Space Debris and Human Spacecraft," NASA (NASA, April 14, 2015), https://www.nasa.gov/mission_pages/station/news/orbital_debris.html.

proven it can endanger lives. In April 2021, astronauts aboard the SpaceX Crew Dragon were told to suit-up and buckle-up as a piece of debris came dangerously close to the transiting capsule.[6] While multiple state actors including the U.S.; France; India; China; and Russia; have tested their ability to intentionally destroy their satellites using targeted rocket launches, many in the international community have also acknowledged the exponential dangers each test contributes to the orbital environment and sought ways to reduce debris generation.[7] While earth's gravity and atmosphere cause space debris to deorbit over time, the amount we generate and the ways in which we generate it may mean it will be up there for centuries.[8] If unmitigated, the likelihood of a space debris related catastrophe increases with time and frequency of launches but especially KE-ASAT tests.[9]

Further still, KE-ASAT tests run the risk of creating a runaway debris-generating effect, a phenomenon known as the Kessler Syndrome, an orbital equivalent of a tragedy of the commons.[10] Unfortunately, variations in the interpretation of past agreements give little encouragement toward progress. For example, in 2007, agreement was reached in the United Nations (UN) Committee on the Peaceful Uses of Outer Space (COPUOS) on establishing guidelines for space debris mitigation including the avoidance of intentional destruction of on-orbit space craft.[11] So, when asked at the February 2022 COPUOS meeting in Vienna how Russian diplomats expected other committee member states to reconcile the November 2021 KE-ASAT test with Russian support for the guidelines, its diplomats reasoned that their test did not

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[6] Tariq Malik, "A Piece of Space Junk Zipped by Spacex's Dragon Capsule on Its Way to the Space Station," Space.com (Space, April 24, 2021), https://www.space.com/spacex-crew-2-dragon-capsule-space-junk. With only an eighteen-minute lead time, the crew aboard the capsule had to don their suits and secure the rest of the cabin and themselves.

[7] "SWF Releases Updated Compilation of Anti-Satellite Testing in Space," SWF Releases Updated Compilation of Anti-satellite Testing in Space | Secure World (Secure World Foundation, 2020), https://swfound.org/news/all-news/2020/06/swf-releases-updated-compilation-of-anti-satellite-testing-in-space/. This webpage hosts a link to a publicly available spreadsheet tracking data about space debris.

[8] Brian Dunbar, "Frequently Asked Questions: Orbital Debris," NASA (NASA, 2011), https://www.nasa.gov/news/debris_faq.html.

[9] D.L. Oltrogge et al., "A Comprehensive Assessment of Collision Likelihood in Geosynchronous Earth Orbit," Acta Astronautica (Pergamon, March 12, 2018), https://www.sciencedirect.com/science/article/pii/S0094576517315011.

[10] Donald J. Kessler and Burton G. Cour-Palais, "Collision Frequency of Artificial Satellites: The Creation of a Debris Belt," *Journal of Geophysical Research* 83, no. A6 (1978): p. 2637, https://doi.org/10.1029/ja083ia06p02637.

[11] "Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space," Office for Outer Space Affairs (United Nations, 2014), http://www.unoosa.org/pdf/publications/st_space_49E.pdf, p. 3.

conflict with their support for the guidelines as Cosmos-1408 was launched prior to the guidelines' adoption.

So, what chance does the establishment of space norms have in such an environment? International agreements like the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the UN Convention on the Law of the Sea (UNCLOS), the Convention on International Civil Aviation (ICAO), and the Antarctic Treaty System (ATS) survived continuous trials for between forty and seventy-five years all while creating sustainable and normative behaviors in their respective domains. In contrast, the Intermediate-range Nuclear Forces (INF) Treaty offers a sample of lost opportunity in international relations. Analysis of these key historic diplomatic efforts will serve to identify the successes and failures in those agreements that the United States should consider when engaging international partners in establishing an immediate KE-ASAT test moratorium. Failing to do so will impact national and global security for decades, if not centuries, to come.

SPACE DEBRIS' IMPACT

On multiple occasions, unintentional collisions have taken place in orbit that have involved active satellites and debris. In 2009, the Iridium-33 and Russian military's Cosmos-2251 collided, producing nearly two thousand pieces of debris which meant there no longer existed a world where the sky was too big for such an incident to occur.[12] A March 2021 incident that caused the breakup of a Chinese meteorological satellite was determined to have involved debris from a 1996 Russian satellite. These incidents account for two of the known five accidental collisions between catalogued objects, all of which occurred during or after 1991.[13] Russia's November 2021 KE-ASAT test nearly added the sixth such incident and while moving the ISS out of the way might seem a simple enough task, orbital mechanics aside, international space relations also determine the station's fate. Potentially cutting short the ISS's recent life extension to 2031, Russia's Director General of Roscosmos, the federation's civil space program, tweeted a thinly veiled threat on February 24, 2022, saying routine corrective

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[12] Brian Weeden, "2009 Iridium-Cosmos Collision Fact Sheet," Publications by Brian Weeden (Secure World Foundation, November 10, 2010), https://swfound.org/about-us/staff-publications/publications-by-dr-brian-weeden/.
[13] Heather Cowardin and Rossina Miller, eds., "Accidental Collision of YunHai 1-02," accessed 2022, https://orbitaldebris.jsc.nasa.gov/quarterly-news/pdfs/odqnv25i4.pdf.

maneuvers by the Russian Progress space craft on the ISS which help the station maintain a sustainable orbit and avoid debris, may be prevented as retaliation for sanctions levied against Russia after its invasion of Ukraine, including sanctions directly impacting its space sector.[14]

To avoid debris one must first know where it is and for decades the U.S. Department of Defense (DOD) has used its global Space Surveillance Network (SSN) radar and optical systems, a system designed to track missile launch activity, to monitor debris in earth's orbit. Lately, a growing sense of urgency and opportunity is rapidly expanding the number of commercial and non-profit companies interested in building space domain awareness (SDA) data systems that seek to supplement and likely surpass SSN's role. Space domain awareness systems like ExoAnalytic Solutions and Satellite Dashboard use sensory and shared satellite data to track, analyze, and model orbital activity and advise operators of any necessary course corrections.[15] However, as course adjustment maneuvers add up, the lifetime of a satellite's fuel is reduced. To compensate, more fuel could be added but doing so also adds costs to the launch.[16] With each additional kilogram of mass needing launched, cost of that project increases, limiting common access to peaceful space development. Such a problem may soon be a thing of the past, though. Launch affordability has been dramatically reduced by commercial launch developers like SpaceX, Relativity Space, and others. Cost to get a payload to space has dropped considerably from past decades and launch costs are expected to continue their downward trend from tens or hundreds of millions of dollars per launch to the low millions in the next ten years. This is anticipated, in large part, due to the payload mass design capacity of SpaceX's Starship.[17] Such a domestic commercial system has the potential to improve resiliency in satellite operations by

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[14] Dmitry Rogozin, (@rogozin) "…Garbage, with Which Your Talented Businessmen Have Polluted the near-Earth Orbit, Is Produced Exclusively by the Engines of the Russian Progress MS Cargo Ships. If You Block Cooperation with Us, Who Will Save the ISS from an Uncontrolled Deorbit and Fall into the United States or...," Twitter (Twitter, February 24, 2022), https://twitter.com/Rogozin/status/1496934100363587587?s=20&t=E6RHF343eSM1vBPQSHPuDw. This would, in effect, result in the early de-orbiting of the ISS. If not optimally controlled, the event could also generate a lot of debris on the way down as it fails to avoid other debris along its descent.

[15] "Satellite Dashboard: About," Satellite Dashboard (Secure World Foundation, Center for Strategic International Studies, Department of Aerospace Engineering and Engineering Mechanics, & University of Texas at Austin, 2022), https://satellitedashboard.org/about/. Using the dashboard, one can track the orbit of debris, active and inactive payloads, as well as rocket bodies.

[16] D.L. Oltrogge et al., "A Comprehensive Assessment of Collision Likelihood in Geosynchronous Earth Orbit," Acta Astronautica (Pergamon, March 12, 2018), https://www.sciencedirect.com/science/article/pii/S0094576517315011, pp. 316, 337.

[17] "Starship," SpaceX, 2022, https://www.spacex.com/vehicles/starship/. Starship is designed to take approximately 100 tons of payload to low-earth orbit, tripling NASA's shuttle capacity.

deploying large orbital constellation networks and demonstrating rapid redeployment capability helpful in deterring adversarial aggression on and off planet.[18] Still, more mass orbiting the Earth, and later other celestial bodies, can mean higher risks too.

Opportunities for continued investment in orbital development are also in danger of eroding as concerns grow among some venture capitalists over Russia's 2021 KE-ASAT test. Of those willing to wait out the decade long investment returns in long-term orbital infrastructure projects, some are also asking, "who wants to build a hotel in a war zone?"[19] For the investor looking to make returns a little sooner, the debris mitigation sector is seeing both government and commercial sector investment show up after more space operators have faced up to what it would mean for their business's bottom line and for national security if a billion dollar satellite and its services were suddenly lost. Cleaning up the earth's orbit is about to become one of the largest international environmental cleanups in history.

ANALYSIS OF HISTORIC MODELS

Five treaties created in the UN established rules of the space domain as it was understood to be at the time.[20] The UNOST was the first of those to be entered into force in October 1967 garnering the support over one hundred UN member states. The last of the five treaties took effect in 1984 when only eighteen member states ratified the Moon Agreement, the United States not among them. Serving as a behavioral baseline, parties and signatories to the respective treaties agreed to the common purpose of preserving space for exploration, to being held liable if another's property is destroyed, to rescuing each other's distressed human space travelers, to share the orbital information of the satellites launched from their soil, and to avoid national claims of celestial plots of real estate.

Since the Moon Agreement, attempts at clarifying internationally accepted norms of behavior in space have not prevailed, though, not for a lack of trying.

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[18] "Ad Astra, on the Cheap; Rocket Science.," *The Economist*, February 19, 2022, p. 65(US), https://link.gale.com/apps/doc/A694044477/AONE?u=usc&sid=bookmark-AONE&xid=bd80d2ba.
[19] Kurth, Justin L. Interview on Space and Venture Capital with Adrian Mangiuca of Voyager Space. Personal, November 23, 2021.
[20] "United Nations Office for Outer Space Affairs," Space Law Treaties and Principles (United Nations, 2015), https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties.html.

In 2008, the governments of Russia and China together proposed the 'Treaty on Prevention of the Placement of Weapons in Outer Space' (PPWT).[21] However, its fate was doomed after U.S. diplomats concluded it would undermine existing UN Security Council (UNSC) enforcement mechanisms and appeared to largely target U.S. research, intelligence, and military activity. The U.S. also observed that the PPWT would not prevent KE-ASAT tests like the one completed by China in 2007.[22]

A 2012 analysis of the European Union (EU) draft proposal of an International Code of Conduct (ICoC) said the draft showed promise.[23] Unfortunately, it failed to gain support over concerns surrounding national sovereignty and the exclusivity of the proposal's development.[24]

Two significant advancements toward developing space norms came in the form of a July 2021 memorandum from the U.S. Secretary of Defense, Lloyd J. Austin, and the February 2022 release of the Combined Space Operations Command's *CSpO Vision 2031* initiated by the U.S., Australia, Canada, France, Germany, New Zealand, and the United Kingdom. The former sends a clear behavioral expectation to the department's secretaries and others about responsible operation in space, like to "[l]imit the generation of long-lived debris."[25] The latter seeks to lead the international space power structure going forward and even defend against hostilities.[26]

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[21] "Note Verbale Dated 3 December 2021 from the Permanent Mission of China to the United Nations (Vienna) Addressed to the Secretary-General," Committee on the Peaceful Uses of Outer Space (United Nations of Outer Space Affairs, December 3, 2021), https://www.unoosa.org/res/oosadoc/data/documents/2021/aac_105/aac_1051262_0_html/AAC105_1262E.pdf.

[22] "Letter Dated 2008/08/19 from the Permanent Representative of the United States of America Addressed to the Secretary-General of the Conference Transmitting Comments on the Draft 'Treaty on Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force against Outer Space Objects (PPWT)" as Contained in Document CD/1839 of 29 February 2008," United Nations Digital Library (United Nations, 2008), https://digitallibrary.un.org/record/637449, p. 4.

[23] Paul Meyer, "The Judgment of PAROS: How Best to Prevent an Arms Race in Outer Space," Summit (School for International Studies, 2012), https://summit.sfu.ca/item/14882, Abstract.

[24] Nicholas Wright, ed., "Outer Space; Earthly Escalation? Chinese Perspectives on ...," SMA Space Panel Discussion (NSI, Inc., October 2018), https://nsiteam.com/social/wp-content/uploads/2018/08/SMA-White-Paper_Chinese-Persepectives-on-Space_-Aug-2018.pdf, p. 50.

[25] Lloyd J. Austin, "Memorandum for the Secretaries of the Military Departments: Tenets of Responsible Behavior in Space," Department of Defense (United States, 2021), https://media.defense.gov/2021/Jul/23/2002809598/-1/-1/0/TENETS-OF-RESPONSIBLE-BEHAVIOR-IN-SPACE.PDF. The tenets are these descriptions of what the DOD describes as responsible behavior: Operate in, from, to, and through space with due regard to others and in a professional manner; Limit the generation of long-lived debris; Avoid the creation of harmful interference; Maintain safe separation and safe trajectory; and communicate and make notifications to enhance the safety and stability of the domain.

[26] "Combined Space Operations Vision 2031," Department of Defense (United States, 2022), https://media.defense.gov/2022/Feb/22/2002942522/-1/-1/0/CSPO-VISION-2031.PDF.

Still, space is not the first domain in which adversarial nations have had to coexist with each other and their environment. The Antarctic Treaty was created during the Cold War and included the US and USSR as two of the original twelve signatories. It sought to preserve the continent as a zone for research and exploration.[27] That same preserving sentiment was placed in the UNOST less than a decade later.[28] Though legal disputes remain over sovereign claims, war has yet to arrive at its frozen shores.

In 1982, formal establishment of nautical norms in the UNCLOS did not gain official support of the U.S. as the treaty's international enforcement powers concerning mineral extraction were thought to be too compromising of national sovereignty. While modifications have been made to avail U.S. concerns over sovereignty, accession has yet to be approved in the Senate. Meanwhile, the U.S. has largely refrained from undermining the treaty. Though the treaty's text has been interpreted by China in such a way as to allow for harassment of surveillance vessels and island claims—a claim disputed by other countries—scholars conclude the treaty, "prevents the outbreak of new maritime claims and promotes third party management efforts of maritime conflicts."[29]

For almost eighty years, the International Civil Aviation Organization (ICAO) has brought major air-faring countries together to produce sustainable best practice guidance to air traffic controllers, pilots, and airplane manufacturers. Regular meetings of the ICAO council, consisting of thirty-six of its 193 member nations, offer opportunities to seek adoption of new standards of operation that improve the safety of the skies around the globe.[30] The ICAO has received praise for its ability to keep, "basic sovereignty of the states [] at [its] heart."[31] As

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[27] "Key Documents of the Antarctic Treaty System," Key Documents | Antarctic Treaty (Secretariat of the Antarctic Treaty, 2011), https://www.ats.aq/e/key-documents.html. The treaty was signed by the U.S., the U.S.S.R., and others nearly eight months after NATO declared its intent to protect West Berlin.

[28] "United Nations Office for Outer Space Affairs," The Outer Space Treaty (United Nations, 2015), http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introouterspacetreaty.html.

[29] Stephen C. Nemeth et al., "Ruling the Sea: Managing Maritime Conflicts through UNCLOS and Exclusive Economic Zones," CSU-Pueblo Academic Search Premier (International Interactions, 2014), https://login.ezproxy.csupueblo.edu/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=99208261&site=ehost-live&scope=site, Abstract.

[30] The ICAO executes its missions in compliance audits and capacity assistance, sharing its collective knowledge, experience, and resources. "Mission," Vision and Mission (International Civil Aviation Organization, 2016), https://www.icao.int/about-icao/Council/Pages/vision-and-mission.aspx.

[31] David MacKenzie, "Chapter 17 Meeting the Twenty-First Century," in *ICAO: A History of the International Civil Aviation Organization* (Toronto, ON: University of Toronto Press, 2010), p. 397, https://www.google.com/books/edition/ICAO/ktcEbzZJk1kC?hl=en&gbpv=0.

witnessed in the EU's ICoC failure, national sovereignty must be a priority to get closer to the desired consensus. Though, adapting an ICAO equivalent of basic space sovereignty may prove more difficult as Article 1 of the UNOST declares space "the province of all," adding, "there shall be free access to all areas of celestial bodies."

The prevention of nuclear weapons tests in the air, space, and sea brought wide ranging support in the form of the Limited Test Ban Treaty of 1963.[32] Within five years, the LTBT was followed up by the NPT, and the Comprehensive Nuclear-Test-Ban Treaty (CTBT) in 1996, which is not yet in effect. Each treaty sought to limit the production and use of nuclear weapons.[33] To date, no nuclear weapons test has occurred off planet, demonstrating some common willingness to keep space peaceful and keep nuclear arms activity, however limited, earthbound. However, concerns over how the NPT is sustained in an emerging multipolar world raise the prospect of this treaty regime needing a refresh as well.[34]

Finally, it is worth noting the eventual withdrawal of the U.S. and Russia from the INF Treaty. After twenty-seven years in force, a sequence of reports from both countries, about how the other was violating the treaty's obligations on ground-launched ballistic and cruise missiles, marked the beginning of the end. While the determination of whether legal lines were crossed by either country is a topic still being debated, both parties, nonetheless, felt the spirit of the treaty had been violated, dashing a quarter-century of trust building.[35] Preventing this erosive result will be an important factor in establishing a KE-ASAT test moratorium.

While space debris is no nuclear bomb, its collisions involving civil or military satellites and space stations, have and will continue to leave both orbital and geopolitical fallout. Should an accidental collision occur during a tense moment on the ground between two countries, what each country decides to interpret that accident as will have impacts on the ground. Similar circumstances, like the 1995 Norway Incident, have found the world perilously close to nuclear

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[32] "Fact Sheet: The Limited Test Ban Treaty (LTBT)," Treaties (Center for Arms Control and Non-Proliferation, April 13, 2021), https://armscontrolcenter.org/fact-sheet-limited-test-ban-treaty-ltbt/.

[33] Kena Alexander, "Disarmament Treaties Database," UNODA Treaties (United Nations, 2021), https://treaties.unoda.org/.

[34] Rebecca Davis Gibbons and Stephen Herzog, "Durable Institution under Fire? the NPT Confronts Emerging Multipolarity," *Contemporary Security Policy*, July 2021, pp. 1-30, https://doi.org/10.1080/13523260.2021.1998294, 21.

[35] Steven Pifer, "The Blame Game Begins over the INF Treaty's Demise, and Washington Is Losing," Brookings (Brookings, January 25, 2019), https://www.brookings.edu/blog/order-from-chaos/2019/01/25/the-blame-game-begins-over-the-inf-treatys-demise-and-washington-is-losing/.

war after communication protocols broke down between Russian Federation government officials and their radar technicians watching the skies for incoming missile strikes. The government was notified by Norwegian scientists that they would testing a sounding missile but that notification never made it to the radar technician, who dutifully notified their supervisor of the inbound missile, the path of which appeared to be the anticipated corridor through which U.S. intercontinental ballistic missiles (ICBMs) would transit. The missile soon turned away from land but not before Russian President Boris Yeltsin had neared the end of his launch-decision process.[36] The incident nearly made Yeltsin the country's first and last democratically elected president. Hypothetical scenarios abound in the Norway Incident's application to space debris and KE-ASAT tests. Due to the small size of most space debris, affected international space agencies and government leaders may be left guessing whether their space assets have been targeted in an attack or have suffered an accidental collision, circumstances some political opportunists might relish the prospect of.

PROPOSAL AND FUTURE CONCEPTS

Successes in the adoption and implementation of treaties and agreements like of the NPT, ICAO, ATS, UNCLOS, and the UNOST prove consensus on norms can be accomplished. Failures in the PPWT and ICoC lay bare the importance of sovereignty in future discussions on the international governance of the commons. Essential ingredients in those successes included the ATS's preservation of the Antarctic for research and exploration, UNOST's establishment of common ownership of celestial bodies, the ICAO's embracement of sovereignty's role in governance, the adaptability demonstrated in amending UNCLOS to bring about more consensus. Each success served to increase transparency and reduced uncertainty in their respective domains for decades. Could these ingredients for success be engaged in a KE-ASAT test moratorium? Absent the previously mentioned historical solutions, would an anarchical

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[36] EUCOM History Office, "This Week in EUCOM HISTORY: January 23-29, 1995," United States European Command, January 23, 2012, https://web.archive.org/web/20160105033448/http://www.eucom.mil/media-library/article/23042/this-week-in-eucom-history-january-23-29-1995.

power vacuum have caused a neoclassical realist to assume another state would have soon responded if the neoclassical realist failed to act first?[37]

Members of the COPUOS have struggled for decades with the balance of sovereignty of member states and the UNOST's proclamation of globally common stewardship of space. Something that sets space apart from airspace and oceans is those have definable limits at which the international gives way to the national. A sovereign government can tell a ship or a plane to go no further. A delimitation of where airspace ends, and space begins could be of benefit to the future of space development, however, diplomatic discussions on such a definition have gone on for decades within the COPUOS, bearing no fruit. Defining such a boundary has proven too much to agree upon as the ambiguity serves some countries' interests in flying in high altitude airspace which is typically uncontrolled and useful for airborne surveillance missions. There may soon need to be determination as to whether a boundary is or is not a necessity of the next era of space development. As the number of satellites grows, and relative technological advancements continue, will aircraft be needed for this service? Air and space travel could become congested enough to necessitate a delimitation like the air traffic control air space classifications, but further research is needed to determine the conditions which should stimulate changes.

As parties to the UNOST make clear, space is no one country's territory. This is also the case for international waters and airspace, only the air and sea provide one convenience that space does not; they are static. Space, however, is where the earth rotates in relation to the celestial bodies around it. If one strictly applied airspace sovereignty to anything above a country, then American sovereignty would extend to any point in space which it is then facing, be it the Moon or Jupiter, until it rotates away. If countries maintained positive control over satellites above their airspace, satellites would have to be accepted by space traffic controllers and handed off within minutes to another country's controller. Smaller countries might have seconds of control time. Presently satellites orbit in an anarchic environment, where companies and governments control their movement using computer commands and increasingly integrated artificial intelligence, coordinating with each other as best as present-day systems allow.

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[37] Gideon Rose, "Source: World Politics, Vol. 51, No. 1 (Oct., 1998), Pp. 144-172," *World Politics*, (October 1998): 144–72, pp. 144-172, https://www.jstor.org/stable/25054068.

Satellites, like aircraft, do not change ownership when they overfly countries outside of their point of origin. Sovereignty over space objects is specifically maintained in Article 8 of the UNOST.[38] Whether whole, or in pieces, the object a country, or company from within launches into space, is the sovereign responsibility of that country. The country's government and people are also likely to benefit from the launch. Maintaining a safe and sustainable orbital environment by placing a moratorium on KE-ASAT tests is *ipso facto* an exercise in preserving one's proprietary sovereignty in the space domain. Rallying other countries to the same cause preserves a mutually beneficial environment and keeps it freely accessible. Would losing military surveillance or weather monitoring satellites to space debris be net contributors to that country's sovereignty?

The U.S. should lead an effort through COPUOS to gain consensus on a KE-ASAT test moratorium, engaging national sovereignty concerns where they are encountered to address and incorporate them as done in the ICAO model. Operating in parallel with the U.S./COPUOS effort, and in case such an effort fails, the U.S. should also engage its CSpO Command and Artemis Accords partners to establish the moratorium. The opportunities for civil exploration and the principles for cooperation in the Accords, which emphasize debris mitigation, are in large part why its membership is now fifteen countries strong.[39]

The KE-ASAT test moratorium could then be used to provide an avenue of approach for further engagement on other important international space norms and operations like space traffic management, the boundary delimitation, and the ways public awareness of space development can be improved to show public benefit and return on investment. A Convention on Space Modernization and Standards, or COSMOS, might serve as the launch pad from which normative behavioral expectations of space faring nations are established and agreed upon. Whether through the COPUOS or the hypothetical COSMOS, future efforts in space development are unlikely to progress if debris goes unmanaged. A KE-ASAT test moratorium

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[38] "United Nations Office for Outer Space Affairs," The Outer Space Treaty (United Nations, 2015), http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introouterspacetreaty.html, Article 8.
[39] Sean Potter, "Israel Signs Artemis Accords," NASA (NASA, January 27, 2022), https://www.nasa.gov/feature/israel-signs-artemis-accords. The other fourteen members now include Australia, Brazil, Canada, Italy, Japan, Luxembourg, Mexico, New Zealand, Poland, the Republic of Korea, Ukraine, the United Arab Emirates, the United Kingdom and the United States.

creates a starting point to advance common space interests by preserving the space environment for our future in it.

<div align="center">

CONCLUSION

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International agreements do not come quickly, nor are they sustained easily and though each will see challenges to the efficacy of its attempt at norm building, the desired result to affect normative behavior through consensus agreements contributes to their relative domain's stability and growth. Movement about the air, seas, and space has been rendered free under broadly accepted, and reasonably limited conditions. Maritime captains and aircraft pilots know they can, under normal circumstances, anticipate unmolested transit within the bounds of their domain's internationally accepted norms, some standards of which are then mirrored in adopted domestic laws. These normative regimes established starting points and north star guidance to leaders of industry and governance concerning their relative operational expectations. The same is urgently needed in the burgeoning orbital, and later cislunar, space domain.

Almost fifty years have passed since astrophysicist Don Kessler published his seminal orbital debris research in 1978. Kessler was interviewed in December 2021, and he shared his disheartened conclusion that the runaway effect identified in his research is already underway in what might seem like slow motion.[40]

Though the situation may seem as dire as Kessler puts it, we should not shy from the opportunity to better ourselves and our environment. Technological advancements and human will have found their place in cleaning up our lands, seas, and air. A similar effort to clean up orbital debris is in its infancy yet a KE-ASAT test moratorium would reduce the amount of clean up needed and serve to secure the continued safe use of all space faring countries.

A common lesson taught to children about littering is that it is not okay to leave one's trash laying around for others to have to clean up and that some of that trash can hurt others. This is passed on to encourage them to be good stewards of their environment. While it may be easy to dismiss the space debris we cannot see as something that cannot affect us, consider how invisible some cigarette butts are until the fire they start consumes lives and livelihoods. We

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[40] The Downlink, *The Downlink* (Apple Podcasts, December 31, 2021), https://podcasts.apple.com/us/podcast/the-no-1-space-issue-from-2021-thats-punching-through/id1590387089?i=1000546583496.

would be wise to act preventatively with the same ambition to live in a clean space environment for many of the same reasons.

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THE IMPACT OF THE MERIDA INITIATIVE IN THE BILATERAL AGENDA AGAINST ORGANIZED CRIME: EFFECTS ON PUBLIC SECURITY IN MEXICO

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Nada por la fuerza; todo con razón y derecho.- Benito Juárez García, President of Mexico 1858-1872.

Through the review of several articles, reports and specialized informative papers focused on the Merida Initiative and the history of security cooperation between Mexico and the United States, this research paper presents an analysis of the development of the Merida Initiative and its effect on public security in Mexico. This research finds that Mexican foreign policy is designed and executed in alternating periods of distancing and rapprochement with its most important political and economic ally, the United States. With more than 3000 kilometers of border and a long-shared history, the diplomatic relations between Mexico and the United States has turned into an intermestic one. The cooperation among these two nations in the economic and financial areas has been widely praised over the years. Nevertheless, the security topic is complicated and a source of disagreement between administrations on both sides of the border. As an effort to recognize the importance of cooperation to solve their common problems, this paper reviews the impact of the Merida Initiative in the bilateral agenda against organized crime in Mexico, focusing on the achievements and areas of opportunity for further policy implementation around the subject.

INTRODUCTION

In essence, the Merida Initiative was a joint security partnership plan designed by both Mexican and American governments to enhance the institutional capabilities of Mexico's security agencies to fight criminal violence derived from the presence of drug cartels in the country.[1] To address these key issues such as: narcotics; arms trafficking; and the increase of drug cartels violence generated along the borders, the two nations recognized the existence of shared responsibilities to solve these problems, in hope for a strategic cooperation to overcome future challenges for the North American region.[2]

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[1] Clare Ribando Seelke, "Mexico: Evolution of the Mérida Initiative, 2007-2020". United States Congressional Research Service, June 28th (2019), 1. https://crsreports.congress.gov/product/pdf/IF/IF10578/14

[2] Jorge Chabat, "La Iniciativa Mérida y la relación México y Estados Unidos: en búsqueda de la confianza perdida". Centro de Investigación y Docencia Económicas, Documentos de trabajo del CIDE, no. 195 (2010), 5.

This initiative was named after the place it got propositioned in, the city capital of the Mexican state of Yucatan: Merida. Looking at the ends of its chronological life, the Initiative started to get designated in early 2007, when President Bush and President Calderón released a joint statement in Merida recognizing the need of "working together for the fight against crime and violence along the borders of both Mexico and the United States," and was formally terminated in mid 2021, when Mexican Secretary of Foreign Affairs, Marcelo Ebrard commented to the Washington Post in an interview: *"The Merida Initiative is dead. It doesn't work, okay?"* [3]

This research paper seeks to examine the process in between the aforementioned dates to look over the flaws and achievements that took the Merida Initiative from being of the most historically promising security deals between Mexico and the United States, to a symbol of "disgrace" and "shame" for at least one of the present-day administrations of both nations.[4]

THE PHASES OF THE INITIATIVE

The plan that was initially led by the administrations of former United States President, George W. Bush (2000-2008) and former Mexican President, Felipe Calderón Hinojosa (2006-2012) changed drastically over the fourteen years that the initiative lasted. For instance, in the first phase of the initiative, despite the financial support that the Mexican government was receiving, the main objective was the reconstruction of the lost confidence among the security agencies of both countries along the years, to assure that the intelligence and the strategies were coordinated and effective.

Since the murder of DEA agent Enrique "Kiki" Camarena by the hands of "El Cartel de Guadalajara" in 1985, cooperation among Mexican and American agencies for drug trafficking and overall security related issues was strongly limited and harsh to materialize, the conceptual idea of the Merida Initiative meant a new pathway for the construction of a strong security

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[3] Alma Arámbula Reyes, "Iniciativa Mérida, Compendio" Servicio de Investigación y Análsis, Subdirección de Política Exterior, Cámara de Diputados, Junio (2008), 8; Mary Beth Sheridan and Kevin Sieff, "Mexico declares $3 billion U.S. security deal 'dead,' seeks revamp". The Washington Post, July 29th (2021). https://www.washingtonpost.com/world/2021/07/29/mexico-merida-initiative-violence/

[4] Arturo Rodríguez García, "AMLO sobre Iniciativa Mérida: queremos cooperación, pero para el desarrollo" Revista Proceso, noviembre 18, (2020). https://www.proceso.com.mx/nacional/2020/11/19/amlo-sobre-iniciativa-merida-queremos-cooperacion-pero-para-el-desarrollo-253026.html

cooperation partnership able to provide an initial 1.4-billion-dollar plan for military aircraft, Blackhawk helicopters and other specialized hardware for Mexico's public security forces.[5]

As with any other treaty related to a bilateral security partnership, there were major concerns about the roles that each nation needed to fulfill for this new understanding of regional security to achieve its objectives.

Some of the questions around the degree of political interference around the initiative: will the Merida Initiative reaffirm the existence of an asymmetric relation of Mexico with the United States? Is Mexico giving up sovereignty in favor of the political intervention of the United States in Mexican domestic affairs? Can the United States stand true to its foreign policy principles after the Merida Initiative enters into force? The distrust seemed like a logical position by many political sectors of Mexican society when the Initiative was proposed, looking back into the historical diplomatic relations among Mexico and the United States, we can see major ups and downs that eventually translated into the development as the states we know today.

Despite the relevance that NAFTA (now USMCA) has had over the development of the Mexican economy in the last 30 years, it seems logical that both the government and society of Mexico were skeptical about the participation of United States into domestic policy issues.[6] Mostly, considering that the official nation's history has pointed Mexico's northern neighbor as the abusive entity that illegitimately intervened in the country to stole 50% of the territory back in 1846, a fact that not many Americans know, even though it shaped most of the modern Mexican identity as well as Mexico's foreign policy.[7]

Nevertheless, the overall debate around the initiative identified key arguments that ended up being determinant for the development of this historical partnership. To elaborate the importance of the Merida Initiative as an instrument for regional cooperation, it is vital to overview the essence of Global Governance. This theory of International Relations stands for the participation and cooperation of all sectors of international society for the solution of the

[5] Reich, Simon, & Aspinwall, Mark, "The Paradox of Unilateralism: Institutionalizing Failure In U.S.-Mexican Drug Strategies". Norteamérica, *8*(2), 7-39. (2013). http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-35502013000200001&lng=es&tlng=en.
[6] Bureau of Western Hemispheric Affairs, "U.S. Relations with Mexico" United States Department of State, September 16th (2021) https://www.state.gov/u-s-relations-with-mexico/
[7] Council of Foreign Affairs, "Timeline of the Mexico-US relations: 1810-2010" Council of Foreign Affairs, https://www.cfr.org/timeline/us-mexico-relations

common problems.[8] The Merida Initiative represents an understanding of a Global Governance affair, in which neither Mexico nor the United States could solve their security problems by their own, this intermestic relation (the term intermestic was coined by the first Council of Foreign Relations president, Bayless Manning, to describe a relationship where domestic and international policy are inextricably linked) explains the bond that relates statistics among drug abuse that killed 70,630Americans in 2019 and the more than 17,756 homicides committed with firearms from the United States in Mexico in 2021. [9]

As previously mentioned, the first phase was about acquiring specialized equipment and rebuilding confidence. The second phase of the Initiative took place when President Barak Obama and President Peña Nieto were in office, since then the initiative took a more holistic pattern in which the four new pillars of the plan were stated[10]:

1) Combating transnational criminal organizations
2) Institutionalizing rule of law and protection the of human rights
3) Create a border of the "21st century"
4) Build stronger and more resilient communities

The presented statement of the problem goes around the same pathway of the previous examples of the intermestic relationship among both nations. The drug cartels' violence in Mexico is deeply linked with the consumption of narcotics and the arms trafficking in the United States. Therefore, the hypothesis (H1) for this paper, is that the objectives of the Merida Initiative were not fulfilled according to the expected results, because of the structural institution weaknesses of Mexican public security agencies and the American government frivolity at overseeing the development of the plan.

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[8] Marbella International University Centre, "Defining Global Governance", May (2019). https://miuc.org/defining-global-governance/

[9] CDC, "Drug overdose deaths in the United States" Centers for Disease Control and Prevention, (2019). https://www.cdc.gov/drugoverdose/deaths/index.html; [9] Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública, "Homicidios dolosos con arma de fuego" Gobierno de México, noviembre (2021) https://www.gob.mx/sesnsp/acciones-y-programas/incidencia-delictiva-del-fuero-comun-nueva-metodologia?state=published

[10] Germán Padinger, "Qué es la Iniciativa Mérida, el cuestionado pacto de seguridad entre México y EE.UU. que podría ser reemplazado" CNN en Español, octubre 8 (2021), https://cnnespanol.cnn.com/2021/10/08/que-es-iniciativa-merida-pacto-seguridad-mexico-eeuu-orix/

REBUILDING CONFIDENCE

Unexpected behavioral changes in international relations comes after unexpected circumstances in the international scenario. The emergence of Merida Initiative responds to a context of tragedy and political dynamism in both Mexico and the United States, that forced them to construct a strong relation around shared objectives to build safer and stronger communities in the difficult circumstances that they were passing through.

Since the terrorist attacks executed by Al-Qaeda to the World Trade Center in the city of New York in 2001, onwards, the United States of America identified terrorism as the most important threat to national security.[11] This new defensive posture reflected the way the country conducted its foreign policy into a phase of prevention mechanism for certain countries that could represent more vulnerabilities for the U.S. homeland security.[12] For instance, there is the Patriot Act, a controversial piece of legislation that embodied a new opportunity for the American government to expand its surveillance capacities into domestic and foreign jurisdictions in the name of terrorism prevention.[13]

Mexico, being United States southern neighbor, signified an inherent threat as a potential gateway for terrorists to come in and attack U.S. sovereignty. The previous reason (although it was never confirmed nor proved that any Al-Qaeda terrorist entered the U.S. through the southern border), along many others were the justification for the creation of two government agencies that were going to be determinant for the design and the eventual execution of the Merida Initiative.[14]

First, the NORTHCOM (United States Northern Command) in 2002, under the watch of the Department of Defense for the protection of U.S. interests in North America (Mexico, the U.S. and Canada) and the creation of the Department of Homeland Security in 2003, that got in charge of the security of the nation's borders and immigration control, two areas in which

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[11] Office of the Director of National Intelligence, "Annual threat assessment of the United States Intelligence Community" April 9th (2021), 23-24. https://www.dni.gov/files/ODNI/documents/assessments/ATA-2021-Unclassified-Report.pdf
[12] Jorge Chabat, (2010), 7
[13] Office of the Director of National Intelligence, "The Patriot Act", https://www.dni.gov/index.php/who-we-are/organizations/ise/ise-archive/ise-additional-resources/2116-usa-patriot-act
[14] Nelson Arteaga B., "The Merida Initiative: Security Surveillance Harmonization in Latin America" European Review of Latin American and Caribbean Studies, October (2009), 1-9.

Mexico performs a crucial role.[15] While these newly created institutions had strong operating capabilities and sufficient resources to comply with their designated duties, the cooperation with Mexico and Canada in the security field were and still are vital for the United States regional plans to succeed.

By assessing the Mexican political scenario in the first decade of this century, it is important to mention that the democratic transition in the year 2000 represented a substantial change for the Mexican politics and the way that the United States would now interact with them. After being ruled by a single party for seventy years, whose policies most of the times were unwilling to cooperate with foreign agencies in the name of national sovereignty, the U.S.-Mexico security cooperation strategy suddenly saw a potential transformation with the arrival of the newly elected President Vicente Fox Quesada form the National Action Party (PAN), as an opportunity to change the way the Mexican government dealt with security matters.[16]

In an event that marked the democratic alternance and a new reality for the Mexican institutions, including the security ones, Bush and Fox administrations had the chance to align some of their national interests in the name of regional security. Despite having different national security problems, the Fox Administration deployed a frontal and aggressive strategy to combat the drug cartels better known as "Narcos," over the years of his administration.[17] The new role that the government started to play ended up heating tensions among drug cartels and started a war between the Sinaloa and the Gulf cartels, these events elevated the violence records to numbers that Mexico had never seen before.[18]

Almost immediately after the fight among drug cartels was notably worrisome and seen as out of reach of the Mexican government capabilities of contention, the increase of violence in Mexico became a major concern for the United Sates. The historical point in which we can state that the idea of funding the Mexican authorities with the hardware and equipment to fight organized crime became a real possibility was in 2005, when the American Ambassador Antonio "Tony" Garza, wrote a letter to Mexican Secretary of Foreign Affairs Luis Ernesto Derbez

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[15] Arturo Sarukhán Casamitjana, "Sane la relación con México". American Quarterly, Julio 26 (2016) https://americasquarterly.org/fulltextarticle/sane-la-relacion-con-mexico/
[16] Luis Medina Peña, "Hacia el nuevo Estado", Fondo de Cultura Económica, 3ª edición (2017), 360-374.
[17] Jorge Chabat (2010), 6
[18] José Luis Pardo Veiras, "13 años y 250 000 muertos: las lecciones no aprendidas en Mexico" The Washington Post, October 28th (2019) https://www.washingtonpost.com/es/post-opinion/2019/10/28/aos-y-muertos-las-lecciones-no-aprendidas-en-mexico/

Bautista with his concerns about the rising numbers of homicides and kidnappings in Mexico, and the threat this represented for the millions of American tourists and citizens that permanently live in Mexico.[19]

APPROVING THE INITIATIVE: AGENDA SETTING

The presidency of Felipe Calderón Hinojosa among many other things, will be remembered as the administration that started the frontal combat against organized crime in Mexico, this legitimate effort to enforce the law and end the impunity, sadly translated into a wave of violence that has not seized the country as of the present day.[20] Apart from the previously mentioned, Felipe Calderón happened to be the president that knew how to approach the United States into the negotiation of the Merida Initiative (informally refereed as "Plan Mexico" at the beginning). Knowing that the American presence experience in Colombia to fight drug trafficking in the 90s, generated a political climate of tension that Mexico in its political circumstances of the moment, simply could not afford, President Calderón along with President Bush marked an historic precedent in bilateral cooperation.[21]

Following the process of the consolidation, the win of the PAN in a highly contested presidential election in 2006, the Research and National Security Center of Mexico (CISEN) recommended President Calderón to adopt a bilateral approach to the rising concerns that the violence among the drug cartels were generating in the eyes of the international community. There were several sectors of Mexican society and members of the U.S. Congress that were unsure if a cooperation plan in terms of security could be beneficial for both countries. Considering the public opinion and the skepticism of some conservative sectors to use taxpayers' resources to fund a foreign country for their domestic problems, the challenge to implement the plan was not minor, it required the support from the legislatures of both nations under periods of political polarization and economic uncertainty.[22]

It is imperative to know that the success of the initiative depended mostly in the ability of the negotiators from both governments to sell the project to the key legislators in the Committees

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[19] Jorge Chabat (2010), 7
[20] José Luis Pardo Veiras (2019)
[21] Héctor Aguilar Camín, "Nocturno de la Democracia Mexicana" Editorial debate, noviembre (2018), 117-126.
[22] Alma Arámbula Reyes (2008)

of Foreign Affairs of both Mexican and American legislatures. The negotiation started to see a promising future when U.S. Senator Richard G. Lugar (IN-R) and Congressman Thomas Lantos (CA-D) showed the needed signs of willingness and cooperation for a bipartisan agreement in both chambers of the Congress, that would approve the initative as it was negotiated among diplomatic teams leaded by Mexican Chancellor Patricia Espinosa and Secretary of State Condoleezza Rice.[23] In the Mexican upper chamber, the Senators Rosario Green Macías (PRI) and Ricardo Francisco García Cervantes (PAN) operated in favor of a consensus to pass the correspondent law with a comfortable majority, the process of approval was significantly easier in the Mexican congress.

Convinced to see the Merida Initiative as a multifaced long term strategy to overcome common security problems that Mexico and the United States shared, and thanks to the lobbying of the aforementioned legislators with their peers, the initiative successfully entered into force on June 26, 2008. Seeing beyond the financial element of the 1.4 billion dollar plan to enhance the institutional capabilities of the security agencies in Mexico, it is relevant to emphasize that the structure of the Merida Initiative never implied/suggested any deployment of troops nor the increase of personnel from the American agencies that were already operating in Mexico, such as agents from the DEA and attachés from the DHS, DOD and the DOS in the Embassy of the United States in Mexico or any of the existing consulates.[24]

Consequently, the argument going around nationalist political groups that the Merida Initiative involved a more invasive strategy than "Plan Colombia" did, gets invalidated, even the Assistant Secretary of State for Western Hemisphere Affairs, Thomas Shannon mentioned in 2008 that: "*The Initiative does not suppose by any means a violation of Mexican sovereignty and the United States will not increase its personnel in that country.*"[25]

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[23] Alma Arámbula Reyes (2008).
[24] United States Senate, "H.R. 6028 (110th): Merida Initiative to Combat Illicit Narcotics and Reduce Organized Crime Authorization Act of 2008", Gov track, June 11th (2008)
https://www.govtrack.us/congress/bills/110/hr6028/text
[25] Alma Arámbula Reyes (2008), 3

TACKLING COMMON PROBLEMS

Respecting the Mexican sovereignty and working together towards common objectives was the metric that the Merida Initiative needed to follow to get the already existing understanding among the governments into tangible cooperation between intelligence and public security agencies. As was mentioned before, in the first phase of the initiative, the labeled financial resources were sufficient for the now extinct Mexican Federal Police to acquire Black Hawk helicopters and specialized training provided by the United States to more Mexican security agencies such as the Federal Protection Service, but also to take advantage of the specialized hardware to improve security at the airports and strategic facilities, such as specialized X-ray, Gamma-ray and ion detection equipment to identify drugs without doing invasive inspections.[26] The idea of providing funds looked great in paper, but the Federal Police got involved into many human rights and corruption cases that reached the highest levels of the agency being one of the main reasons the intelligence strayegy never worked as expected.

This, technologically speaking, greatly improved the way Mexico adopted the good practices for the prevention of crimes and drug trafficking area. The overall aim for the first four years of the initiative was to prepare the security institutions for the new Mexican justice system and for them to do a better and more efficient job at enforcing the law in situations that involved criminal violence generated from drug trafficking, most importantly without ignoring the importance of human rights protection in all the judicial processes.

This reform along with the prisons one, represented whole new reality for the Mexican judicial operation and processing systems, although the contents of the Merida Initiative did not forced Mexico to establish new specific legislation apart from the derived from the treaty, Mexico had agreed to meet the investment that the United States was making, seeing the new benefits of the plan as an opportunity to overcome structural flaws of the provision of criminal justice.

In this alignment with the American justice system "implicit" recommendations, Mexico moved to an adversarial criminal justice system, like the United States one, the controversy came in affirming that Mexico was not prepared to move to a system like that, for that reason the

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[26] Secretaría de Seguridad Pública y Protección Ciudadana, "El Servicio de Protección Federal a la vanguardia en capacitación y certificación, a través de la Iniciativa Mérida" Servicio de Protección Federal, Gobierno de México, 8 de Marzo (2020) https://www.gob.mx/sspc/prensa/el-servicio-de-proteccion-federal-a-la-vanguardia-en-capacitacion-y-certificacion-a-traves-de-la-iniciativa-merida

judicial power in Mexico got a 10-year period to implement the new system that came along a Human Rights reform in 2011.[27] The American Embassy, as a part of the compromises made in the Context of the Merida Initiative decided to train and give the proper tools for the new generation of lawyers in the criminal system. [28]

The new efforts of President Peña Nieto to reduce drug trafficking were centered around the capturing and dismantling major drug lords and their organizations to eventually extradite them to the United States. Unfortunately, this did not work as both governments were expecting, the controversial escapes of Joaquín Guzmán Loera from federal Mexican prisons twice and the Ayotzinapa scandal in 2014 where forty-three students disappeared mysteriously, diminished the trust on the Mexican and American agencies, showing that they were not fit to perform duties that involved law enforecement from the municipal, state and federal levels.[29] From 2012 to 2018, the objectives that President Obama and President Peña Nieto had raced around the initiative involved the consolidation of the four pillars into the national reality. For both countries, however, the represented American presence in the decision making around the Initiative implied a correlation but in no means causation of the continuation of the eventual aggravation of Mexican problems regarding criminal violence. The argument of sovereinty implies that Mexico has to be the one that solves its own security problems, the aid from the U.S. is strictly an external factor.

THE AFTERMATH OF THE INITIATIVE: A NEW CHALLENGE

Although, according to President Felipe Calderón who said that it was the already existing institutional weakness's fault, the ones that caused a collapse in Mexican security, it were the strong and persisting corruption among Mexican institutions combined with the lack of American

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[27] Víctor Manuel Rangel Cortés, "Iniciativa Mérida y la Reproducción del Derecho Penal Mexicano", Revista del Instituto de Investigaciones Jurídicas de la UNAM, (2016), 11-18.
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiR4urbnJ71AhWRGs0KH
WdsAPwQFnoECAMQAQ&url=https%3A%2F%2Frevistas.juridicas.unam.mx%2Findex.php%2Freforma-
judicial%2Farticle%2Fdownload%2F10451%2F12595&usg=AOvVaw0UZXDDW26n1rmPwloi0Ljz
[28] Anabel Clemente, "Iniciativa Mérida prepara a litigantes mexicanos" El financiero Bloomberg, Junio (2018)
https://www.elfinanciero.com.mx/nacional/iniciativa-merida-prepara-a-litigantes-mexicanos/
[29] Secretaría de Gobernación, "Comisión para la verdad y acceso a la Justticia del Casp Ayotzinapa" Gobierno de
México (2019)
http://www.comisionayotzinapa.segob.gob.mx/work/models/Comision_para_la_Verdad/Documentos/pdf/Informe%2
01semestre.pdf

compromise to follow up into the accountability and execution of the initiative, the factors that can explain the so called "failure" of the Merida at the eyes of the public opinion and the future administrations of both countries that got rid of it.[30]

It is important to observe that politics is about context, thirteen years ago, the Merida Initiative was seen as a key part of the solution against violence and drug trafficking in the region. Due to the wear and tear of power and the lack of visible results in the public security indexes, the previously favorable context around the initiative wore off at the extent that the political actors were getting benefited from the political opposition to the Initiative and its outcomes.[31] Therefore, it will be a methodological mistake to affirm that the whole infinitive was unsuccessful, specially since most of the benefits translated into the development of the institutions in a long-term strategy, there is no magic wand to fix a country.

Nevertheless, the hypothesis that this paper stands for, is the position in which the Initiative could not accomplish the objectives around the four pillars of the Initiative due to the systematic corruption and the root problems of the Mexican security agencies. It is imperative to look over the areas of improvement and the areas in which the development was noticed, showing that were performed right and that there is evidence to re-structure the Initiative for the new needs.[32]

However, seeing the statistics of the homicides in the past sixteen years in in Mexico *Table 1*, we can identify the trends of major increase around the number of homicides in the time that the Initiative lasted, from then assess the undebatable fact that the number of homicides went up from 8,500 in 2007 to 29,482, meaning that if there was a long-term strategy to reduce violence in Mexico, it clearly did not result positive.

Even these figures represent an historic record that express how the Mexican government has not been able to fulfill the expectations of the four pillars that the Initiative had generated as a guidance that needed to be followed. To see a more tangible perspective on the effects of the

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[30] Felipe Calderón Hinojosa, "Decisiones Difíciles" Editorial Debate, (2020), 313-318; Transparency International, "Corruption perception Index" (2020) https://www.transparency.org/en/cpi/2020/index/mex

[31] Forbes Mexico, "AMLO deja en el pasado la Iniciativa Mérida; quiere reorientar dinero de EU" Revista Forbes Mexico, Mayo (2019) https://www.forbes.com.mx/amlo-deja-en-el-pasado-la-iniciativa-merida-quiere-reorientar-dinero-de-eu/

[32] United States Embassy in Mexico City, "LA INICIATIVA MÉRIDA APOYA LA HOMOLOGACIÓN DEL MODELO DE APRENDIZAJE Y CAPACITACIÓN EN LA FORMACIÓN POLICIAL", August 22nd (2019). https://mx.usembassy.gov/es/la-iniciativa-merida-apoya-la-homologacion-del-modelo-de-aprendizaje-y-capacitacion-en-la-formacion-policial/

initiative into the Mexican society, let us contrast the four pillars of the initiative with the national reality. *First pillar*: The fight against translational organized crime is far from being solved, as seen before in *Table 1*, the number of homicides has reached over 20,000 deaths since 2016 and the new government policy of "*Abrazos no balazos"* of the López Obrador Administration is proving to be deficient to meet his objectives of eradicating violence through scholarships and not throughout the frontal combat against crime.[33] Apart from the Mexican experience, the United States has also a problem to contain the operation of the Mexican drug cartels in its territory, although the role that the cartels perform in U.S. soil is different, the DEA has made a map *see annex 2,* that show the great presence of this crime groups in most of the United States.[34]

 Second pillar: The rule of law in Mexico has been catalogued by the World Justice Project "Rule of law index 2021" as poorly and deficient having scored only 0.43/1 in a list of 134 countries in which Mexico holds the 113th place and the United States the 27th.[35] Regarding the impunity area, the evaluations of the "Global Impunity Index 2020" performed by the Research Center for Security and Impunity Studies of the Universidad de las Américas Puebla, Mexico gets a score of 49.67, being number 60 of 69 evaluated countries, qualifying as country with high levels of impunity.[36] For the record, the United States scored 40.21, holding the 38th place, being positioned as a medium impunity country. One of the main aims of the Merida initiative, was to enforce the rule of law along the two sides of the border, these indexes are a guideline that can tell if the plan worked as it should have.

 Third pillar: the border between Mexico and the United States constantly faces record breaking crisis of central American and Caribbean migrants trying to cross illegally to obtain humanitarian visas, this has caused the immigration services to be collapsed and overwhelmed in both sides of the border. Recently, the inhuman conditions in which children are being detained

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[33] Andrés Manuel López Obrador, "A la Mitad del Camino" Grupo editorial Planeta, septiembre (2021), 310-319; Andrés Manuel López Obrador, "2018 La Salida: decadenia y renacimiento de México" Grupo editorial Planeta, febrero (2017), 230-236

[34] Christopher Woody, "These maps show how Mexican cartels dominate the US drug market" Business Insider, December 15th (2017) https://www.businessinsider.com/dea-maps-of-mexican-cartels-in-the-us-2016-12?r=MX&IR=T

[35] World Justice Project, "Rule of Law Index 2021" (2021) https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf

[36] Juan Antonio Le Clercq Ortega & Gerardo Rodríguez Sánchez Lara, "Índice Global de Impunidad 2020" CESIJ UDLAP, agosto (2020) https://www.udlap.mx/cesij/files/indices-globales/0-IGI-2020-UDLAP.pdf

and processed, has dragged the world's attention, and opened a debate on the way that Mexico's National Guard is being a second border patrol rather than an agency to fight organized crime.[37]

Fourth pillar: There are not stronger and more resilient communities, but communities that are turning into ghost towns due to drug cartels violence in Mexican states such as Michoacán, Zacatecas, and Guanajuato, were families are displaced and forced to migrate into the United States and face the harsh reality of every migrant at Mexico's southern border.[38]

There are still some characteristics that need to be noted about the data referent to the number of first-degree murders in Mexico for the past sixteen years and its bond with the efforts of the Merida Initiative. Both variables, the execution of the Merida Initiative and the number of first degree murders in Mexico over the last decade, are correlational by the fact that a large part of the mentioned first degree murders are being executed with firearms coming from the United States to Mexico due to two main factors: First, the poor gun control regulation in the United States that allows drug cartels to get access to several weapons catalogues that the Mexican local police corps could never dream having.[39]

Second, the continuous war against the Mexican State and seven major criminal organizations, that according to the Pentagon control over 35% of the Mexican territory.[40] This ledeagencies during the Obama administration such as the Alcohol Tobacco and Firearms Bureau (ATF), to try operations such as the *Fast and Furious*, that probably is the most controversial one that marked the lack of knowledge that some agencies have over the operations of the organized crime in Mexico. This operation in which agents from the ATF's regional office in Phoenix AZ, after receiving tips that a local store was selling AK-47 to several individuals over an unusual period of time, the agents of the ATF decided that a way to identify this weapons could be by smuggling arms into Mexican territory, for the cartels to use them so the ATF could trace those

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[37] Amnistía Internacional, "Estados Unidos y México deportan a miles de niños y niñas migrantes no acompañados a situaciones de peligro" junio (2021) https://www.amnesty.org/es/latest/news/2021/06/estados-unidos-mexico-deportan-miles-ninos-migrantes-situaciones-peligro/

[38] Marcos González Díaz, "Aguililla, el pueblo de Michoacán asediado por el narco que se convirtió en epicentro de la violencia incontrolable en México" BBC News International, August 12th (2021) https://www.bbc.com/mundo/noticias-america-latina-58169830

[39] Luis Pablo Beauregard & Elías Camhaji, "México inicia una ofensiva diplomática para frenar el tráfico de armas desde EE UU" Diario El País, noviembre (2021) https://elpais.com/mexico/2021-11-22/mexico-inicia-una-ofensiva-diplomatica-para-frenar-el-trafico-de-armas-desde-ee-uu.html

[40] Air Force General Glen D. VanHerck, Commander, U.S. Northern Command; Navy Admiral Craig S. Faller, Commander, U.S. Southern Command, "USNORTHCOM-USSOUTHCOM Joint Press Briefing", U. S. Department of Defense, march 16th (2021) https://www.defense.gov/News/Transcripts/Transcript/Article/2539561/usnorthcom-ussouthcom-joint-press-briefing/

weapons and then detain the holders, in other words, they wanted to know the traffic routes of the weapons.[41]

This operation ended up as a complete disaster, they were not able to trace those weapons and when they found that those weapons have been used to kill several individuals including the murder of a U.S. Border Patrol Agent in 2010. Even the United States Attorney General Eric Holder appeared before a congressional committee to give testimony on the failed U.S. operation "Fast and Furious." It was the sixth time in a year he had given testimony on the program, an ill-fated attempt to trace unlawfully purchased weapons from the United States into Mexico. He denied authorizing the program or covering up later investigations. He called it "unacceptable" and "stupid."[42]

THE BICENTENIAL AGREEMENT: TOWARDS A NEW UNDERSTANDING

Acknowledging the fact that the assurance of security and the impartation of justice regarding internal situations are obligations of the Mexican Government only, and that the United States has no jurisdiction to deliver any kind of justice nor look after the Mexican people on their domestic affairs. There is still a debate around the shared responsibilities and the necessary cooperation among Mexico and the United States for a new regional security deal. The results of period in which the Merida Initiative lasted, are accomplishment or failures of the administrations that implemented them, new governments represent new opportunities to set differences aside and work for a better tomorrow. At the end, the objectives of building a brighter future for North America are in the hands of the countries of the region.

The Bicentennial Framework for Security Cooperation agreement answers the questions related to the future cooperation among Mexico and the United States. President Biden along with President López Obrador via the mediation of Ambassador Moctezuma and Ambassador Salazar have figured a strategy that will respect the sovereignty of both countries that will seek to keep the good practices experienced in the Merida Initiative and improve in the areas that the

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[41]Office of the United States Inspector General, "A Review of ATF's Operation Fast and Furious and Related Matters" U. S. Department of Justice, September (2012) https://infosen.senado.gob.mx/sgsp/gaceta/62/3/2015-03-10-1/assets/documentos/ANEXO_1_ATF.pdf

[42] Simon Reich & Mark Aspinwall, "The Paradox of Unilateralism: Institutionalizing Failure In U.S.-Mexican Drug Strategies" NORTEAMÉRICA, no. 2, July-December (2013) http://www.scielo.org.mx/pdf/namerica/v8n2/v8n2a1.pdf

previous plan flawed.[43] While some analysts comment that the Bicentennial agreement is just a new name for the same practices of the Initiative, there is still room for improvement in the bilateral relationship in terms of security.[44]

This new understanding should focus in leaving behind political bias and reconcile the clear objectives of the nations, more than trade partners, allies, and friends.[45] Second, enhance the local security institutions and generate a coordination system that involves the federal governments of both countries. Third, foster the participation of joint operations via the share of intelligence produced in both sides of the border. Finally, look the problem from a strategic perspective point of view, look after the new threats, such as the fentanyl and the trafficking of new weapons and substance.

CONCLUSIONS

The active cooperation between the United States and Mexico is vital to achieve the common development objectives of North America that have been traced along the years that the countries have existed. The efforts put into the Merida Initiative from the Mexican and American governments, are the best representation of willingness for working together as a region, while the idea of tackling common issues will always be remembered as the time in which the partnership went beyond economic interests, the future challenges demand innovative solutions that meet them.

This 2022 marks the bicentennial anniversary of the establishment of diplomatic relations among both countries, although the way the United States and Mexico looked back in the 19th century substantially different to the way both nations coexist, and as the time passes the region

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[43]Government of Mexico and The White House, "FACT SHEET: U.S.-Mexico High-Level Security Dialogue" October 8th (2021) https://www.gob.mx/sre/prensa/mexico-and-united-states-begin-work-on-bicentennial-framework?idiom=en and
https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/fact-sheet-u-s-mexico-high-level-security-dialogue/
[44]Ryan C. Berg, "The Bicentennial Framework for Security Cooperation: New Approach or Shuffling the Pillars of Mérida?" Center for Strategic & International studies, October 29th (2021) https://www.csis.org/analysis/bicentennial-framework-security-cooperation-new-approach-or-shuffling-pillars-mérida
[45] Center for U.S.-Mexican, "U.S.-Mexico Security Cooperation 2018-2024", UC San Diego, February (2018)
 https://usmex.ucsd.edu/_files/Whitepaper_Security_Taskforce_March_26_Covers.pdf

faces new threats that will certainly require a bilateral approach to be addressed and eventually solved.

The shared history of Mexico and the United States, in which the Merida Initiative now holds a new place, has made us, the citizens of these countries that dedicate their studies to the field of political science or international relation comprehend that cooperation among nations that qualify as intermestic allies, is an opportunity for the construction of partnerships that go beyond simple conjunctural objectives, of the governments in turn. As Plato one said: "Laws are written in sand, customs in granite," let us make strong cooperation a custom rather than a passenger law. The future of Mexico depends on the future of the United States, not only because it is its most important economic and political partner, but because the problems that today may aggravate one country, will eventually affect the other, this will be the challenge for the future among Mexico and the United States in security matters.

APPENDIX

Table 1: Homicides in Mexico (2005-2008) own elaboration with INEGI and SNSP data[46]

Year	Willful homicides (Mexico)
2006 (President Felipe Calderón assumed office in December)	10,371
2007	8,506
2008 (Merida Initiative entered into force)	13,627
2009	16,118
2010	20,143
2011	22,409
2012 (President Peña Nieto assumed office in December)	21,459
2013	18,107
2014	15,520
2015	16,910
2016	20,548
2017	25,499
2018 (President López Obrador assumed office in December)	29,097
2019	29,482
2020	28,830
2021 (Merida Initiative was formally terminated)	25,987

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[46] Secretariado Ejectuivo del Sistema Nacional de Seguriad Pública, "Incidencia delictiva del fuero común" 2005-2021: homocidio doloso, Gobierno de México, dicembre (2021) https://www.gob.mx/sesnsp/acciones-y-programas/incidencia-delictiva-del-fuero-comun-nueva-metodologia?state=published
Instituto Nacional de Estadística y Geografía, "Mortalidad por homicidios 1990-2021" INEGI, (2020 https://www.inegi.org.mx/sistemas/olap/consulta/general_ver4/MDXQueryDatos.asp?proy=

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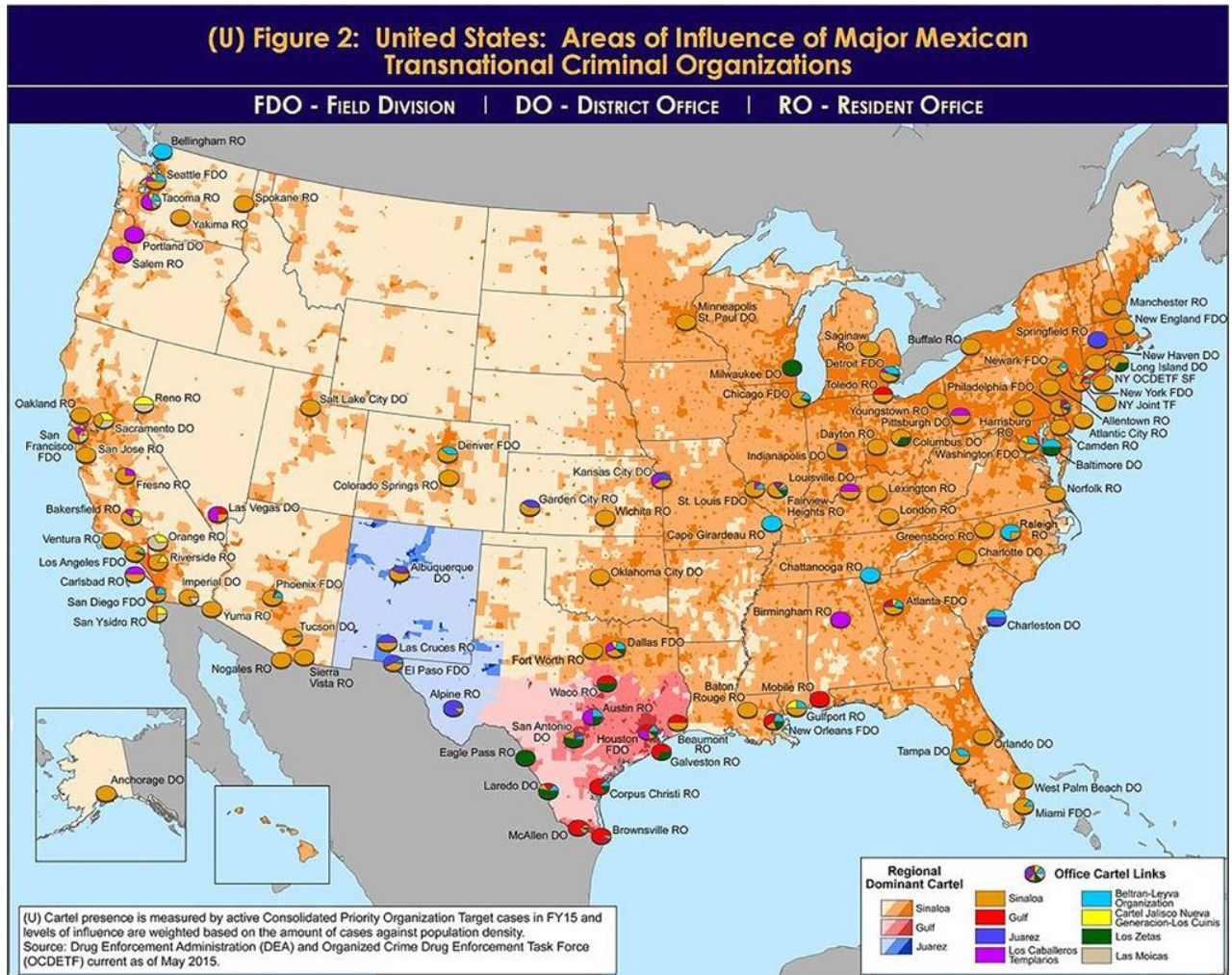
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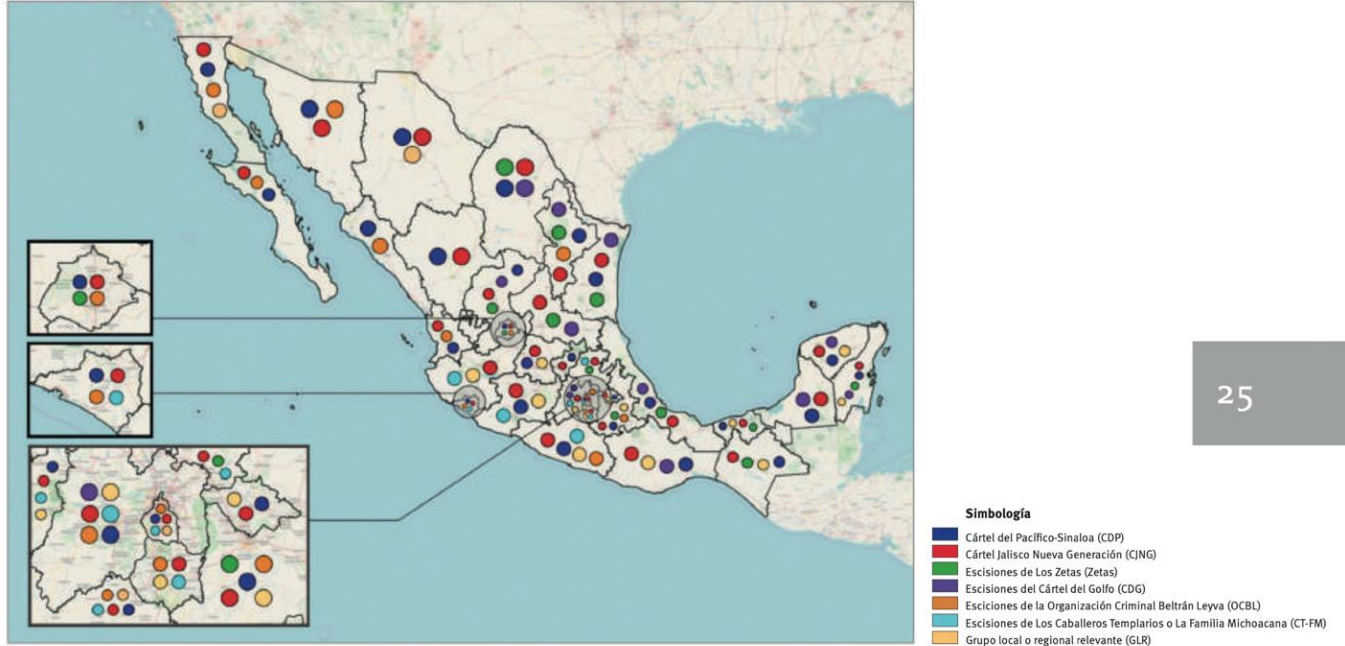
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VIOLENT EXTREMIST GROUP RECRUITMENT OF WOMEN AND GIRLS THROUGH INFORMATION COMMUNICATION TECHNOLOGIES

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This document seeks to understand what role information communication technologies (ICTs) and gendered marketing strategies play into the recruitment of women and girls from the west in joining violent extremist groups globally, provide a historical analysis of the U.S.' role in recruitment prevention of western women, and share recommendations regarding how the U.S. can better position itself to combat marketing strategies deployed via ICTs by violent extremist groups such as ISIS, Al-Shaabab, and domestic groups in the U.S. With young women and girls being recruited by violent extremist organizations online, this topic proves to be of utmost importance and relevance for the U.S. government today because these are American women who are being recruited and the national security of the U.S. will be severely jeopardized if this issue is not effectively addressed.

INTRODUCTION

In October of 2014, three teenage girls played hooky from high school and left their homes in Denver, Colorado, United States to join the Islamic State of Iraq and Syria (ISIS). A pair of Somali sisters, aged fifteen and seventeen years old, as well as their Sudanese-American friend, aged sixteen years old, fled to Syria in secrecy after engaging with ISIS on the internet, taking with them just $2,000 in cash and their passports. The girls were ultimately stopped in Germany's airport and forced to return back home to their families in Colorado. This occurred just a month after nineteen-year-old resident of Arvada, Colorado, Shannon Conley, attempted to join ISIS where she planned to marry the Tunisian ISIS fighter she had met online.[1]

While stories like this may seem shocking or seldom, violent extremist groups like ISIS have succeeded in recruiting women from the United States and U.S. allies, such as Great Britain, in order to join their cause despite current U.S. countering violent extremism (CVE) efforts. In fact, "Eighteen years since the devastating terrorist attacks of 9/11...The United States

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[1] Walsh, Michael. "Three Denver Girls Who Skipped School in Alleged Attempt to Join ISIS under Investigation ." nydailynews.com. New York Daily News, January 9, 2019. https://www.nydailynews.com/news/world/denver-girls-skipped-school-alleged-attempt-join-isis-article-1.1982931.

has spent nearly $6 trillion to counter terrorism, yet the number of Islamist extremist fighters last year was 270% higher than it was in 2001."[2] Moreover, the State Department's Bureau of Counterterrorism bears no mention of gender on its webpage and documents, showcasing that although funds are allocated, gender is not being prioritized regardless of its great impacts in the terrorism space in this allocation.

Today's information communication technologies (ICTs) have provided a tool and platform for extremist groups to spread their narratives broadly as well as have created the ability for recruiters to engage one on one with prospective members online. Violent extremist groups such as ISIS, Al-Shaabab, and domestic actors supported by platforms like QAnon, have capitalized on social and digital media platforms including TikTok, Twitter, Facebook, Telegram, and more to spread their narratives and recruit women to advance their causes, ultimately putting the United States at greater risk of threats of violent extremism.

METHODOLOGY

This document argues that in order for the United States to enhance its national security and further prevent the recruitment of women and girls by violent extremist groups, the U.S. government should incorporate a gender lens within all CVE programming, fund further research regarding the role of gender in violent extremism, create counter-messaging narratives to deploy on the platforms violent extremist groups operate on, collaborate with the tech industry to implement online redirection to steer vulnerable populations away from extremist rhetoric, and to incorporate disarmament, demobilization, and reintegration into U.S. CVE policy. In order to support this argument, this document provides the U.S. government's historical approach to this issue, an analytical framework outlining the reasons why women join violent extremist groups, an outline of the key issues, five case studies of specific violent extremist groups and how they have utilized ICTs to recruit women and girls, and recommendations for the U.S. government regarding how it can help prevent the recruitment of women and girls by violent extremist organizations in the interest of U.S. national security.

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[2] Omar, Angie. "The Making of Female Extremism." The Washington Institute. Fika Forum. Accessed March 3, 2022. https://www.washingtoninstitute.org/policy-analysis/making-female-extremism.

This report draws upon secondary research from a number of relevant organizations including the United Nations, the U.S. Department of State, the Washington Institute, and more. Concepts from these sources are utilized in order to assess how violent extremist groups recruit and influence female perceptions via digital technologies through the case studies of ISIS, Al-Shaabab, and domestic actors operating on platforms like QAnon, as well as how this ultimately impacts U.S. national security. Focus will be placed on these particular organizations due to their effective use of ICTs in engaging western women. While a number of themes are consistent throughout these violent extremist groups in terms of female recruitment through ICTs, this document explores five different case studies in order to explore those similarities, but also to showcase the differences that make each group unique in their ICT strategies across the globe. Additionally, for the purposes of this document, violent extremism will be defined in the same way it is defined by the U.S. Federal Bureau of Investigation as, "Encouraging, condoning, justifying, or supporting the commission of a violent act to achieve political, ideological, religious, social, or economic goals."[3] Focus will also be placed primarily on U.S. women as the document's recommendations are designed with the U.S. government's role in mind.

U.S. GOVERNMENT HISTORICAL APPROACH

After the infamous 9/11 attack in New York, the United States enhanced its focus on U.S. CVE, as departments such as the Department of Homeland Security (DHS) were founded to "protect the safety and security of the American people."[4] Counterterrorism became the center of U.S. national security throughout the Bush administration. During the following Obama administration in 2010, the "Empowering Local Partners to Prevent Violent Extremism in the United States" policy was launched. The policy area became "Countering Violent Extremism," or "CVE" by 2014; later described as "the preventative aspects of counterterrorism as well as interventions to undermine the attraction of extremist movements and ideologies that seek to

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3 "What Is Violent Extremism? - Futures without Violence." Futures Without Violence. Accessed March 3, 2022. https://www.futureswithoutviolence.org/wp-content/uploads/FWV_blueprint_3-What-is-VE.pdf.

[4] US Department of Homeland Security. "Center for Prevention Programs and Partnerships." Center for Prevention Programs and Partnerships | Homeland Security. Accessed March 3, 2022. https://www.dhs.gov/CP3.

promote violence." In 2015, the Obama administration hosted a summit on CVE as well.[5]
However, U.S. CVE efforts have historically dismissed gender in the context of U.S. CVE, and
more specifically, the role of women in violent extremism other than as victims.

ANALYTICAL FRAMEWORK

While much research is available regarding how violent extremist groups like ISIS recruit
males to join their organizations, less information is available concerning the recruitment of
young girls and women. Perhaps the fact that this topic remains under-studied can be attributed
to the prevailing ideology that women are not actors of violent extremism, rather victims of it.
This plays into traditional gender norms that women are inherently peaceful and nurturing while
men are aggressive and violent whereby, "Perceiving women in these ways, or only as passive
victims of violent extremism, is harmful because it perpetuates negative gender stereotypes–of
women as weak, helpless, chattel controlled by men, lacking agency and voice, less dangerous
than men, incapable of carrying out acts of violence."[6] However, women are also capable of
spreading extremist propaganda, recruiting other women to join their causes, and committing
acts of terror, as nearly 30% of suicide attackers identify as women.[7]

Examining gender in the context of violent extremism proves vital and relevant to
intervention strategy creation, planning and implementation because women are not just victims,
but actors of violent extremism. With gender biases and stereotypes permeating conventional
counterterrorism policy, blind spots will remain in the U.S. CVE legislation and efforts.
Neglecting to incorporate a gender lens in U.S. CVE policy proves to fall short in that by not
considering women as agents rather solely victims, the United States is turning a blind eye to the
capabilities of women as violent extremists and risking its national security as a result of this
biased perception.

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[5] Guittard, A. "Homeland Security Policy Paper #1 the ... - Belfercenter.org." Accessed March 3, 2022.
https://www.belfercenter.org/sites/default/files/files/publication/HSP%20Paper%20Series-Paper%201.pdf.
[6] Idris, Iffat. "Women and CVE – Let's Start by Seeing Women Properly." International Development Department
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[7]Bloom, Mia. "Mother. Daughter. Sister. Bomber. - Mia Bloom, 2005." SagePub. Bulletin of the Atomic Scientists.
Accessed March 3, 2022. https://journals.sagepub.com/doi/10.2968/061006015.

WHY WOMEN JOIN: PUSH AND PULL FACTORS

Push factors can be defined as, "The conditions conducive to violent extremism and the structural context from which it emerges such as lack of socio-economic opportunities; marginalization and discrimination; poor governance, etc." Pull factors can be defined as "The individual motivations and processes, which play a key role in transforming ideas and grievances into violent extremist action such as individual backgrounds and motivations; collective grievances and victimization stemming from domination, distortion and misuse of beliefs, etc."[8] While each violent extremist group will be discussed in greater detail in terms of ICTs used to appeal to push and pull factors, a number of push and pull factors are commonly seen across all the groups. Recruiters then capitalize on these push and pull factors by creating narratives which appeal to them and spread these narratives digitally worldwide.

SISTERHOOD AND BELONGING

Some women join violent extremist groups in order to feel a sense of sisterhood or belonging. As was previously mentioned in the case of the Denver girls who fled to join ISIS, they felt like outsiders within their own community, and felt compelled to join ISIS in order to achieve a sense of sisterhood, amongst other reasons.

ADVENTURE AND AGENCY

Other women join violent extremist groups in order to break out of the mold of traditionally assigned gender norms and instead participate in something that they feel will give them a sense of adventure and agency in their own lives.

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[8] Kiernam. "Counter-Terrorism Module 2 Key Issues: Drivers of Violent Extremism." Counter-Terrorism Module 2 Key Issues: Drivers of Violent Extremism. Accessed March 3, 2022. https://www.unodc.org/e4j/en/terrorism/module-2/key-issues/drivers-of-violent-extremism.html.

PURPOSE AND DUTY

In other cases, some women join violent extremist groups in order to fulfill their sense of duty or achieve a greater sense of purpose. As will be discussed in the case of ISIS, some women felt they had to join as part of their duty of being a Muslim woman, which recruiters capitalized on.

GRIEVANCES

A factor that pushes some women to join violent extremist groups is that they hold grievances with how the established government is handling governance. For example, Muslim women who hold deep grievances with western government or policies may be more susceptible to ISIS rhetoric.

LOVE (FAMILIAL AND/OR ROMANTIC)

For some women the reason they decide to join a violent extremist group is to be with, or find, a romantic partner, or because they have a family member, such as a brother, who is affiliated with the group. As will be discussed in the case of ISIS, some women join to find a "jihadi fighter" they can marry. Recruiters use the narrative of love to gain female participation.

ECONOMIC AND FINANCIAL

Finally, some women join violent extremist groups because they need financial support. When basic needs are not met, women may search for support through terrorist organizations who promise to alleviate financial needs.

KEY ISSUES

1. *Women are actors, not just victims, of violent extremism*

In this context, an actor is a participant in inciting violent extremism whereas a victim is not inciting violent extremism but is injured, destroyed, or sacrificed as a result of it.[9] With nearly 30% of suicide attackers identifying as women, females are also serving as actors in inciting violent extremism globally.[10] Extremist groups such as ISIS have recognized that women often go undetected as a result of this misperception that women are victims, and in turn, use females to carry out suicide bombings since security forces are not identifying them as potential threats. For example, "In 2008, thirty-nine female suicide bombers killed at least 363 individuals and wounded 974 others in Iraq, the majority of which were US and Iraqi military personnel."[11] Therefore, in order to create effective policy surrounding the U.S. CVE, it is crucial that women are seen not just as victims, but as actors in violent extremism and inciting violence.

2. *Violent extremist groups capitalize on push and pull factors within their narratives*

Whether it be economic, social, religious, political, etc., certain push and pull factors may motivate women and girls to join violent extremist groups. Recruiters may then capitalize on push and pull factors by creating narratives which appeal to them. For example, if a young girl in the United States feels like she lacks freedom in her traditional family, ISIS recruiters may deploy a narrative of adventure and independence to pull them in to join their cause.

3. *ICTs have enabled violent extremist groups to more effectively recruit women across global boundaries*

ICT platforms such as Twitter, TikTok, and Telegram have enabled violent extremist groups to target and engage with women and girls from across the globe by deploying narratives

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[9]Merriam-Webster. "Actor Definition & Meaning." Merriam-Webster. Merriam-Webster. Accessed March 3, 2022. https://www.merriam-webster.com/dictionary/actor; Merriam-Webster. "Victim Definition & Meaning." Merriam-Webster. Merriam-Webster. Accessed March 3, 2022. https://www.merriam-webster.com/dictionary/victim.

[10]Bloom, Mia. "Mother. Daughter. Sister. Bomber. - Mia Bloom, 2005." SagePub. Bulletin of the Atomic Scientists. Accessed March 3, 2022. https://journals.sagepub.com/doi/10.2968/061006015.

[11] Bryson, Rachel. "Female Suicide Bombers May Be New for Isis, but They're No Stranger to Iraq." Institute for Global Change. Tony Blair Institute for Global Change. Accessed March 3, 2022. https://institute.global/policy/female-suicide-bombers-may-be-new-isis-theyre-no-stranger-iraq.

of love, adventure, duty, and more which appeal to the young, female demographic. Due to the ability of these platforms to transcend borders and reach individuals from across the globe, violent extremist groups are able to display and share their content, such as online magazines, TikTok videos, and more to effectively spread their message in a way that appeals to young women from the west. While companies like Twitter and Facebook attempt to take down extremist messaging, the disparate nature of the internet makes this task challenging.

4. *Failing to incorporate a gender lens in U.S. CVE policy risks U.S. national security*

Current U.S. CVE policy and programming by the U.S. government doesn't include a gender lens in its approach. For example, the U.S. Department of States' Bureau of Counterterrorism website does not mention gender within the Bureau's key topics, mission, and other materials.[12] However, the narratives violent extremist groups deploy are gendered. By dismissing gender in violent extremism, the United States creates blind spots and puts citizens at risk. In order to combat this, gender must be actively mainstreamed in U.S. CVE policies, meaning gender must be considered and accounted for at all stages in U.S. CVE policy creation and implementation.

ICT RECRUITMENT CASE STUDIES

ISIS deploys a number of recruitment strategies through social media sites and blogs to target young women. For example, ISIS shares propaganda videos of marches, fighters with guns, and videos with "heart filters" to appeal to female viewers on TikTok. They also share videos of beheadings and tortures to intimidate those who oppose their cause and engage youth who may be disenfranchised with the west.[13] By effectively utilizing this platform targeting the youth, ISIS is able to appeal to and recruit female youth who are engaged on the platform.

ISIS is also able to recruit young women through content creation and extensive networks via Twitter. In fact, ISIS uses hashtags such as #notodemocracyyestoislam on Twitter to create

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[12] US Department of State. "Bureau of Counterterrorism - United States Department of State." U.S. Department of State. U.S. Department of State, March 1, 2022. https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/bureau-of-counterterrorism/.

[13] CBS News. "Isis Turns to TikTok for Recruitment." CBS News. CBS Interactive, May 20, 2020. https://www.cbsnews.com/video/isis-turns-to-tiktok-for-recruitment/.

the narrative that individuals should not believe in man-made law, rather only abide by Sharia Law, as it is the "best law for man-kind." By encouraging young girls not to vote in western countries and instead, come to Syria to live under the Khalifa, ISIS has created the narrative that it is a good Muslim woman's duty to do so.[14] ISIS then uses Twitter to create a community in which recruiters can engage and influence women to voyage to Syria and join their cause.

ISIS recruiters are able to attract young girls to join their cause by creating a narrative of romance through blogs. "Shams Blog" recruits young women to join ISIS by portraying a life in which young girls will find true love, marry an ISIS fighter, experience adventure, and serve a greater purpose under the Islamic State. In the blogs, young women are promised cars, great housing, and a sense of "empowerment" as the leader of their household.[15] The Georgetown Institute for Women's Peace and Security finds that, "These girls, like victims of child sexual exploitation, don't see themselves as victims. They see themselves as girls going to be with men who genuinely love them." However, the reality is that these girls are often assigned a husband who could be much older than them with other wives, forced to live in a war zone, suffer from abuse, and are passed to another soldier once their husbands die from war.[16]

Finally, ISIS has also employed online magazines, such as Dar al-Islam, to recruit women. In Fernande Buril's "Changing God's Expectations and Women's Consequent Behaviors," Buril argues that, "Dar al-Islam and the evolution of their messages, from portraying a god that wants submission to a god that needs women's active participation in battle" helps maintain the narrative that God's expects women to take part in ISIS activities in order to be "good Muslim women."[17]

While platforms such as Twitter, Facebook, and Microsoft have come together to take down ISIS propaganda, it proves to be a difficult task given the sheer vastness, disparate nature of the internet and immediacy in which content can be posted, leaving ISIS narratives to persist.

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[14] Begum, P. "Isis Women Unveiled (Terrorism Documentary) - Youtube." Real Stories. Accessed March 3, 2022. https://www.youtube.com/watch?v=ZTq-AEB_3RM.

[15] Ibid.

[16] Binetti, Ashley. "Human Trafficking and ISISs Recruitment of Women from the West." Georgetown Institute for Women Peace and Security. Accessed March 3, 2022. https://giwps.georgetown.edu/wp-content/uploads/2017/10/Human-Trafficking-and-ISISs-Recruitment-of-Women-from-the-West.pdf.

[17] Buril, Fernanda. "Contemporary Voices: St Andrews Journal of International Relations." Contemporary Voices: St Andrews Journal of International Relations. School of International Relations, University of St Andrews, October 12, 2017. https://cvir.st-andrews.ac.uk/article/10.15664/jtr.1363/.

AL-SHAABAB

Al-Shabaab utilizes similar platforms in order to spread its message and recruit young girls. In fact, the violent extremist group has its own media group called alKataeb which utilizes platforms like Twitter through its handle @HSMPress to target and communicate with recruits. Through its online magazine, Millat Ibrahim, the violent extremist group is able to engage female audiences across the globe through the internet. Through its website, Al-Shabaab also, "Spreads jihadist sermons, photos and videos of attacks, chat rooms, discussion boards, and in some cases manuals on tactics or bombing practices."[18]

Chat rooms seem to be particularly engaging to women and girls, as it was reported that the girls Halima Ali, Khadija Abdul Kadir, Mariam Aboud and Ummul Khayr of Kenya were recruited through a chat room via the Internet.[19] With ICTs like these effectively deployed by the violent extremist group, Al-Shabaab has recruited hundreds of foreign fighters from Sweden, Australia, the United Kingdom, United States, South Asia, and the Middle East.[20]

QANON: DOMESTIC VIOLENT EXTREMISM IN THE UNITED STATES

With women being the majority of followers on the site, QAnon, this platform provides an ample opportunity for disinformation and recruitment for acts of violent extremism. Hashtags like, #savethechildren appeal to this female audience; potentially inciting a maternal reaction. It is through platforms like this that western women, like Jessica Prim, a female QAnon supporter who was carrying a dozen knives and was arrested in May after authorities alleged that she had livestreamed her expedition to New York City to "take out" Biden as well as another QAnon-supporting woman in Texas who was charged with aggravated assault after she rammed her car into other people she believed were involved in the kidnapping of children."[21]

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[18] Ajaebili, Nnamdi C, J Tochukwu Omenma, and Cheryl Hendricks. "Al-Shabaab and Boko Haram: Recruitment Strategies - Nsuworks." Accessed March 3, 2022.
https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1460&context=pcs.
[19] Ibid.
[20] Ajaebili, Nnamdi C, J Tochukwu Omenma, and Cheryl Hendricks. "Al-Shabaab and Boko Haram: Recruitment Strategies - Nsuworks." Accessed March 3, 2022.
https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1460&context=pcs.
[21] Pandith, Farah. "Female Extremists in Qanon and Isis Are on the Rise. We Need a New Strategy to Combat Them." NBCNews.com. NBCUniversal News Group, December 11, 2020.

Women also utilized the QAnon platform in order to incite and inspire the riot of the January 6 insurrection. For example, "The 35-year-old Ashli Babbitt followed and repeated QAnon on her social media accounts. The day before she died, she tweeted, 'Nothing will stop us … They can try and try and try but the storm is here and it is descending upon DC in less than 24 hours … dark to light!.'"[22] By leaning into disinformation and conspiracies on QAnon, women are able to inspire one another to incite violence domestically to further their cause.

STRATEGIC RECOMMENDATIONS FOR THE U.S. GOVERNMENT

1.   *Mainstream gender through all U.S. CVE programming:*

In order to better prepare the United States to address violent extremism, a gender lens must be applied to all CVE policies. As demonstrated through the previous cases, each of the violent extremist groups utilized gender norms and perceptions to their advantage by creating content that resonated with female populations, as well as reaching them through ICT platforms women and girls are most actively engaged on. Therefore, gender mainstreaming is needed in policy creation and implementation as incorporating gender proves critical to successful CVE efforts.

Gender mainstreaming is defined as, "The process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels."[23] In order to engage in gender mainstreaming, a gender analysis must first be conducted on all U.S. counterterrorism policy. A gender analysis is defined as, "A process that assesses the differential impact of proposed and/or existing policies, programs and legislation on women and men. It makes it possible for policy to be undertaken with an appreciation of gender differences, of the nature of relationships between women and men and of their different social realities, life expectations and economic circumstances."[24] By taking a critical eye to U.S. counterterrorism policy and rhetoric, one can see that gender is often excluded from the

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https://www.nbcnews.com/think/opinion/female-extremists-qanon-isis-are-rise-we-need-new-strategy-ncna1250619.

[22] Shaw, S. et al."Gender Mainstreaming." UN Women – Headquarters. Accessed March 3, 2022. https://www.unwomen.org/en/how-we-work/un-system-coordination/gender-mainstreaming.

[23] Ibid.

[24] "Working Document Gender-Based Analysis - Pacificwater.org." Accessed March 3, 2022. http://www.pacificwater.org/userfiles/file/IWRM/Toolboxes/gender/gender_based_analysis.pdf.

conversation despite its relevance. In fact, when looking at the U.S. Department of States'
Bureau of Counterterrorism website, the word gender is not mentioned within the Bureau's key
topics, mission, and other materials.[25]

In order to more effectively implement counterterrorism policy, gender must be
accounted for in policy-making. By acknowledging the push and pull factors as to why women
join violent extremist groups, recognizing that women can be both victims and actors of violent
extremism, and designing policy that accounts for these nuances with a gender lens, the United
States can better ensure the safety of all its citizens.

2.   *Fund further study regarding the role of gender in violent extremism:*

In order to mainstream gender into U.S. CVE policy, further research regarding the role
of women in violent extremism must be conducted. While male recruitment proves to be well-
studied in violent extremism since the 9/11 attack, the role of women as agents of violent
extremism proves to be an understudied field. In order to create more effective policy geared
towards successful CVE efforts, the role of gender with a lens on women in violent extremism
needs to be further studied. By partnering with leading institutions such as Georgetown
University's Institute for Women, Peace, and Security and similar academic institutions, as well
as with relevant think tanks and organizations of the like, the U.S. government can fund deeper
research regarding the push and pull factors that incite women to join these organizations.
Through funding further research, the United States can illustrate its commitment and
prioritization of ensuring the safety of U.S. citizens and allies. When further research is
conducted, more dynamic solutions can be created from a position of holistic understanding and
gender awareness as well as sensitivity. When deeper research is conducted, more informed
policy is created and implemented.

3.   *Create Counter-Messaging Narratives:*

While content regulation proves to be of utmost importance in combating the narratives
employed by violent extremists, the First Amendment proves to pose a difficult challenge when

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[25] US Department of State. "Bureau of Counterterrorism - United States Department of State." U.S. Department of
State. U.S. Department of State, March 1, 2022. https://www.state.gov/bureaus-offices/under-secretary-for-civilian-
security-democracy-and-human-rights/bureau-of-counterterrorism/.

regulating content because of the right to freedom of expression. Regulating content proves to be even more challenging in that when content is regulated, violent extremists can simply move to a different platform or forum that is less regulated, such as Telegram. Therefore, the U.S. government can utilize its resources to change the conversation by creating counter-messaging. Through counter-messaging that addresses push and pull factors and educates women and girls regarding the dangers of recruitment by these organizations, as well as highlights the discrepancies between the narratives spread vs. the realities on the ground when joining these organizations, the U.S. government can play a part in preventing radicalization before it is too late. By working with the tech sector to deploy targeted messaging to the demographic of young women on social media, the U.S. government can begin to shift the conversation.

4. Implement Online Redirection:

While the tech sector has engaged in efforts to regulate content of violent extremist groups, the disparate nature of the internet makes catching these actors a difficult task. Online redirection, "The action of assigning or directing something to a new or different place or purpose,"[26] can serve as a potential tool and solution tech companies can employ in order to ensure access to extremist forums become more difficult. By steering at-risk women and girls away from easily accessing violent extremist sites and propaganda, and instead towards accessing sites where education regarding the reality of these groups is offered for women and girls, the U.S. government can work with the tech industry to shift the conversation and better ensure U.S. national security.

CONCLUSION

As young women and girls are recruited by violent extremist organizations online, it is in the national security interest of the United States to address this issue. Through the U.S. government's incorporation of a gender lens within all U.S. CVE programming, funding of further research regarding the role of gender in violent extremism, creation of counter-messaging narratives to combat extremist narratives, collaboration with the tech industry to implement

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[26] TechTarget Contributor. "What Is Redirection? - Definition from Whatis.com." WhatIs.com. TechTarget, September 21, 2005. https://whatis.techtarget.com/definition/redirection.

online redirection to steer vulnerable populations from engaging with extremist rhetoric, and the incorporation of disarmament, demobilization, and reintegration structures into U.S. CVE policy through the focus of incorporating the push and pull factors that uniquely affect women and girls, the U.S. government can begin to protect its citizens from violent extremism for years to come.

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TO COLLABORATE OR NOT: THE QUESTION FACING UNITED STATES- MEXICO BILATERAL SECURITY POLICY

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Security collaboration with Mexico represents a critical foreign policy priority of the United States. The following paper will examine why security collaboration between both nations is vital and what form this collaboration should take, proposing a strategy for the upcoming Bicentennial Framework under the Biden and Andrés Manuel López Obrador administrations.

INTRODUCTION

For more than a decade, the presence of transnational criminal organizations (TCOs) continues to threaten the security interests of the United States. Despite the goals set out in the Merida Initiative, increasing levels of organized crime-related violence in Mexico and drug overdoses within the United States has triggered widespread questioning of the initiative's legitimacy by academics and policymakers, who argue that there is a misalignment between the Merida Initiative's goals and tangible social outcome. With Andrés Manuel López Obrador taking office in Mexico in 2018, security cooperation between both nations strained, forcing the initiative to end. Recently, with the announcement of an upcoming agreement to replace the Merida Initiative by Secretary of State Antony Blinken, United States-Mexico security collaboration policy has become newly relevant. However, the efficacy of the United States-Mexican efforts is a source of congressional concern, with critics questioning whether there should be collaboration and what form this collaboration should take.

Collaboration between the United States and Mexico is vital and evident through three ideas: the principle of state power diffusion, the risk of Mexico becoming a failing state, and the notion that nation-building is within U.S. security interests. Furthermore, collaboration must be approached under a conflict analysis lens, with a multidimensional peacebuilding approach and state-building strategies compatible with Mexico's current Estrada Doctrine.

The research paper will utilize a theoretical case study method to sustain the thesis, employing theories from Joseph Nye, Robert I. Rotberg, Keith Mines, and Ami C. Carpenter. This approach was selected due to the topic at hand being a current event with constant

evolution, hence an in-depth focus limited to the specific but complex case of United States-Mexico security collaboration allows for a broader understanding of its underlying dynamics. The paper will commence by exploring the spectrum of scholarly debate surrounding United States-Mexico security collaboration in the literature review, to subsequently examine the Merida Initiative and argue for security collaboration under a conflict analysis lens, concluding with a collaboration proposal compatible with the Estrada Doctrine.

This project employs a variety of primary and secondary research resources provided for the public domain. Primary sources include the transcript of hearing No. 113-60 before the Committee on Homeland Security House of Representatives and several Congressional Research Service Reports. Primary empirical data includes figures on organized crime-related crimes from Statista database, allocated funds from the Government Accountability Office (GAO), and figures related to the United States' opioid epidemic from the Council on Foreign Relations. Secondary sources encompass scholarly works from a variety of authors, employing their theories in the context of United States-Mexico collaboration. The project recognizes the limitations of considering the topic is a current occurrence with the relevance of sources thus being diminished with time.

THE MERIDA INITIATIVE

To assess prospects of United States-Mexico security collaboration policy from a theoretical perspective, an overview of past security collaboration policy, the Merida Initiative, is necessary. Created in 2008 under the George W. Bush and Felipe Calderón administrations since the commencement of the initiative the United States has devoted over $3 billion to aid Mexico's battle against transnational criminal organizations. The Merida Initiative consists of three main phases in fiscal years: FY2008-FY2010, FY2011-2017, and FY2018-FY2021.

In the initial phase of the initiative, Congress appropriated approximately $1.5 billion to Mexico, including $420.7 million in Foreign Military Financing, used to purchase equipment to aid the efforts of Mexico's federal security forces (military and police). The assistance had three points of focus "(1) counternarcotics, border security and counterterrorism; (2) public security and law enforcement; and (3) institution-building and the rule of law."[1] Congress withheld 15% of certain U.S assistance under the "Leahy Laws"

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[1] Congressional Research Service. "Mexico: Evolution of the Mérida Initiative, FY2008-FY2021." November 1, 2021.

vetting requirements until the State Department submitted a report that ensured Mexico was taking the necessary steps to fulfill human rights requirements. However, despite the human rights requirements of the initial phase, this period employed hard power via a criminal justice lens, with the United States' support of Mexico's strategy of arresting and extraditing high-value targets in the drug trade ("kingpin strategy").[2] However, this strategy allegedly "fueled violence, as fractured drug trafficking organizations fought to regroup and reorganize."[3]

In 2011, the Obama administration revised the strategy behind the Merida Initiative, broadening the scope of bilateral efforts under four pillars:

> (1) Combating transnational criminal organizations through intelligence sharing and law enforcement operations; (2) Institutionalizing the rule of law while protecting human rights through justice sector reform, forensic equipment and training, and police and corrections reform; (3) Creating a 21st- century U.S.-Mexican border while improving immigration enforcement in Mexico; and (4) Building strong and resilient communities by piloting approaches to address root causes of violence and reduce drug demand.[4]

The focus of this phase was more holistic, with an emphasis on justice sector reform and institution-building with programs that encouraged a "culture of lawfulness."

In 2018, the Trump administration refocused the Merida Initiative to "a narrower, security and antidrug-oriented approach reminiscent of the first phase of the Mérida Initiative but with less U.S foreign assistance."[5] As highlighted by the Congressional Research Service, security collaboration strained under the Andrés Manuel López Obrador administration due to his critiques of previous presidencies' security policies, his declaration regarding ending the "war on drugs," and his articulated desire to reduce the role of the United States in Mexico's security policy. [6] In October 2020, bilateral cooperation floundered following the COVID-19 pandemic and further aggravated with the arrest of Mexican former Defense Minister Salvador Cienfuegos on drug charges. Though exonerated with the Cienfuegos case ultimately dropped, the Mexican Congress passed a security law that critically hampered collaboration by curtailing the ability of the Drug Enforcement Agency to cooperate without prior approval. In January 2021, following an Andrés Manuel López Obrador press

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[2] Views threat posed by TCOs in terms of the criminal actors' individual decisions, classifying the violence as illegal/criminal. Classifies the conflict as a "drug war" and advocates for a hard power resolution.
[3] Ibid.
[4] Ibid.
[5] Congressional Research Service. "Mexico: Background and U.S. Relations." Accessed December 17, 2021. https://crsreports.congress.gov/product/pdf/R/R42917/43.
[6] Ibid.

conference that derided the Merida Initiative, the Ministry of Foreign Affairs announced the official conclusion of the initiative. In October 2021, following the 200th anniversary of Mexican Independence Secretary of State Antony Blinken and Attorney General Merrick Garland announced a new framework to replace the Merida Initiative, the *U.S.-Mexico Bicentennial Framework for Security, Public Health, and Safe Communities* (Bicentennial Framework) for January 2022.

EXPLORING UNITED STATES-MEXICO SECURITY

The main threat to United States-Mexico security takes the form of transnational criminal organizations (TCOs). The 2011 White House Strategy to Combat Transnational Organized Crime defines these organizations as:

> self-perpetuating associations who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/ or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms.[7]

According to the DEA's 2019 National Drug Threat Assessment, Mexican drug trafficking organizations constitute the most significant criminal threat to the United States, and the DEA's 2020 assessment highlights "Mexican TCOs are responsible for the production and trafficking across the Southwest Border (SWB) of the overwhelming majority of the heroin available in the United States."[8] As such, Mexican TCOs not only threaten the security interests of both Mexico and the United States but also constitute a primary source for the illegal drug flow towards the United States, thus playing a vital role in the effectiveness of the United States' drug control policy. TCOs connect both nations under a common threat with public health and security implications, raising the question of how the United States-Mexico interaction should be.

The spectrum of scholarly debate surrounding United States-Mexico security collaboration encompasses two key points. The first point is whether there should or should not be United States-Mexico security collaboration. Assuming there is collaboration, the

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[7] "Strategy to Combat Transnational Organized Crime: Definition." National Archives and Records Administration. Accessed November 30, 2021.
https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime/definition.

[8] U.S Department of Justice Drug Enforcement Administration. "2020 Drug Enforcement Administration National Drug Threat Assessment." March 2021. Accessed November 5, 2021.

second point is what form and characteristics United States-Mexico security collaboration should take.

Regarding the first point of debate, critics of collaboration under the Merida Initiative highlight two main points against security collaboration between the United States and Mexico, one empirical and one theoretical concerning the idea of "nation-building." Regarding the first point, critics of the Merida Initiative such as Laura Carlsen, director of the Americas Program in Mexico City and Rubén Olmos Rodríguez, international analyst and consultant, highlight the increasing levels in Mexico of organized crime-related violence, drug cartel presence, and drug and weapon trafficking as grounds for questioning the initiative's legitimacy. As can be consulted in the annexed graphs, in 2020 the number of organized crime-related homicides in Mexico amounted to 28,328 cases, representing a 21% increase compared to the previous year. Since the beginning of the Merida Initiative, the number of organized crime-related homicides in Mexico has increased, with more than triple in 2020 than in 2009.[9] Furthermore, authors such as Stephanie Erin Brewer point to a lack of emphasis on targeting drug demand in the United States; the engine that drives the drug trade. Drug overdoses in the United States follow the same increasing trend as organized crime-related homicides in Mexico, with almost 70,000 people in the United States dying of opioid-related overdoses in 2020, the highest annual number on record.[10]

The second argument against collaboration is a theoretical argument that deems unfeasible the entire construct of "nation-building" by a foreign entity. To assess the critique, it is first necessary to establish what nation-building is, understanding the different elements of a "nation-state." A "nation-state" consists of two distinct components, the "nation" aspect, and the "state" aspect. According to Keith Mines, former foreign service officer, and director of the Latin America program at United States Institute of Peace, at a political level the nation "is the result of a political compact that unites people under a certain territory under a single identity."[11] However, the "nation" is of an emotional nature, consisting of the cultural, social, and historical ties that bind a population together. On the other hand, the state consists of the "institutions that can manage the business of governing within that nation."[12] This distinction is key as nation-building critics recognize that foreign entities can intervene in a

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[9] See Annex 1

[10] See Annex 2

[11] Mines, Keith W. *Why Nation-building Matters: Political Consolidation, Building Security Forces, and Economic Development in Failed and Fragile States*. Lincoln, NE: Potomac Books, an Imprint of University of Nebraska Press, 2020.

[12] Ibid

state-building process, but argue they lack the capacity to intervene and repair the emotional "nation" element.

An example of a nation-building effort undertaken by the United States often used as a point of reference by academics concerning the Merida Initiative is Plan Colombia. In the early 2000s, Colombia supplied approximately 90% of the world's cocaine, and the illegal narcotics trafficking provided the Revolutionary Armed Forces of Colombia (FARC) with much of its revenue. "Plan Colombia" took place from 2000-2015 and consisted of more than $10 billion of United States aid to Colombia that "aimed to help the country combat guerrilla violence, strengthen its institutions, and stem drug production and trafficking."[13]

Supporters of Plan Colombia such as Keith Mines contend that "by staying in a supporting role to a Colombia that was well led and intent on winning, the U.S.-Colombian partnership yielded a successful end-state… a lend of soft and hard power, and national determination on both sides combined to get the country to a place of relative stability, ending one of the modern age's longest conflicts."[14] Moreover, supporters highlight the importance of Plan Colombia in paving the way for subsequent peace talks that now allow for the United States to be Colombia's largest trading partner, with a bilateral free trade agreement between both nations entering into force in 2012.

However, critics such as Peter Clark, senior associate at the US Office on Colombia, question the initiative's apparent success, suggesting Plan Colombia was the cause of potentially thousands of deaths and internal displacements. Critics further argue that even if Plan Colombia were considered successful, the model would not be exportable to Mexico due to acute differences between the two countries. While Colombian rebels sought sovereignty, Mexican transnational criminal organizations have economic motivations. Additionally, Mexican transnational criminal organizations do not classify as "insurgents," so approaching the issue with a similar collaboration initiative would be unsuccessful. Moreover, as mentioned, critics contend that outsiders cannot repair the fundamental ties that bind people together as a nation. Hence, attempts of "nation-building" by a foreign entity such as the United States are fundamentally unfeasible.

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[13] "Colombia's Civil Conflict." Council on Foreign Relations. January 11, 2017. Accessed December 15, 2021. https://www.cfr.org/backgrounder/colombias-civil-conflict.
[14] Mines, 2020

COMPETING LENSES TOWARDS COLLABORATION: CRIMINAL JUSTICE LENS AND NON-INTERNATIONAL ARMED CONFLICT FRAME

The second point of departure amongst academics concerning United States-Mexico security collaboration is assuming there is collaboration, how should it be, and what form should it take? There are two competing "lenses" to the United States-Mexico security threat posed by transnational criminal organizations (TCOs) within this deliberation. The differences between these lenses are fundamental as "lenses generate frames, which defines issues."[15] By "frames," we understand "collective, intersubjective understandings that people use in constructing roles and interpreting objectives; they influence how people organize and interpret knowledge."[16] The concept of "frames" is relevant in United States-Mexico security collaboration as in the realm of armed conflict, the frame "shapes actors' understanding of the causes of violence, peace, and the role of the intervener, making certain actions possible while precluding others."[17] Thus, the role of competing lenses regarding TCOs is vital as it defines the frame of reference towards the issue, which in turn defines the approach and actions taken by Mexico and the United States to combat the threat.

The first lens takes the form of a criminal justice perspective and is put forth by scholars such as the Vice President of Legal Affairs at NBC Universal Media Craig A. Bloom, Michael T. Wotherspoon from University of Washington, and former Attorney General of Mexico Carina Bergal. The criminal justice lens presents the threat posed by TCOs in terms of the criminal actors' individual decisions and actions (cartels, paramilitaries, and street gangs), classifying the violence as illegal or criminal. This lens views the conflict under a "drug war" foundation, proposing a Non-International Armed Conflict (NIAC) frame of reference, advocating a hard power approach to its resolution. The competing lens, presented by scholars such as Ami C. Carpenter (Associate Professor of Conflict Analysis and Resolution at University of San Diego) advocates for collaboration from a conflict analysis lens, viewing the conflict under a Factional-Economic frame, proposing multidimensional peacebuilding and state-building strategies for its resolution.

The academics who view the conflict from a criminal justice lens advocate for a Mexican "drug war" framework, providing legal justification to classify the conflict as a Non-International Armed Conflict. Scholars such as Bergal sustain their proposal under

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[15] Carpenter, Ami C. "Changing Lenses: Conflict Analysis and Mexico's 'Drug War.'" *Latin American Politics and Society* 55, no. 3 (2013): 139–60. http://www.jstor.org/stable/43284851.
[16] Ibid.
[17] Ibid

various legal sources including the Geneva Convention's, Common Article 3, and Additional Protocol II, under the precedent of the Tadić decision, under the Rome Statute, under the ICRC definition, and from additional sources such as the Uppsala conflict classification.[18]

Delving further into the legal sources that justify the Mexican "drug war" NIAC classification, firstly there is the Framework of Common Article 3. This maintains that the conflict is consistent with the stipulations of the Geneva Conventions and thus classifies the Mexican "drug war" as an "armed conflict not of an international character… occur [ring] in the territory of one of the High Contracting Parties."[19] Mexico, considered a High Contracting Party as a signatory to the Geneva Conventions, thereby fulfils this clause by being engaged in a conflict within its territory. Furthermore, the conflict is not conducted among "two or more of the High Contracting Parties" as cartels are nonstate actors excluded from this consideration. Therefore, both Common Article 3 elements are fulfilled- the existence of an armed conflict, not of an international character.[20]

The landmark decision of Tadić provides further support for the NIAC classification. In this decision, the International Criminal Tribunal for the former Yugoslavia (ICTY) succinctly implied that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups within a state."[21] The violence between Mexican authorities (governmental authorities) and drug cartels (organized armed groups within a state) is of a protracted nature, with constant fighting between cartels and the Mexican government over regions of territorial control, thereby further justifying the armed conflict classification.

Amongst other supporting frameworks, Article 8 (2)(d) Rome Statute also supports the NIAC classification, with the Mexican "drug war" fulfilling the requirements of not being "simply an internal disturbance or tension, such as a "riot [], isolated and sporadic act [] of violence," and occurring not on an international scale but rather between "governmental authorities and organized groups or between such groups."[22] As the TCOs violence is of a protracted nature, not constituting an isolated act of violence, this fulfills the first part of the Article 8 (2)(d) Rome Statute definition. Furthermore, cartels consist of "organized groups"

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[18] Four conventions and additional protocols that establish international legal standards for humanitarian treatment in war, 1949; Article common to four conventions, applies to "conflicts not of an international character";1977 amendment protocol to the Geneva Conventions relating to the protection of victims of non-international armed conflicts

[19] *Geneva Convention Relative to The Protection of Civilian Persons In Time of War*, August 12, 1949.

[20] Ibid.

[21] Carpenter, 2013

[22] "Rome Statute of the International Criminal Court." July 1998.

because of their hierarchical organizational structure, with the violence occurring between cartels and/or between Mexican governmental authorities and cartels, thereby fulfilling the latter element of the definition.

This criminal justice lens, sustained from a "drug war" point of reference, proposes applying International Humanitarian Law to stabilize Mexico. The approach advocates for a hard power approach, primarily approaching the issue via military and law enforcement strategies. Resulting military and law enforcement strategies emergent from the frame of the conflict as a NIAC have "centred on capturing top drug bosses" in the so-called "kingpin strategy," "launching military and police operations against organized crime groups, and purging Mexican officials linked to the drug trade." [23] As previously mentioned, the "kingpin strategy," a result of the hard power approach to the conflict, fueled violence by fracturing drug trafficking organizations who subsequently fought to reorganize. However, rather than changing the hard power strategy of collaboration, which is merely the effects of a NIAC frame of reference, the approach to the conflict must be modified at the root, from the lens itself. The form of collaboration must change, starting from a shift in lens from that of criminal justice to conflict analysis.

THE CASE FOR SECURITY COLLABORATION

Scholars have questioned the efficiency of the Merida Initiative "with little publicly available information on the specific metrics the U.S. and Mexican governments are using to measure the impact of the Merida Initiative, analysts have debated how bilateral efforts should be evaluated."[24] The evaluation of the initiative is thus largely dependent on what the program's goals and indicators of success are.

Indicators of success of the Merida Initiative include cooperation among law enforcement that has led to the capture of high-profile targets such as Joaquin "El Chapo" Guzmán, the transition of Mexico's justice system from one of presumption of guilt to the presumption of innocence with oral trials in 2016, and the improvement of Mexican correctional facilities allowing the achievement of international accreditation of ninety-eight Mexican prisons. From a theoretical standpoint, a firm security collaboration policy between the United States and Mexico is crucial for three fundamental reasons. First, due to the

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[23] Carpenter, 2013
[24] Congressional Research Service. "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond." June 29, 2017. Accessed December 6, 2021.

declining power of states in the globalized world, the so-called "state diffusion" phenomenon. Secondly, to curb the risk of Mexico becoming a failed state. Lastly, due to nation-building being within the United States' security interests.

A) STATE POWER DIFFUSION

In an increasingly globalized society, states live in a system of "complex interdependence," as put forth by Robert Keohane and Joseph Nye. Within this system, states cooperate as it is within their common interest to do so to ensure stability and prosperity. In this system, "cooperation is as dominant a characteristic of international politics as conflict."[25] This need for cooperation is further relevant according to Joseph Nye's principle of power diffusion. The globalized world's information revolution, lowering computing and communication costs, has led to a power shift or "diffusion" from states to non-state actors. While the state and governments still constitute the most powerful actors in international relations, now this power is shared with powerful non-state actors.

The need for collaboration in combating TCOs is further necessary due to the agility of TCOs whose expanding network and diversification of activities converge a series of threats that were previously distinct. Operating under high levels of capital, cartels have the capacity to corrupt government officials and respond violently towards law enforcement. Additionally, the transnational nature of these organizations allows them to operate under several jurisdictions, strengthening the necessity for collaboration across national boundaries. As emphasized by Dinkins and Alan D. Bersin in their prepared statement for the Committee on Homeland Security, "no single agency or country can tackle transnational criminal organizations unilaterally. Rather, it requires a multi-agency, multinational approach."[26] Furthermore, strengthening international collaboration, particularly with neighboring Mexico, allows for the prevention of transnational crime helping uphold public health and safety, democratic institutions, and economic stability through a more efficient allocation of resources in protecting global trade and travel.

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[25] Genest, Marc A. *Conflict and Cooperation: Evolving Theories of International Relations*. Belmont, CA: Thomson/Wadsworth, 2004.

[26] "Taking Down the Cartels: Examining United States-Mexico Cooperation. *"Hearing Before the Committee on Homeland Security House of Representatives* One Hundred Thirteenth Congress, no. One Hundred Thirteenth Second Session Second Session (April 2, 2014).

B) THE RISK OF MEXICO BECOMING A FAILED STATE

Secondly, United States-Mexico collaboration is vital as Mexico was at risk of becoming a failed state prior to the Merida Initiative; a dangerous state contested by warring factions and loss of governmental control or support. Between the 1980s and 2000s, there was limited cooperation between both nations due to U.S. distrust of Mexican officials and Mexican hesitancy over U.S. involvement in security affairs for fear of a breach of national sovereignty. However, in 2008, an acute need for the United States-Mexico security collaboration arose due to increased violence among Mexican drug cartels, evident in several ways. Drug cartels were targeting unprecedented numbers of police officers, with the Mexican Milenio newspaper reporting seventy-one police officers killed nationwide in August 2008. Moreover, the crossfire of cartel violence increasingly affected citizens, and decapitations (a previously uncommon cartel tactic) were rising in popularity.

The 2008 increasing cartel violence was due to several reasons. Firstly, Mexican cartels increased their market share due to the breakup of Colombia's Cali and Medellín cartels in the 1990s. Moreover, the capture of several Mexican cartel leaders created power vacuums and thus competition to obtain cartel leadership. Additionally, there was access to more sophisticated weaponry than in previous years and a rising enlistment by cartels of special operations forces such as the *"Zetas,"* former Mexican special operations, and the "*Kaibiles,"* former Guatemalan special operations. Combining these factors resulted in a more sophisticated type of cartel warfare, highlighting the need for collaboration. In May 2007, Luis Astorga, an expert in drug trafficking at UNAM University, reported to the Houston Chronicle, "We're seeing a transition from the gangsterism of traditional hitmen to paramilitary terrorism with guerrilla tactics."[27] Hence, increasing cartel violence, because of superior weaponry and heightened organizational sophistication made plausible the possibility of Mexico becoming a failed state.

Moreover, according to Robert I. Rotberg, "Nation-states exist to provide a decentralized method of delivering political (public) goods to persons living within designated parameters (borders)."[28] According to the effectiveness at providing political

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[27] Schaefer, Agnes Gereben, Benjamin Bahney, and K. Jack Riley. *Security in Mexico: Implications for U.S. Policy Options*. RAND Corporation, 2009. http://www.jstor.org/stable/10.7249/mg876rc.

[28] Rotberg, Robert I. *State Failure and State Weakness in a Time of Terror*. Cambridge, MA: World Peace Foundation, 2003.

goods, one can distinguish between strong states, weak states, and failed or collapsed states. Additionally, there is a hierarchy within the political goods delivered:

> None is as critical as the supply of security… The state's prime function is to provide that political good of security—to prevent cross-border invasions and infiltrations, and any loss of territory; to eliminate domestic threats to or attacks upon the national order and social structure; to prevent crime and any related dangers to domestic human security, and to enable citizens to resolve their disputes with the state and with their fellow inhabitants without recourse to arms or other forms of physical coercion.[29]

In the context of the years prior to the Merida Initiative, fears of Mexico becoming a failed state arose as Mexico was not providing the most critical political good, security. Mexico was unable to provide to provide this political good as it was not fulfilling two fundamental principles of the state: monopoly of force and a defined territory. The lack of monopoly of force was evident in TCO violence throughout the country, and "It is not the absolute intensity of violence that identifies a failed state. Rather, it is the enduring character of that violence."[30] The enduring, prolonged character of the TCO violence is evident with the Mexican government being forced to deploy military officials to combat the threat. Furthermore, the collective organization of TCOs allowed them to conduct sustained operations, exercising certain control over regions in the territory, fulfilling the definition, "In contrast to strong states, failed states cannot control their borders. They lose authority over sections of territory."[31] The Mexican government ultimately lacked a monopoly of force and control over the entirety of its territory, hindering its ability to provide the most important political good, security, thus putting Mexico at acute risk of becoming a failed state.

The combination of the previously mentioned more sophisticated type of cartel warfare coupled with an internal incapacity to provide security to its citizens ultimately prompted Mexican President Felipe Calderón to break from the traditional Mexican stance of hesitancy towards security collaboration and ask for help from the Bush administration. Thus, the United States needed to engage with the Mexican government to the self-serving national security of having a neighboring country at risk of becoming a failed state. Though Mexico was not yet a failed state and still had a government structure in place, if the United States did not establish security collaboration, it is plausible that Mexico could have degenerated into a fragile state at risk of failure.

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[29] Ibid.
[30] Ibid
[31] Gereben, Bahney, and Riley, 2009

C) NATION-BUILDING AS WITHIN THE UNITED STATES' SECURITY INTERESTS

Finally, security collaboration between Mexico and the United States is critical as, "the chief threats to us and to world order come today from weak, collapsed, or failed states."[32] The current state of rising overdose deaths in the United States and organized crime-related violence in Mexico are output measures of an initiative whose real outcome is yet to be determined. Other domestic factors such as rising United States drug demand for more deadly fentanyl and other synthetic drugs, exacerbation of the drug crisis due to the Covid-19 pandemic, and the rise of the painkiller OxyContin, are not effectively considered in defining whether the Merida Initiative constituted a failure or success.

The Merida Initiative was comparable to Plan Colombia in that it was also a form of nation-building by the United States, allowing it to expedite assistance to a "Mexico under siege by traffickers and destabilizing actors."[33] As emphasized by Mines, in dismissing nation-building too early, one overlooks subsequent success. Moreover, "nation-building is a difficult, long-term enterprise with high costs in manpower, lives, and resources. The places where it has been more successful… are the ones where U.S forces have remained for generations."[34] Nation-building via security collaboration with Mexico is firmly within the interest of the United States. Although it is not possible to measure what the current conditions in Mexico and the United States would be in the absence of collaboration under the Merida Initiative, it is credible that the threat posed by TCOs, if left untended, would have grown in strength; widening insecurity that in today's globalized world is borderless.

WHAT FORM SHOULD SECURITY COLLABORATION TAKE?

There are two competing frames to United States-Mexico security collaboration. A criminal justice lens views the conflict under a "drug war" dominant frame of reference, proposing a Non-International Armed Conflict (NIAC) classification framework, and hard power approach to its resolution. As mentioned, the form of collaboration must change, shifting lens from that of criminal justice to conflict analysis. The conflict must be

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[32] Fukuyama, Francis. Nation-Building 101. 2004. Accessed December 17, 2021. https://www.scirp.org/reference/referencespapers.aspx?referenceid=3020158.
[33] Mines, 2020
[34] Fukuyama 2004

approached from a Factional-Economic frame, with multidimensional peacebuilding and state-building strategies for its resolution.

A conflict analysis lens views the threat posed by TCOs as a complex Factional-Economic conflict, which encompasses three elements: entrenched illicit economies, alternatively governed space, and power struggles between political or criminal factions. The threat posed to the United States-Mexico security conflict can be classified as a factional-economic conflict, firstly, because TCOs are driven to a significant degree by an "interpenetration of political and criminal worlds."[35] The criminal justice lens views the conflict as a struggle between the government and "drug lords." However, this overlooks the entrenched relationship between governmental actors and the drug trade that have been complicit, blurring the realm of the legal and illegal. Secondly, this interpenetration has led to the state competing for authority in "alternatively governed" spaces. Lastly, illicit leaders have generated "varying degrees of loyalty through patronage systems that provide protective and other services to local communities," creating power struggles between factions.[36]

The criminal justice lens and "drug war" frame that influenced United States security policy "left little rhetorical and operational room for creative multisectoral strategies to stem the violence and address its root causes."[37] This frame is problematic as it "couches the threat in terms of criminal actors (cartels, paramilitaries, street gangs), minimizes contextual (structural) sources of the violence," resulting in the problem being met with hard power, law enforcement solutions, prioritizing military and enforcement strategies.[38] These strategies centered on capturing high-value targets ("kingpin strategy") and removing Mexican officials linked to the drug trade. These strategies have been problematic in their consequences, evident under Andrés Manuel López Obrador's return to a former foreign policy doctrine: the Estrada Doctrine.

The Estrada Doctrine began as a foreign policy doctrine in Mexico in the 1930s, maintaining two key principles: non-intervention and self-determination, following a history as an independent nation filled with foreign interventions, mainly by the United States, France, Spain, and England. The doctrine aimed to consolidate the post-revolutionary PRI regime, avoiding external interference in domestic affairs. In 2000, with the fall from power of the long-reigning PRI party, the Estrada Doctrine was abandoned for the Castañeda

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[35] Carpenter 2013
[36] Ibid.
[37] Ibid.
[38] Ibid.

Doctrine under the Vicente Fox administration. The Castañeda Doctrine took place following the collapse of the Soviet Union and shift from a "bipolar" to a "unipolar" world order, and aligned more with U.S. ideals, pushing for openness, with Mexico taking a more active part in foreign affairs and in promoting a liberal world order. The 2018 election of Andrés Manuel López Obrador brought back the Estrada Doctrine, evident in his lack of diplomatic trips abroad during the first six months of presidency, failure to attend the June 2019 G20 summit, and defense of non-interference in Cuba and Venezuelan affairs.

The return to the Estrada Doctrine represents a unique policy challenge for the United States-Mexico security collaboration. In Mexico, the strategies enforced via the criminal justice lens ("kingpin strategy") and removing Mexican officials linked to the drug trade meant that the Merida Initiative is portrayed as something forced onto Mexico by the United States and as something that has increased violence in Mexico. Moreover, the strategy of arresting high-value targets has "escalated violence by creating a space for newer more militant contenders to compete for leadership using harsher and harsher tactics," generating further Mexican public discontent.[39]

A strategy to stop violence and protect civilians would require undertaking "difficult political choices in confronting corrupt officials, militia leaders, and narcotics traffickers."[40] However, given the return to the Estrada Doctrine, this strategy is incompatible with Mexico's current foreign policy, as evidenced in the U.S. arrest of Mexico's former Secretary of Defense General Salvador Cienfuegos on October 15, 2020. His arrest led to an angering of Mexico that hampered collaboration and ultimately led to the end of the Merida Initiative.

How should the United States react to Mexico's return to the Estrada Doctrine? The United States must advocate maintaining collaboration. Firstly, collaboration must be viewed from a different lens, a conflict analysis lens that pushes for resolution through multidimensional peacebuilding and state-building strategies. Additionally, this collaboration must shift away from a criminal justice lens with law enforcement strategies that have generated Mexican resentment towards U.S. security interference, evidenced in the return of the Estrada Doctrine. The United States must shift policy focus, avoiding the "kingpin strategy" and arrest of top officials connected to the drug trade to avoid hampering collaboration. The newly announced Bicentennial Framework provides an opportunity to renew collaboration and must aim to soothe bilateral friction and foment nation-building.

[39] Ibid.
[40] Ibid.

CONCLUSION

Despite questioning of the Merida Initiative's efficiency, the initiative undoubtedly constituted an unprecedented partnership between the United States and Mexico to tackle transnational criminal organizations. The Merida Initiative was historic in its landmark break from Mexican hesitancy towards security collaboration with the United States, recognizing the mutual countries' "shared responsibility" in the matter, transcending political parties, and extending across the interagency communities of both governments. As stated by Christopher Wilson, the former Deputy Director of the Wilson Center's Mexico Institute, with the Merida Initiative:

> Attitudes of mutual recrimination, with the United States faulting Mexico for the northbound flow of drugs and Mexico faulting the United States for the southbound flow of illicit money and arms, gave way to an approach based on shared responsibility for the transnational challenges posed by drug trafficking and organized crime.[41]

Following a critical hampering of collaboration in October 2020, the recently announced Bicentennial Framework provides an opportunity for collaboration to resume. Collaboration is vital and must continue for the three mentioned reasons: state diffusion requires interstate cooperation, it is within the interest of the United States that Mexico does not become a failed state, and nation-building is key to avoid a growing threat left untended. Moreover, this collaboration must aim to soothe bilateral friction, being compatible with Mexico's return to the Estrada Doctrine. Finally, rather than viewing the threat posed by transnational criminal organizations from a criminal justice lens with a "drug war" Non-International Armed Conflict frame with a hard power resolution, collaboration must be viewed under a conflict analysis lens with a Factional-Economic frame, fostering collaboration via multidimensional peacebuilding and state-building strategies

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[41] Committee on Homeland Security House of Representatives, 2014

ANNEX

1. Organized-Crime Related Homicides in Mexico 2009-2020
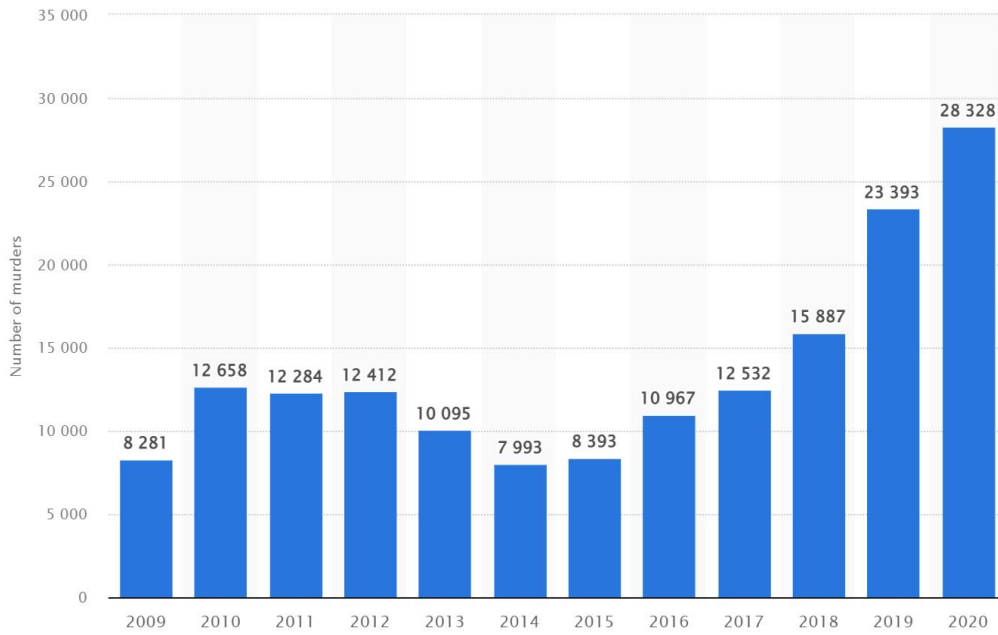
Source: Statista 2020

2. Opioid Overdose Deaths in the United States, 1999-2019
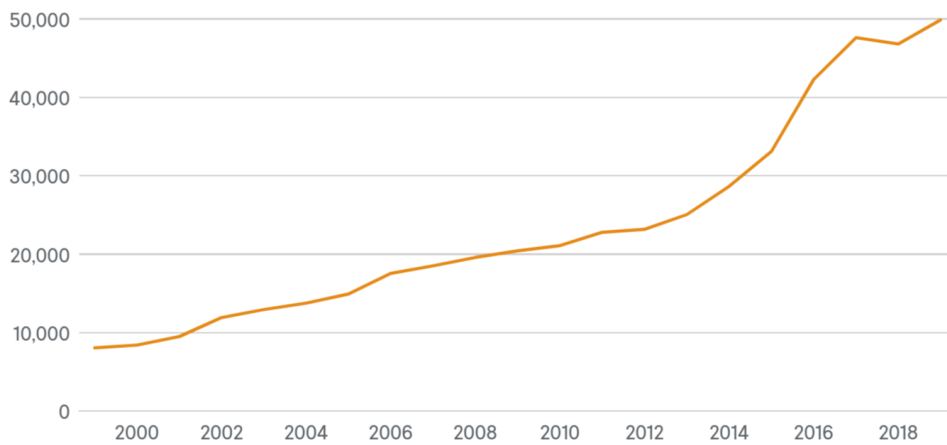
Source: National Institute on Drug Abuse; Centers for Disease Control and Prevention.

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PRESIDENTIAL CONTROL OVER AUTONOMOUS WEAPONS

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Autonomous weapons will continue to change war. While these weapons have positive impacts, they can also do severe harm. The president will, in some way, be involved in the development and use of these weapons. This paper presents two broad approaches Congress can take to regulating presidential control over autonomy in weapons: mandating "meaningful human control" over every use of force or adopting an "it depends" policy regarding how much human control is needed on a case-by-case basis, along with specific policies which follow from these approaches. While this paper takes no stance on which approach is better, it argues that Congress should regulate the president's ability to control autonomous weapons. The paper incorporates lessons from presidential control over nuclear weapons and drones to explore this question in more depth.

INTRODUCTION

Over time, autonomy in weapons has significantly increased, from sketches of mechanical knights to weapons which can locate and destroy targets based on electromagnetic waves.[1] Autonomous weapons will continue to produce changes in armed conflict, including rapid increases in the speed of fighting. Policymakers should develop policy to control presidential authority over use of autonomous weapons now, before policy is forced upon them by circumstances.[2] This paper begins by outlining lessons Congress can learn from presidential control over nuclear weapons and drones. Next, it presents an overview of two approaches Congress should consider regarding presidential control over autonomous weapons. The first is ensuring the president maintains "meaningful human control" over uses of force. The second is an "it depends" approach to autonomous weapon regulation which outlines how much human control is required to use force in different situations. While "it depends" is a broader approach, it still calls for human involvement in use of force by weapons, and leaves open the possibility of fully autonomous weapons being used.

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[1] Ty McCormick, "Lethal Autonomy: A Short History," *Foreign Policy,* January 24 2014, https://foreignpolicy.com/2014/01/24/lethal-autonomy-a-short-history/.

[2] James E. Baker, *The Centaur's Dilemma: National Security Law for the Coming AI Revolution* (Washington, D.C: Brooking Institute Press, 2021), 81-83.

NUCLEAR WEAPONS

The core feature in Nuclear Command, Control, and Communication (NC3) regarding nuclear weapons is the president's sole authority to launch them. The president can receive council by high-level officials, but only the president can decide to employ nuclear weapons.[3] While there are concerns about the weakness of NC3 systems leading to uncontrolled nuclear escalation, the 2018 *Nuclear Posture Review* states NC3 systems are currently stable.[4] The Biden administration states the United States will use nuclear weapons as a deterrent, while pursuing arms control.[5] Currently, the Department of Defense does not accept a no-first use (NFU) policy, but says the United States will only consider use of nuclear weapons under extreme circumstances, such as severe non-nuclear attacks.[6]

The core reason the United States maintains presidential sole control over nuclear weapons is deterrence.[7] In a situation where nuclear use would even be contemplated, events are likely to be changing quickly, and any lag time in nuclear orders could be the difference between survival and destruction for the United States.[8] However, some opponents of the current process argue the decision to deploy nuclear weapons is too important to be left to one person. One proposal which two such critics make is to require the legal approval of the Secretary of Defense

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[3] Amy F. Woolf, "Defense Primer: Command and Control of Nuclear Weapons," *Congressional Research Service* (November 2021): 1, https://crsreports.congress.gov/product/pdf/IF/IF10521.

[4] United States Department of Defense, *2018 Nuclear Posture Review* (Washington, D.C: Department of Defense, 2018): 56-59. https://media.defense.gov/2018/Feb/02/2001872886/-1/-1/1/2018-NUCLEAR-POSTURE-REVIEW-FINAL-REPORT.PDF.

[5] Joesph R. Biden Jr, *Interim National Security Strategic Guidance* (Washington, D.C: The White House, March 2021): 13, https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf.

[6] James M. Acton, "Escalation Through Entanglement," *International Security* 43, no. 1 (August 2018): 56-99, https://doi.org/10.1162/isec_a_00320; United States Department of Defense, *Nuclear Posture Review*, 52-56.

[7] Some argue deterrence is breaking down. Rebecca Hersman, "Wormhole Escalation in the New Nuclear Age," *Texas National Security Review* 3, no. 2 (Summer 2020): 91-108, https://repositories.lib.utexas.edu/handle/2152/83221; Rose Gottemoeller, "The Standstill Condemn: The Advent of Second-Strike Venerability and Options to Address it," *Texas National Security Review* 4, no. 3 (Fall 2021): 115-124, http://dx.doi.org/10.26153/tsw/17496. For emerging technologies and stability see; Matthew Kroenig, "Will Emerging Technologies Cause Nuclear War? Bringing Geopolitics Back In," *Strategic Studies Quarterly* 15, no. 4 (Winter 2021): 59-7, https://www.airuniversity.af.edu/Portals/10/SSQ/documents/Volume-15_Issue-4/D-Kroenig.pdf.

[8] Brandon Rittenhouse Green, "The President and Nuclear Weapons or: How I learned to Stop Worrying and Love Trump Having The Bomb, " *War on The Rocks,* September 25 2017, https://warontherocks.com/2017/09/the-president-and-nuclear-weapons-or-how-i-learned-to-stop-worrying-and-love-trump-having-the-bomb/.

and Attorney General before nuclear strikes are launched.[9] One scholar argues most nuclear strike orders would be illegal, and that people with sufficient knowledge of the illegality of them could be held liable.[10] At the same time, even if orders were illegal, there could be so much damage done from nuclear use that the legal question would remain theoretical.

A related measure which some critics of the current nuclear doctrine advocate for is an NFU policy. This policy is what it sounds like: a policy not to use nuclear weapons unless they are first used against the United States. Arguments for an NFU policy include the stances that it would increase crisis stability, limit routes of escalation, and conventional weapons already allow the United States to deter adversaries. Arguments against an NFU policy include that it lacks credibility, as states would expect the United States to use nukes if needed, and it would undermine U.S. extended deterrence, possibly increasing nuclear proliferation.[11] Legislation to formally institute an NFU has been introduced in Congress, and the Biden administration is reportedly considering an NFU in it's upcoming *Nuclear Posture Review*. At the same time, this policy faces severe opposition, especially from Republicans.[12]

There is not enough space in 15 pages to fully cover the complex debate regarding nuclear weapons and presidential authority, since the question of how much authority one person should have over weapons of such destructive power is a complex issue. While this question applies to many weapons systems, Congress should specifically provide answers in the realm of autonomous weapons. drone strikes conducted by the last two administrations raise similar issues regarding presidential control over use of force, along with two critiques: the possibility of civilian casualties, and rapid presidential action increasing the possibility of poor policy outcomes.

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[9] Richard K. Betts and Matthew C. Waxman, "The President and the Bomb," *Foreign Affairs* 97, no. 12 (March/April 2018): 119-129, https://www.foreignaffairs.com/articles/united-states/2018-02-13/president-and-bomb.

[10] Anthony J. Colangelo, "The Duty to Disobey Illegal Nuclear Strike Orders," *Harvard National Security Law Journal* 9, no. 2 (2018): 84-120, https://harvardnsj.org/wp-content/uploads/sites/13/2018/06/3_Colangelo_DutyToDisobey_06.08.18.pdf.

[11] Galen Jackson et al, "Policy Roundtable: Nuclear First-Use and Presidential Authority," *Texas National Security Review* 3 (July 2019): 1–60, https://tnsr.org/roundtable/policy-roundtable-nuclear-first-use-and-presidential-authority/.

[12] Joe Gould, "Debate on 'no-first use' of nukes mushrooms in Washington," *Defense News,* October 6 2021, https://www.defensenews.com/congress/2021/10/06/debate-on-no-first-use-of-nukes-mushrooms-in-washington/.

DRONES[13]

In February of 2021, the Biden administration confirmed to *The Daily Beast* it was undergoing a review of drone policies.[14] The administration limited the role of drone strikes compared to former President Trump's policy, despite a drone strike which killed ten civilians in Afghanistan occurring on August 29, 2021.[15] In contrast, the Trump administration had looser rules regarding drone strikes, including legal guidelines authorizing targeting of terrorist networks outside of states the United States was in conflict with.[16] Further, the Trump administration departed from the Obama administration by enabling action against actors if they only posed a "threat."[17] While the Trump administration left open the possibility of strikes without presidential authority, Obama policy and rules of engagement mandated presidential approval of each drone strike.[18]

This section discusses two critiques of presidential control over drones. The first is civilian casualties because of drone strikes. Luke Hartig, a fellow at New America, argues the August 29, 2021 drone strike in Afghanistan exemplifies the need for further efforts to reduce

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[13] For debate over the ethics and efficacy of drone strikes, see Danial Byman, "Why Drones Work," *Foreign Affairs* 92, no. 4 (July/August 2013): 32-44, https://www.foreignaffairs.com/system/files/pdf/issues/2013/92400.pdf.; Michael C. Horowitz, Sarah E. Krebs, and Matthew Furmann, "Separating Fact From Fiction in the Debate Over Drone Proliferation," *International Security* 41, no. 2 (fall 2016): 7-42, https://www.belfercenter.org/sites/default/files/files/publication/isec_a_00257.pdf; Bryce Loidolt, "Were Drone Strike Effective? Evaluating the Drone Campaign in Pakistan," *Texas National Security Review* 5, no. 2 (Spring 2022): 53-79, https://tnsr.org/2022/01/were-drone-strikes-effective-evaluating-the-drone-campaign-in-pakistan-through-captured-al-qaeda-documents/.

[14] Spencer Ackerman, "Biden lunches classified Review of Drone Strikes and Counterterrorism Raids," *The Daily Beast,* February 25 2021, https://www.thedailybeast.com/biden-starts-classified-review-of-drone-strikes-and-counterterror-raids?ref=scroll.

[15] United States Department of Defense, *Pentagon Press Secretary John F. Kirby and Air Force Sam. Said Hold a Press Briefing* (Washington, D.C: Department of Defense, November 3 2021), https://www.defense.gov/News/Transcripts/Transcript/Article/2832634/pentagon-press-secretary-john-f-kirby-and-air-force-lt-gen-sami-d-said-hold-a-p/.

[16] Donald J. Trump, *Principles, Standards, and Procedures For U.S Direct Action Against Terrorist Targets* (2017): 2, https://www.justsecurity.org/wp-content/uploads/2021/05/principles-standards-and-procedures-for-direct-action-against-terrorist-targets-psp-FOIA-final.pdf; Hina Shamai, "Trumps Secret Rules for Drone Strikes and Presidents' Unchecked License to Kill," *Just Security,* May 3 2021, https://www.justsecurity.org/75980/trumps-secret-rules-for-drone-strikes-and-presidents-unchecked-license-to-kill/.

[17] Shamai, "Trump Drones."

[18] Barrack H. Obama, *Procedures For Approving Direct Action Against Terrorist Targets Located Outside The United States And Areas of Active Hostilities* (2013): 11, https://www.aclu.org/sites/default/files/field_document/presidential_policy_guidance_0.pdf.

innocent life lost as a result of such strikes.[19] A 2013 Subcommittee On The Constitution, Civil Rights, And Human Rights of the Senate Judiciary Committee hearing echoed this concern, with witnesses and Senators raising concerns about how the line between civilian and combatant was drawn.[20] Further, policies such as signature strikes have been criticized for making it too easy for civilians to be classified as combatants.[21] Overall, the rate of civilian casualties as a result of drone strikes has led to criticism that current drone policy does not draw the line between civilian and combatant clearly enough.

The second critique of drone policy is that the speed with which drones can be used may result in poorer policy outcomes. Further, presidents could use drone strikes to divert public attention from domestic issues, along with using strikes to act without oversight from Congress.[22] As with nuclear power, this paper will not attempt to fully cover the issues raised by drones, but the question of speed of presidential action along with risks to civilians, will play a role in autonomous weapons as well. The next section will not take sides on the scope of presidential war powers, but will focus on Congressional regulation and oversight of autonomous weapons.[23]

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[19] Luke Hartig, "Re-examining the Fundamentals of the Done Program After the Kabul Strike," *Just Security,* November 10, 2021, https://www.justsecurity.org/79168/reexamining-the-fundamentals-of-the-drone-program-after-the-kabul-strike/.

[20] Subcommittee On The Constitution, Civil Rights, And Human Rights, Committee Of The Judiciary United States Senate, *Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killings, (*Washington, D.C: Government Publishing Office, 2013). https://www.govinfo.gov/content/pkg/CHRG-113shrg26147/html/CHRG-113shrg26147.htm.

[21] Spencer Ackerman. "Inside Obama's drone panopticon: a secret machine with no accountability," *The Guardian,* April 25, 2015, https://www.theguardian.com/us-news/2015/apr/25/us-drone-program-secrecy-scrutiny-signature-strikes.

[22] Brock Laney, "Drone Strikes and the War Powers Resolution," *Brigham Young University Prelaw Review* 27 (April 1, 2013): 15-32, https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1209&context=byuplr; Scott S. Borders and Graig R. Klein, "Political Use of force in the Drone Age," *SSRN* (November 16, 2020): 1-45, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2380151; Scott S. Borders and Graig R. Klein, "Presidential use of Diversionary drone force and public support," *Research and Politics* (May 26, 2021): 1-7, https://journals.sagepub.com/doi/full/10.1177/20531680211019904.

[23] For overview of the legal debate, see John C. Yoo, "The continuation of Politics by other means: The original understanding of war powers," *California Law Review* 84, no. 2 (March 1996): 167-305, https://www.jstor.org/stable/pdf/3480925.pdf; Michael D. Ramesy, "Textualism and War Powers," *University of Chicago Law Review* 69, no. 4 (Fall 2002): 1543-1638, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5138&context=uclrev; Saikrishna Prakash, "Unleashing the Dogs of War: What the Constitution Means by Declare War," *Cornell Law Review* 93, no. 1 (November 2007): 46-122, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3078&context=clr; Eric Talbot Jenson, "Future War and the War Powers Resolution," *Emory International Law Journal* 29, no. 3 (2015): 499-555, https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1139&context=eilr.

AUTONOMOUS WEAPONS

Any discussion of autonomous weapons should first begin by defining what autonomous weapons are. The Department of Defense defines autonomous weapons as "a weapon system that, once activated, can select and engage targets without further intervention by a human operator." The DOD further defines semi-autonomous weapons as "a weapon system, once activated, is intended to only engage individual targets or specific targets selected by a human operator."[24] James E. Baker, Retired judge and current director of Syracuse University's National Security Law Program defines artificial intelligence, a key component of autonomous weapons as "programmed machine optimization."[25]

Worldwide, militaries are seeking to develop semi and autonomous weapons, including the United States, China, Russia, Iran, and non-state actors.[26] From 2014 to 2017, the DOD undertook what it called the "third offset strategy," which sought to use artificial intelligence (AI) to counter the rise of China and Russia. During the first offset, in the 1950s, the United States pursued nuclear weapons against the Soviet Union, while in the second, during the last half of the Cold War, the United States increased its use and development of precision-guided munitions.[27] Autonomous weapons are beneficial due to their increased speed and possible reduction of ethical violations. However, autonomous weapons can also cause great harm due to

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[24] United States Department of Defense, *Directive Number 3000.9* (Washington, D.C: Department of Defense, 2012): 13-14, https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodd/300009p.pdf.

[25] James E. Baker, "Artificial Intelligence and National Security," *Starr Forum Reports,* May 25, 2018, https://cis.mit.edu/publications/starr-forum-report/18-01-report.

[26] Scharre, *Army of None*, 59-78; Jacob Ware. "Terrorist Groups, Artificial Intelligence, and Killer Drones," *War on the Rocks,* September 24, 2019, https://warontherocks.com/2019/09/terrorist-groups-artificial-intelligence-and-killer-drones/; Jeffrey Distin, and Paresh Dave, "U.S Commission Cites 'Moral Imperative' to explore A.I Weapons," *Reuters,* January 26 2021, https://www.reuters.com/article/us-usa-military-ai/u-s-commission-cites-moral-imperative-to-explore-ai-weapons-idUSKBN29V2M0; Yasmin Tadjadh, "Algorithmic Warfare: Russia exporting fleet of AI-enabled weapons," *National Defense Magazine,* July 20 2021, https://www.nationaldefensemagazine.org/articles/2021/7/20/russia-expanding-fleet-of-ai-enabled-weapons; Evan Omeed Lisman, "Iran's Bet on Autonomous Weapons," *War on the Rocks,* August 30 2021, https://warontherocks.com/2021/08/irans-bet-on-autonomous-weapons/; Patrick Tucker, "SecDef: China is Exporting Killer Robots to the Mideast," *Defense One,* November 5 2021, https://www.defenseone.com/technology/2019/11/secdef-china-exporting-killer-robots-mideast/161100/.

[27] United States Department of Defense, *Remarks by Deputy Secretary of Defense Work on Third Offset Strategy,* (Washington, D.C: Department of Defense, 2016), https://www.defense.gov/News/Speeches/Speech/Article/753482/remarks-by-d%20eputy-secretary-work-on-third-offset-strategy/; Gian Gentiles et al. "A history of the third offset, 2014-2018," *RAND Corporation* (2021): 1-103, https://www.rand.org/content/dam/rand/pubs/research_reports/RRA400/RRA454-1/RAND_RRA454-1.pdf.

increased risk of escalation, and autonomous weapons not knowing when to stop fighting.[28] One of the key questions regarding autonomous weapons is how much control humans should have over usage of force? Currently, there are a wide variety of autonomous weapons, which are mostly used in defensive ways, such as the Aegis Missile defense system. However, weapons with higher degrees of autonomy, closer to humans, could be developed. An incident in June 2020 could be the first-time autonomous weapons were lethally used in combat, showing the importance of Congressional action regarding autonomous weapons.[29]

This section presents two frameworks Congress can use to regulate presidential control over autonomous weapons. The first is "meaningful human control," the second is the "it depends" approach. After describing each of these frames, I describe some policies which Congress could adapt if it wanted to follow each modal. It is important to note that most of the writing cited in the below section focuses on the implications of these modals for individual weapons exchanges, not higher-level control. While AI is currently strong at pattern understanding and rapid thinking, higher level strategy involves complexities which make human involvement more important, at least for now.[30] I take themes from the individual discussions, and apply them to the higher-level issue of presidential control over the military.

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[28] For overview of the debate on autonomous weapons, see Ronald C. Arkin, "The case for ethical autonomy in Unmanned Systems," *Journal of Military Ethics* 9, no. 4 (December 16 2010): 332-341, https://www.tandfonline.com/doi/abs/10.1080/15027570.2010.536402; Human Rights Watch, "Losing Humanity: The Case Against Killer Robots," *Human Rights Watch* (November 19 2012): 1-50, https://www.hrw.org/report/2012/11/19/losing-humanity/case-against-killer-robots; *Army of None*, 107-29; C. Anthony Plaff, "Respect for Persons and the Ethics of Autonomous Weapons and Decision Support Systems," *The Strategy Bridge,* March 4 2019, https://thestrategybridge.org/the-bridge/2019/3/4/respect-for-persons-and-the-ethics-of-autonomous-weapons-and-decision-support-systems; Burgess Laird, "The risks of Autonomous Weapons Systems for Crisis Stability and Conflict Escalation in Future U.S-Russia confrontations," *Russia Matters,* June 3, 2020, https://www.rand.org/blog/2020/06/the-risks-of-autonomous-weapons-systems-for-crisis.html; Baker, *Centaurs Dilemma*, 1-69; Kenneth Payne, *I Warbot: The Dawn of Artificially Intelligent Conflict* (Oxford University Press*:* New York, 2021).

[29] Scharre, *Army of None*, 35-59. Zachary Kallenborn,"War fighting killer robot used in Libya: quite possibly," *Bulletin of Atomic Scientists,* May 20 2021, https://thebulletin.org/2021/05/was-a-flying-killer-robot-used-in-libya-quite-possibly/; James Vincent, "Have Autonomous Robots Started Killing in War?" *The Verge,* June 3 2021, https://www.theverge.com/2021/6/3/22462840/killer-robot-autonomous-drone-attack-libya-un-report-context.

[30] Kenneth Payne, *Strategy, Evolution and War: From Apes To Artificial Intelligence (*Washington, D.C: Georgetown University Press, 2018); Payne, *I, Warbot,* 195.

"MEANINGFUL HUMAN CONTROL"

One approach which human rights groups advocate for to reduce the harms of autonomous weapons is to maintain "meaningful human control" over each use of force. For example, Article 36, a human rights advocacy group which briefs the United Nations on issues involving autonomous weapons, argued in a policy brief that "meaningful human control" over weapon systems is required in every individual attack.[31] However, there is no codified understanding of what "meaningful human control" entails. If the idea lacks a clear definition, then the so-called solution to the issue of autonomous weapons could end up being hollow. Further, lack of agreed upon definitions makes unified action less likely, as states have failed to collectively act on autonomous weapons, and policymakers in the United States could have the same issue.[32] For these reasons, if Congress adopts this approach, it should establish its definition of "meaningful human control."

Dr. Heather M. Roff, Senior Research Scientist at the Center for Naval Analysis, argues "meaningful human control" assumes machines should not fire without some human judgement, and humans authorizing engagements based purely on computer analysis does not count as human control. Roff concludes key elements of human control include "predictable, reliable and transparent technology… accurate information … outcome sought, operation, and function of technology and the context of use .. human action … timely intervention … [and] Accountability."[33] This definition is in line with Paul Scharre and Michael E. Horowitz's definition, which includes "human operators … making informed, conscious decisions, about the use of weapons … sufficient information to ensure lawfulness of the action they are taking …

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[31]Article 36, "Killing by Machine: Key issues for understanding Meaningful human control," April 2015, https://article36.org/wp-content/uploads/2013/06/KILLING_BY_MACHINE_6.4.15.pdf.

[32] Michael C. Horowitz and Paul Scharre, "Meaningful Human Control in Weapon Systems: a primer," *Center for a New American Security (*March 2015): 6, https://www.files.ethz.ch/isn/189786/Ethical_Autonomy_Working_Paper_031315.pdf; Rebecca Crootof, "A Meaningful Floor for "meaningful human control,"*Temple International and Comparative Law Journal*, 30, no. 2 (Spring 2016): 54, https://sites.temple.edu/ticlj/files/2017/02/30.1.Crootof-TICLJ.pdf; Dustin Lewis, "An Enduring Impasse on Autonomous Weapons," *Just Security,* September 28, 2020, https://www.justsecurity.org/72610/an-enduring-impasse-on-autonomous-weapons/.

[33] Dr. Heather M. Roff and Richard Moyes, "Meaningful human control, Artificial Intelligence, and Autonomous Weapons," Briefing Paper Prepared for Informal Meeting of Experts on Lethal Autonomous Weapons U.N convention in certain Conventional Weapons (April 2016):1-3, https://article36.org/wp-content/uploads/2016/04/MHC-AI-and-AWS-FINAL.pdf.

have effective control of the use of the weapon."[34] The above definitions suggest "meaningful human control" involves human operators initiating use of force by weapons in order to achieve goals which humans decide upon. Further, humans should be aware of what actions weapons are taking in real-time, and be able to stop engagements if needed. This paper now provides several policy changes which could be implemented under this approach.

POLICY PROPOSALS

Along with offering a more concrete definition of "meaningful human control," Congress should address a variety of other questions if it wants to adopt this approach to regulation. The first is at what level humans should have control. Is human judgment required for each use of weapons, or can it be applied at the tactical level?[35] Roff argues human control in use of force involves human judgment for attacks at the tactical level, and that commander control alone cannot meet this threshold. While it is not perfectly clear what constitutes an attack, Roff suggests the broader the term be used, the less meaning it could have, and human control requires people to be involved in initiating each individual attack.[36] The further question exists of whether a requirement for "meaningful human control" would be an actual break from policy. One scholar suggested human control is already a key part of the DOD's policy regarding autonomous weapons. DOD guidelines, for example requires "appropriate levels of human judgment," as well as requiring any autonomous weapons to go through multiple rounds of approval.[37] Congress should consider whether "meaningful human control" is already included in DOD policy. Next, this paper will describe specific policies which Congress could implement via this approach, including factors Congress should consider when defining "meaningful human control."

Definitions regarding autonomous weapons are important, because Congress can use them to ensure regulations are being followed. Congress could regulate how the military executes policies, and the military looks for guidance from Congress regarding what actions it

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[34] Horowitz, "Primer," 3.
[35] Ibid. 15.
[36] Roff, "Meaningful Human Control," 4.
[37] Adam Cook, "Taming Killer Robots: Giving Meaning To The 'Meaningful Human Control' Standard For Lethal Autonomous Weapons Systems," *JAG School Papers* (June 2019): 17, https://www.airuniversity.af.edu/Portals/10/AUPress/Papers/JP_001_COOK_TAMING_KILLER_ROBOTS.PDF.

can and cannot take. High-ranking officials in the military can transfer these guidelines down the chain of command, ensuring people at the ground level understand what uses of autonomous weapons are and are not acceptable. The same transference applies to the president, because Congress can create red lines which the president cannot cross without congressional action regarding autonomous weapons.

Any proposal of "meaningful human control" Congress creates should start with defining the phrase. This definition should consider the complexities of any given definition, including "[d]oes it require a human to physically operate the system, or does real time supervision suffice? Must the human operator be in the loop approving targets, or would the ability to intervene to countermand a target selection?"[38] Further, Congress, if adapting Roff's attack restriction, should define what counts as an attack.

Regarding actual policies, the first measure Congress should take is finding red lines beyond which the president cannot use force via autonomous weapons, or delegate force responsibility to artificial intelligence. These lines could include the NC3 structure.[39] Further, Congress could mandate that autonomous weapons are not deployed, and make the president responsible for being informed if autonomous weapons are going to be used, and if they were, to stop them. The possibility exists of AI being used more and more in decision-making at the strategic level. While this is currently a theoretical concern, Congress could mandate the president must show and verify some level of control over decision-making processes done with the aid of AI to ensure the president remains firmly in control, and to serve as a circuit breaker for extremely rapid policy changes. This question has already arisen at the command level because multiple military strategy documents have described AI as assisting in decision-making. For example, the *Summary of the 2018 Department of Defense Artificial Intelligence Strategy* states "[w]e will incorporate AI into decision-making and operations to reduce risk to fielded forces and generate advantage." Further, the *Department of the Navy Science and Technology For Artificially Intelligent Autonomous Systems* states "[t]he Warfighter's employment of [AI] produces a wider, more penetrating, and more surgical view of battle space activities."[40] It is

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[38] Cook, "Taming Killer Robots," 19.
[39] Baker, "Centaurs Dilemma," 203.
[40] United States Department of Defense, *Summary of the 2018 Department of Defense Strategy Artificial Intelligence* (Washington, D.C.: United States Department of Defense, 2018): 6, https://media.defense.gov/2019/Feb/12/2002088963/-1/-1/1/SUMMARY-OF-DOD-AI-STRATEGY.PDF; United States Department of the Navy, *Science and Technology Strategy For Intelligent Autonomous Systems,*

important to note that these documents describe AI as supplementing, not dominating, the command process. Another area which Congress could regulate autonomous weapons under the "meaningful human control" standard is in cyberspace. There are prior issues involved in regulating cyberspace. Matthew C. Waxman, law Professor at Columbia University, for example, argues most cyber attacks do not rise to the level of use of force, so Congressional war power issues are not activated by cyber attacks.[41] Still, Congress could decide, for example, to only allow AI to be used in defense cyber operations, not offensive, due to the increased speed of escalation which can occur when AI and cyberspace interact.[42] Finally, Congress should implement enforcement mechanisms which can detect where and how AI is being used in order for oversight to actually be effective.[43] These mechanisms are extremely important, as without them, the impacts of Congressional action could be limited in their impact, because Congress would be unable to verify that regulations were being followed. The next approach this paper discusses, "it depends," is a broader approach than mandating "meaningful human control," but still involves human oversight over uses of force, depending on the context is which force is being considered.

"IT DEPENDS"

The second approach this paper describes is wider in scope than "meaningful human control." This approach, "it depends," holds that humans need to have different degrees of control over autonomous weapons in different situations, so there could be some cases in which autonomous weapons could be used. One argument for finding these limits is made by Waxman and others, who argue weapons should be autonomous to the extent they can follow the law of war. For example, an autonomous weapon could be used in autonomous mode to hunt enemy submarines or engage in air-to-air combat but might only be able to legally be used semi-

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(Washington, D.C.: Department of Navy, 2021): 11, https://nps.edu/documents/115559645/121916825/2021+Dist+A+DON+S%26T+Strategy+for+Intelligent+Autonom ous+Systems+2+Jul+2021.pdf/8693f7db-0f22-afc3-baaa-f5916913ca5c?t=1625875521279.

[41] Matthew C. Waxman, "Cyberattacks and the Constitution," *Aegis Series Paper no. 2007* (November 11 2020): 1-23, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3729&context=faculty_scholarship.

[42] Scharre, *Army of None*, 211-231.

[43] Matthew Mittelsteadt, "AI Verification: Mechanisms to Ensure AL Arms Control Compliance," *CSET Issue Brief* (February 2021): 1-28, https://cset.georgetown.edu/wp-content/uploads/AI_Verification.pdf.

autonomous mode in urban warfare.[44] There is evidence of this approach being taken by the U.S. The Navy claims autonomous systems require an appropriate level of human judgment, allowing the possibility autonomous can sometimes legally be used, adapting the language of *Directorate 3000.9,* published in 2012, which outlines DOD policy on autonomous weapons. Further, the DOD released ethical guidelines which repeated the appropriate level of control language, while noting the importance of human commanders being able to govern the behavior of autonomous systems. The United States has argued against the "meaningful human control" standard at the UN, instead focusing on the importance of using machines to achieve the will of commanders.[45] "It Depends" can include hard limits on machine involvement. For example, the Congressionally mandated *National Commission on Artificial Intelligence Final Report*, released in 2021, concludes AI should not be used in decisions regarding whether to use nuclear weapons, even though the report otherwise advocates for use of AI in weapon systems.[46] Overall, while the "it depends" approach enables more delegation of authority to machines, it still allows humans to remain in control of some extremely important decisions.

POLICY PROPOSALS

The first step Congress should take if it wanted to pursue this approach is to carefully define what "it depends" means. Saying merely that different levels of human control are warranted in different situations fails to provide any guidance as to how to decide how much control is warranted. However, excessive strictness of guidelines can make them harder to enforce and to effectively be implemented, due to how rapidly conflict can occur and intensify. As with many questions, some form of middle ground is needed. The scope of this ground, and

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[44] Kenneth Anderson, Danial Reisner, and Matthew Waxman, "Adapting the Law of Armed Conflict to Autonomous Weapon Systems," *International Law Studies,* 90 (2014): 398-406, https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1015&context=ils.

[45] United States Department of Defense, *DOS Adopts Ethical Principles for Artificial Intelligence* (Washington, D.C.: Department of Defense, 2020). https://www.defense.gov/News/Releases/Release/Article/2091996/dod-adopts-ethical-principles-for-artificial-intelligence/; United States Department of Defense, *Science and Technology Strategy For Intelligent Autonomous Systems,* 22; Matthew T. Miller, "Command Responsibility: A Modal For Defining Meaningful Human Control," *Journal of National Security Law and Policy* vol. 90 2 (February 2, 2021): 533, https://jnslp.com/wp-content/uploads/2021/06/Command-Responsibility—A-Model-for-Defining-Meaningful-Human-Control_2.pdf.

[46] Leo Kelion, "Biden urged to back AI weapons to Counter China and Russia Threats," *BBC News,* March 1, 2021, https://www.bbc.com/news/technology-56240785.

how it will specifically be enforced, are questions outside the scope of this paper. Congress should also attempt to write regulations, or delegate regulations to others, which do not relay on specific technologies, because, as Baker notes, technology will always outpace the law.[47] Congress should keep in mind why it is regulating autonomy weapons, for example to reduce risks of escalation, maintain human accountability, and prevent war from being dehumanized.

The next goal Congress should have is to attempt to maintain the president's accountability for actions involving autonomous weapons. It is important to have one key person who can be held responsible, because otherwise, responsibility can diffuse, making accountability harder to achieve. This undermining, in turn, can make it harder for regulations to be implemented and verified.[48] Further, maintaining the ability of presidents to have some degree of accountability, as well as being forced to slow down if deployment of autonomous weapons, could serve to reduce the risk of escalation, which autonomous weapons can bring. Some policy ways for resolving this issue could include mandating that before autonomous weapons were deployed, the president had to authorize their use, and this authorization had to include reports to Congress, so Congress could verify the use.

This approach could be too slow, however, to respond to the number of rapidly threats and situations which could arise in the use of autonomous weapons. In order to resolve this tension, Congress could implement a two-man rule, similar to various formulations proposed over control of nuclear weapons, which would enable the president to act more quickly than filing a report, but could still slow down escalation. Further, Congress could create preauthorization plans allowing the president to deploy autonomous weapons, in various situations and ways. The president could take these steps during a crisis, with the understanding they would need to report back to Congress regarding the way in which the weapons were used. This specific approach, along with others, would face the challenge that it is hard for Congress to agree on anything, and it is almost impossible to anticipate and plan for every possibility in warfare. As Clausewitz writes, "war is the realm of uncertainty."[49] While this quote refers to

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[47] Baker, "*Centaurs Dilemma*," 91-92.

[48] Tobias T. Gibson, "Multiple Principles and the Lack of Intelligence Oversight," *National Security Law Journal* 5, no. 2 (Winter 2017): 239-276, https://www.nslj.org/wp-content/uploads/Gibson-Article-from-Vol.-5-Issue-2-complete-issue.pdf.

[49] Mike Pietruchna, "Living With Fog And Friction: The Fallacy Of Information Superiority," *War on the Rocks,* January 6 2016, https://warontherocks.com/2016/01/living-with-fog-and-friction-the-fallacy-of-information-superiority/.

actual war fighting, not planning for war fighting, the same lesson applies: plans will change during wartime, but it is important to try to think of multiple ways in which fighting could occur, so people are not totally caught of guard when conflict arises.

As with "meaningful human control," Congress could impose red lines of its own. For example, no AI in nuclear or offensive cyber weapons, along with no AI being used in sensitive areas, such as the South China Sea or around Taiwan, without clear Congressional approval. One benefit which these measures could have is to enable the president to maintain the ability to conduct quick and decisive action, while reducing the risk of uncontrolled and unintentional escalation. Further, Congress could impose regulatory guidelines, for example to provide tests which autonomous systems must meet before they are deployed, in order to better ensure the weapon systems live up to DOD guidelines. If Congress pursues this last policy, it should consult heavily with the executive branch and defense department, to enable its regulations to be sensible and logical, achieving their goals while not unduly imposing upon the ability of warfighters to achieve their goals. This may be easier said than done, due to the complexities inherent in weapon systems and possibly differing goals of Congress and the executive branch.

Not all the above policies above are perfect, nor do they offer a perfect way for Congress to move forward on the complex questions which autonomous questions raise. However, they offer at least a broad roadmap which members can follow to try to resolve these complex and important questions. There are other possibilities in regulation, as well as lack of regulation, which could occur. This paper is not meant to be a sweeping overview of every regulation strategy regarding autonomous weapons. This paper is meant to open, rather than close debate.

In this debate, Congress should consider the advice of a wide variety of actors, including the UN and other human rights advocacy groups, the executive and judicial branches, and concerned citizens. Considering a wide variety of views is important, because it is useful to look at complex issues such as regulation of autonomous weapons through a variety of perspectives. At the same time, Congress should not spend so much time looking at differing perspectives that any policy produced has already been superseded by events. In order to maintain relevancy in this area, Congress should keep an eye on developments in autonomous weapons, and should create red lines soon, to maintain some degree of human control in the most important use of force decisions, such as nuclear weapons. Further, Congress could create broad outlines of policy, and fill them in as events occur, to create policy which can evolve with the times.

CONCLUSION

Autonomous weapons pose a host of complexities to warfare and public policy. Congress has not acted regarding autonomous weapons. This is unfortunate, because Congress should take action on these weapons, due to the many possibilities they raise. Autonomous weapons are not inherently flashy, as they have developed over many years, and advances are slow, but steady. This slowness makes autonomous weapons less enticing for policymakers to cover than other hot button issues, such as climate change, healthcare, COVID-19, and the economy. At the same time, due to the possible, and already existing possibilities of these weapons, Congress should take steps to regulate them. This paper has described policy changes coming from two possible modals of regarding regulation of autonomous weapons, and their control by the president. These are meant to provide a framework for debate, not to provide clear solutions. That role, an important one indeed, should be taken up by Congress, and the many sectors of our democracy. Whatever route such debate produces, it is important to get started now or soon before the United States faces narrower options brought on by future circumstances

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ABANDONING AMBIGUITY: SHOULD THE UNITED STATES EXTEND DIPLOMATIC RECOGNITION TO TAIWAN?

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

The United States, acquiescent to the official line of the Chinese Communist Party, does not recognize the independence of the Republic of China (Taiwan). At the same time, the United States has relations with Taiwan as its own entity, separate from the People's Republic of China. This research will examine the U.S.-Taiwan relationship and its history. I will then consider the benefits of the United States extending diplomatic recognition to Taiwan as an independent government, especially apropos U.S.-P.R.C. relations. Implicit in normalization of relations is the discontinuation of the strategic ambiguity policy. Disclaimer: any opinions expressed in this piece are those of the author and are not to be interpreted as those of the United States government, the U.S. Navy, or the U.S. Naval Academy.

I. INTRODUCTION

In 1949, the Chinese Communist Party (C.C.P.) won control of mainland China, ousting the Kuomintang government, which fled to the island of Taiwan.[1] The United States, however, chose to maintain diplomatic relations with the Kuomintang party and the Republic of China as the legal government of all China.[2] This changed in 1979 when President Jimmy Carter "established diplomatic relations with the People's Republic of China (P.R.C.) and broke diplomatic ties with self-ruled Taiwan."[3] Despite this, the United States did not completely abandon Taiwan; Congress passed the Taiwan Relations Act (T.R.A.) in the same year to outline the future of relations between the two.[4] Several years later, President Ronald Reagan issued his "Six Assurances" to Taiwan during the U.S.-P.R.C. joint communiqué negotiations.[5] These were

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[1] Susan V. Lawrence, "Taiwan: Political and Security Issues," Congressional Research Service, November 29, 2021, accessed January 12, 2022, https://sgp.fas.org/crs/row/IF10275.pdf.
[2] Ibid.
[3] Ibid.
[4] Ibid
[5] Susan V. Lawrence, "President Reagan's Six Assurances to Taiwan," Congressional Research Service, October 18, 2020, accessed January 12, 2022, https://sgp.fas.org/crs/row/IF11665.pdf.

intended to "ease [Taiwanese] anxieties about [the joint communiqué's] possible provisions" and remained classified until 2019 under the Trump administration. Both President Donald Trump's and President Joe Biden's administrations, as well as Congress during their terms, have taken actions to strengthen U.S.-Taiwan relations. The president and Congress thus both have played key roles in defining the contemporary relationship between the United States and Taiwan. These sources concerning U.S.-Taiwan relations will be specifically examined in a later section.

Today, the United States and Taiwan have a unique relationship as a result of both the Taiwan Relations Act and the United States' formal adherence to the "One-China" policy that classifies Taiwan as a part of China.[6] The two entities enjoy what the U.S. State Department terms a "robust unofficial relationship."[7] In effect, that means the United States and Taiwan enjoy close economic and cultural ties, though the United States "does not support" Taiwanese independence.[8]

The U.S.-Taiwan relationship is of immense importance to U.S.-P.R.C. relations. It was in conversation about Taiwan that the notion of Chinese "core interests" was first officially defined, which demonstrates the weight of the issue to the P.R.C. According to Michael Swaine, the emergence of "core interests" was likely a response to growing support for Taiwanese independence.[9] The phrase implies a "rigid, uncompromising…stance" that serves to warn other nations not to infringe upon those interests.[10] Thus, any change in official policy towards Taiwan must be done in consideration of—if not in conjunction with—the P.R.C. government, though the latter would be unlikely.

Any recognition of Taiwan must come from the president as it is a power of the U.S. president to extend diplomatic recognition to foreign nations. This was affirmed by the Supreme Court of the United States in *Zivotofsky v. Kerry*.[11] In the case, the Court held that the Reception Clause of the Constitution—which allows the president to receive foreign ambassadors—gives

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[6] Lawrence, "Taiwan: Political and Security Issues."

[7] Bureau of East Asian and Pacific Affairs, "U.S. Relations With Taiwan," U.S. Department of State, August 31, 2018, accessed January 12, 2022, https://www.state.gov/u-s-relations-with-taiwan/.

[8] Bureau of East Asian and Pacific Affairs.

[9] Michael D. Swaine, "China's Assertive Behavior—Part One: On 'Core Interests,'" *China Leadership Monitor*, no. 34 (2011), accessed January 20, 2022. https://www.hoover.org/sites/default/files/uploads/documents/CLM34MS.pdf, 3; Ibid 5.

[10] Ibid 6.

[11] Zivotofsky v. Kerry, 576 U.S. 1 (2015).

the president the power to recognize foreign nations.[12] This is supported by the president's other powers in Article 2 regarding foreign policy.[13] Furthermore, the Court held that the president's power to recognize foreign nations is exclusive, which makes them the only actor needed to extend such a status.[14] From a policy-making perspective, this simplifies the process; there is no need to involve Congress and secure a majority to extend diplomatic recognition, though the T.R.A. would likely need to be modified to remove language referencing derecognition. This paper will examine the ramifications of normalization of the U.S.-Taiwan relationship. Specifically, it will place such a move in light of the U.S.-P.R.C. great power competition.

II. PATH TO THE PRESENT

Relations between the United States and Taiwan today are largely defined by the Taiwan Relations Act (T.R.A.). The T.R.A. outlines the general U.S. policy towards Taiwan, and also delineates some specific provisions. It is specifically geared to promote the "peace and stability" of the region, especially with regard to the future of Taiwan.[15] Congress framed the T.R.A. as in the interest of the entire region, saying it seeks "to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area."[16] The T.R.A. is therefore portrayed as beneficial to all parties in the region.

Perhaps most importantly, the T.R.A. explicitly calls for peaceful resolution of Taiwan's future. It notes that the United States' diplomatic relationship with the P.R.C. depends on "the expectation that the future of Taiwan will be determined by peaceful means."[17] Furthermore, the T.R.A. declares that alternate solutions would constitute "a threat to the peace and security of the Western Pacific area and of grave concern to the United States" and that the United States will resist any such means.[18] These provisions draw a line in the sand for the P.R.C. It may wish to

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[12] U.S. Constitution, art. 2, sec. 3; Zivotofsky v. Kerry.
[13] Ibid.
[14] Ibid.
[15] Congress.gov, "Text - H.R.2479 - 96th Congress (1979-1980): Taiwan Relations Act," April 10, 1979, https://www.congress.gov/bill/96th-congress/house-bill/2479/text.
[16] Ibid.
[17] Ibid.
[18] Ibid.

seek reunification by other means, but this declaration makes it abundantly clear that such a resolution would be unacceptable to the United States. Considering this also comes from an act of Congress—the body that also holds the power to declare war—such a warning must be taken seriously.

Furthering Taiwan's security situation, the T.R.A. commits the United States to provide defense aid to Taiwan, in form and quantity determined by both the president and Congress.[19] In the 1982 joint communiqué negotiations, arms sales to Taiwan was a central point of debate.[20] The United States ultimately claimed it "[did] not seek to carry out a long-term policy of arms sales to Taiwan," and would reduce the level of sales over time.[21] But, as seen below in Figure 1, this has not been the case.

Figure 1: U.S. Arms Sales to Taiwan, 1990-2020, under the Foreign Military Sales (FMS) Program[22]
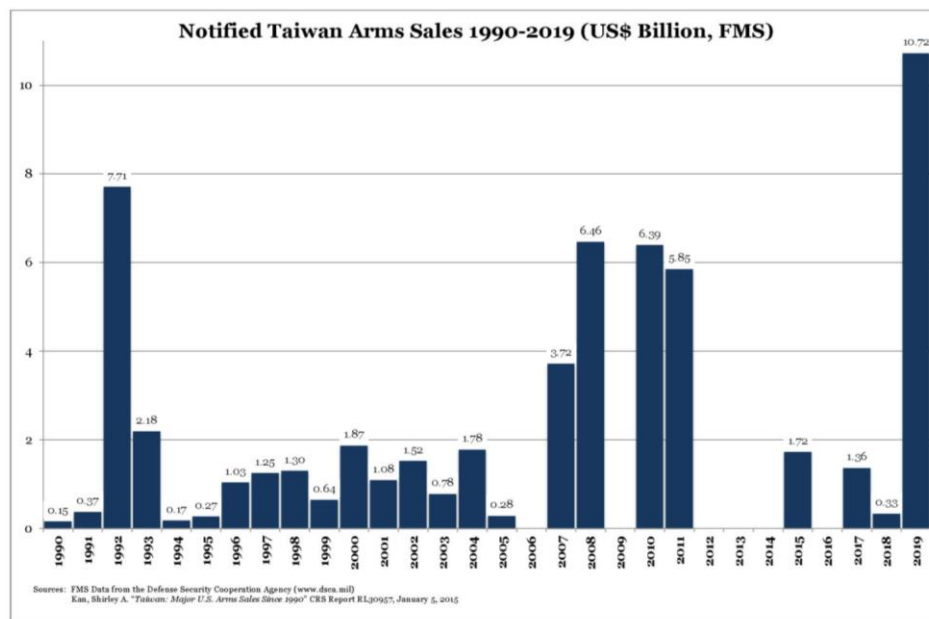
The United States argues that the lack of reduction in arms sales is not a violation of the joint communiqué, as the pledge was conditional on China's commitment to a peaceful

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[19] Congress.gov, "Taiwan Relations Act."

[20] Lawrence, "President Reagan's Six Assurances to Taiwan."

[21] Ibid.

[22] U.S.-Taiwan Business Council, "Taiwan Arms Sales Notified to Congress, 1990-2019," August 21, 2019, accessed January 20, 2022, https://www.ustaiwandefense.com/taiwan-arms-sales-notified-to-congress-1990-2019/.

resolution of the Taiwan issue.[23] This claim was bolstered when the Trump administration declassified a Reagan memo explicitly stating so.[24] As seen in Figure 1, arms sales did die down for a period between 2012 and 2018, but in 2019, the Trump administration made the largest sale of the covered period, at $10.72 billion. By the end of the Trump administration, arms sales to Taiwan proposed to Congress totaled $18 billion.[25] Within months of its beginning, the Biden administration approved its own first sale.[26] Arms sales will likely continue to play a role in future U.S.-Taiwan relations if current trends hold.

Per Section 4 of the T.R.A., international laws and treaties still apply to Taiwan in the same manner as recognized foreign nations.[27] This offers further evidence that despite the official change in diplomatic status in 1979, the United States intended to continue relations mostly the same as before. The T.R.A. established the American Institute in Taiwan (AIT), which has effectively become the U.S. embassy in Taiwan in all but name.[28] This approach was similar to, but not directly copied from Japan, which had opened an unofficial office in Taiwan to continue relations in 1972.[29] This "foundation" was part of the Japanese government and thus could not be replicated completely in the United States.[30] The AIT is unique in part because all official foreign contact between Taiwanese and American officials had to be channeled through it, rather than by continuing direct contact.[31] This later began to change, however, under the Trump administration with the Taiwan Travel Act. This Act of Congress established that "high-level officials" from Taiwan would be allowed to enter the United States and meet with U.S. officials, as well as "conduct official business in the United States" with the Taipei Economic and Cultural Exchange Office (TECRO), Taiwan's reciprocal agency to the AIT. [32]

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[23] Lawrence, "President Reagan's Six Assurances to Taiwan."

[24] Ibid.

[25] Lawrence, "Taiwan: Political and Security Issues."

[26] Derek Grossman, "Biden Administration Shows Unwavering Support for Taiwan," RAND Corporation, October 20, 2021, accessed January 25, 2022, https://www.rand.org/blog/2021/10/biden-administration-shows-unwavering-support-for-taiwan.html.

[27] Congress.gov, "Taiwan Relations Act."

[28] Ibid; David Dean, "U.S. Relations with Taiwan" in *Implementation of Taiwan Relations Act: An Examination After Twenty Years*, Maryland Series in Contemporary Asian Studies, ed. Hungdah Chiu (Baltimore, 2001), 75.

[29] Hungdah Chiu, "China, Taiwan, and the United States," in *Implementation of Taiwan Relations Act: An Examination After Twenty Years*, Maryland Series in Contemporary Asian Studies, ed. Hungdah Chiu (Baltimore, 2001), 10.

[30] Ibid 10.

[31] Dean 73.

[32] Congress.gov. "Text - H.R.6047 - 114th Congress (2015-2016): Taiwan Travel Act." September 15, 2016. https://www.congress.gov/bill/114th-congress/house-bill/6047/text; Bureau of East Asian and Pacific Affairs.

Additionally, in 2016—before even formally taking office—President-elect Trump made a historic phone call with the president of Taiwan.[33] This call was the first of its kind since the United States broke relations with Taiwan in 1979.[34] Importantly, it was an early indicator of President Trump's intention to follow through on campaign promises to be tough on China, in this case by growing closer to Taiwan.[35] President Trump is not the only recent president, however, to have fostered increased ties with Taiwan.

Under the Biden administration, relations between the United States and Taiwan have only grown closer. "Taiwan's *de facto* ambassador to the United States" was invited to President Biden's inauguration, another first in the post-1979 era.[36] President Biden, his Secretary of State Anthony Blinken, his National Security Advisor Jake Sullivan, and his Secretary of Defense Lloyd Austin have all made public comments affirming the U.S.' commitments to Taiwan.[37] Early in the Biden administration, the State Department released revised guidelines "[encouraging] working-level meetings with Taiwan counterparts in federal buildings."[38] In October of 2021, Taiwan president Tsai Ing-wen marked yet another historic first by "[confirming] the presence of a small number of U.S. service-members" in Taiwan.[39] Most recently, Taiwan vice president William Lai visited the United States in January of 2022, meeting with U.S. Speaker of the House Nancy Pelosi and Vice President Kamala Harris.[40]

Thus, contact between Taiwan and the United States continued mostly as it was before derecognition and has only increased in recent years. Interactions have not only increased in frequency, but formality, with the overall relationship between the two entities approaching a normal diplomatic one.

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[33] Anne Gearan, Phillip Rucker, and Simon Denyer, "Trump's Taiwan phone call was long planned, say people who were involved," *Washington Post*, December 4, 2016, accessed February 27, 2022, https://www.washingtonpost.com/politics/trumps-taiwan-phone-call-was-weeks-in-the-planning-say-people-who-were-involved/2016/12/04/f8be4b0c-ba4e-11e6-94ac-3d324840106c_story.html.

[34] Ibid.

[35] Ibid.

[36] Grossman.

[37] Ibid.

[38] Lawrence, "Taiwan: Political and Security Issues."

[39] Ibid.

[40] "Taiwan VP meets U.S. House speaker as he ends his overseas trip," Reuters, January 30, 2022, accessed January 30, 2022, https://www.reuters.com/world/asia-pacific/taiwan-vp-wraps-up-overseas-trip-with-us-house-speaker-meeting-2022-01-29/.

III. ALL ROADS LEAD TO CHINA

Relations between the United States and Taiwan have grown closer, but remain short of normalization. What would actually happen if the United States took that last step? Significantly, how would it affect relations with the P.R.C.? A notable positive effect of recognizing Taiwan would be increased legitimacy in defending it from the P.R.C. While the P.R.C., as a permanent member of the United Nations (UN) Security Council, would be able to block UN membership for Taiwan, the United States has a history of supporting partially recognized nations, most notably Israel.[41] American recognition and support of Israel defies the belief held by recognized nations such as Iran and Saudi Arabia that Israel is an illegitimate state.[42] The United States provides Israel billions of dollars in aid every year, and enjoys a close military relationship with the nation.[43] Though this does not translate directly to China and Taiwan, it indicates that the United States has been willing to engage in a security partnership with a state not recognized by others in the region.

More than increased legitimacy, diplomatic recognition would allow the United States to flip the script on the P.R.C. in the event of a violent P.R.C. takeover of Taiwan. In the status quo, United States support for Taiwan would enable China to accuse the United States of violating its territorial integrity, as the United States officially recognizes Taiwan as part of China.[44] This would constitute a violation of the UN Charter, which also prohibits meddling in domestic affairs.[45] The United States may not suffer any legal consequences from such accusations, as it is also a permanent member of the UN Security Council, but nonetheless Washington would likely wish to remain beyond reproach with regard to those provisions.[46] Furthermore, China would be able to claim self-defense under the UN Charter to attack the United States itself.[47]

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[41] UN Charter, art. 23. UN Charter, art. 4. This establishes membership is predicated upon a Security Council recommendation;UN Charter, art. 27. This establishes that Security Council decisions must have concurrence of the five permanent members.

[42] "International Recognition of Israel," Jewish Virtual Library, accessed January 31, 2022, https://www.jewishvirtuallibrary.org/international-recognition-of-israel.

[43] Bureau of Near Eastern Affairs, "U.S. Relations with Israel," U.S. Department of State, January 20, 2021, accessed January 31, 2022, https://www.state.gov/u-s-relations-with-israel/.

[44] Bureau of East Asian and Pacific Affairs.

[45] UN Charter, art. 2.

[46] UN Charter, art. 23.

[47] UN Charter, art. 51.

With diplomatic recognition of Taiwan, however, these concerns evaporate. A P.R.C. invasion of Taiwan would enable the United States to intervene in the name of preserving Taiwan's territorial integrity, giving it the full backing of the UN Charter. Though Taiwan would not be a member state, the charter provides that the UN will "ensure that states which are not Members of the United Nations act in accordance with [the principles of the charter] so far as may be necessary for the maintenance of international peace and security."[48] Therefore, despite Taiwan's non-membership, the United States could, by virtue of recognizing Taiwan as an independent country, ensure both Taiwan and China abide by the charter's principles. Those principles include non-violation of territorial integrity and political independence.[49] Any Chinese invasion of Taiwan would violate such principles, justifying American intervention. Having greater backing to intervention under international law would likely have second-order effects of engaging allies more effectively. Allied nations would more likely rally to a cause sanctioned by international law than one in violation of it.

In January of 2022, China's ambassador to the United States, Qin Gang, cautioned the United States that if Taiwan continues down the road towards independence, it could mean war between the two nations.[50] He also refused to count out the possibility of non-peaceful reunification, saying that having the option serves as a deterrent.[51] It is possible that this proclamation is a bluff, a deterrent in and of itself, designed to dissuade the United States from even considering supporting Taiwanese independence. This would be consistent with China's "wolf warrior diplomacy," which has seen more aggressive behavior from Beijing.[52] Looking at Qin's comments in that light, he may simply be channeling P.R.C. President Xi Jinping's "fighting spirit" rather than issuing a concrete threat.[53] However, it very well may be a serious comment as well. As such, if the P.R.C. is keeping violent reunification on the table as an option, it may benefit the United States to recognize Taiwan and gain the moral and legal force of the UN Charter.

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[48] UN Charter, art. 2.

[49] Ibid.

[50] Steve Inskeep, "China's ambassador to the U.S. warns of 'military conflict' over Taiwan," NPR, January 28, 2022, accessed January 30, 2022 https://www.npr.org/2022/01/28/1076246311/chinas-ambassador-to-the-u-s-warns-of-military-conflict-over-taiwan

[51] Ibid.

[52] Zhuqun Zhu, "Interpreting China's 'Wolf-Warrior Diplomacy,'" The Diplomat, May 15, 2020, accessed January 31, 2022, https://thediplomat.com/2020/05/interpreting-chinas-wolf-warrior-diplomacy/.

[53] Zhu.

Even if the United States does not ultimately follow through with recognizing Taiwan, the mere threat of it may be useful leverage. The P.R.C. cares so deeply about reclaiming Taiwan that the United States may be able to exact concessions in other areas in exchange for maintaining the status quo. While this is not ideal for Taiwan, it may allow the United States to advance its interests significantly. Perhaps ironically, it is an inversion of China's non-commitment to peaceful means as a deterrent against the United States. However, such a strategy is only effective if the P.R.C. genuinely believes the United States will follow through with its threats, and such threats would likely lose their coercive power over time. Furthermore, should it serve to escalate tensions with the P.R.C., it will give the People's Liberation Army (P.L.A.) ample warning to prepare for a kinetic conflict. Considering the propensity of the U.S. military—specifically the United States Marine Corps—to value surprise as an essential component of warfare, the signaling drawbacks of this strategy additionally count against it.[54]

Ultimately, what determines the sagacity of recognizing Taiwan is the risk of war with China. Should the United States judge that China will not risk war at any cost, recognizing Taiwan may do little more than provoke a public outcry. On the other hand, if China would prefer to come to blows, then it may not be worth starting a war. The United States, however, may not get much say in the matter. In his outgoing congressional testimony in the spring of 2021, Admiral Phil Davidson, the former commander of the U.S. Indo-Pacific Command, claimed China may move to seize Taiwan within the following six years.[55] The Chairman of the Joint Chiefs of Staff, General Mark Milley, has expressed disagreement over the P.R.C.'s immediate intent to invade Taiwan, but noted that President Xi has directed his military to be capable of doing so within that window.[56]

China has recently engaged in its own share of provocative behavior, which lends little credence to General Milley's view over Admiral Davidson's. Most significantly, the P.L.A. Air Force conducted 969 forays into Taiwan's Air Defense Identification Zone (A.D.I.Z.).[57] This region is different from the national airspace defined by international law, and significantly

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[54]*Marine Corps Doctrinal Publication 1: Warfighting*. 1997, 38.

[55] Mallory Shelbourne, "Davidson: China Could Try to Take Control of Taiwan In 'Next Six Years,'" USNI News, March 9, 2021, accessed January 31, 2022, https://news.usni.org/2021/03/09/davidson-china-could-try-to-take-control-of-taiwan-in-next-six-years.

[56] Lawrence, "Taiwan: Political and Security Issues."

[57] Peter Suciu, "Dozens of Chinese Planes Violate Taiwan's Air Defense Zone," National Interest, January 26, 2022, accessed January 31, 2022, https://nationalinterest.org/blog/buzz/dozens-chinese-planes-violate-taiwans-air-defense-zone-199960

larger.[58] Inside the A.D.I.Z., aircraft are supposed to self-identify and provide their location, though the P.R.C.'s and Taiwan's A.D.I.Z.'s overlap.[59] Nonetheless, these actions were a Chinese show of strength, designed to intimidate and demonstrate Chinese power.[60] These repeated incursions into Taiwan's A.D.I.Z. do little to assuage fears of an invasion. Certainly, it does not suggest a peaceful resolution to Taiwan's future. In the event of a violent outcome, the United States would be better positioned to respond if it had an official diplomatic relationship with Taiwan.

IV. CONTEMPLATING STRATEGIC AMBIGUITY, IN BRIEF

The American stance on Taiwan is typically referred to as "strategic ambiguity." This finds its origins in the T.R.A.'s vagueness regarding American commitment to defend Taiwan.[61] The United States has been careful to never explicitly say whether or not it would defend Taiwan if attacked. Steven M. Goldstein argues a key benefit of strategic ambiguity is to deter both China and Taiwan from escalation.[62] Specifically, he claims it is for "conditional clarity regarding the circumstances under which intervention by the United States would be appropriate."[63] This view makes sense in a vacuum. Openly declaring support for Taiwan would encourage Taiwan to outright declare its independence; on the other hand, committing to no support would let China seize Taiwan uncontested. However, strategic ambiguity is losing its meaning given developments since 1979.

In the light of increasingly friendly relations between the United States and Taiwan over the last two presidential administrations, strategic ambiguity is becoming outdated. Closer relations between the United States and Taiwan only serve to embolden Taiwan and convince it

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[58] Rodion Ebbighausen, "China's Taiwan military incursions test the limits of airspace," Deutsche Welle, April 10, 2021, accessed January 31, 2022, https://www.dw.com/en/chinas-taiwan-military-incursions-test-the-limits-of-airspace/a-59398039.

[59] Ibid.

[60] Ibid.

[61] Alyssa Chen, "The US has practised 'strategic ambiguity' on Taiwan for decades. Is that set to change?", *South China Morning Post*, December 25, 2021, accessed February 28, 2022, https://www.scmp.com/news/china/diplomacy/article/3160692/us-has-practised-strategic-ambiguity-taiwan-decades-set-change.

[62] Steven M. Goldstein, "In Defense of Strategic Ambiguity in the Taiwan Strait," The National Bureau of Asian Research, October 15, 2021, accessed February 28, 2022, https://www.nbr.org/publication/in-defense-of-strategic-ambiguity-in-the-taiwan-strait/.

[63] Goldstein.

American support exists no matter if attack is provoked or not. Likewise, the P.R.C. likely sees closer ties between the United States and Taiwan as all but confirming the possibility of an American-backed defense of the island. Though the United States may not have officially taken a position on defending Taiwan, its actions suggest otherwise. This is reminiscent of the American view of Taiwanese existence in the first place; though Washington claims the "One-China" policy, it treats Taiwan like a sovereign nature. Furthermore, increased Chinese aggression towards Taiwan (such as the hundreds of A.D.I.Z. violations) indicate China is not being effectively deterred by existing policies. Given the growing signs that strategic ambiguity is faltering, the United States should formalize the existing trend and normalize relations with Taiwan.

V. CONCLUSION

The relationship between the United States and Taiwan lies at the heart of the East Asian security picture. It is the definitive issue between the United States and the P.R.C.; the Chinese ambassador to the United States has even referred to it as a "tinderbox."[64] The centrality of the issue to Chinese national interest necessitates careful policymaking. Though the United States adheres to the "One-China" policy, the connection between the U.S. and Taiwan remains close. Thus, Taiwan will remain a key component of the U.S.-China great power competition. Due to the Taiwan Relations Act and subsequent adjustments made by presidential administrations, de-recognizing Taiwan has actually had little impact on relations. Nonetheless, there are benefits to reap from re-recognizing Taiwan.

It is within the power of the U.S. president to extend diplomatic recognition to Taiwan. While some language would need to be adjusted in laws like the T.R.A., the main actor is the president. The key advantage derived from recognition is the legal backing it brings to supporting Taiwan. Though Taiwan is not, and would still not be, a member of the United Nations, the provisions of the UN Charter allow for its application in enforcing the charter's principles upon China and a recognized Taiwan. If China invades Taiwan under the status quo, the United States can be blamed for violating international law if it tries to intervene. Intervention would infringe upon China's territorial integrity and could risk a defensive strike

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[64] Inskeep.

against the United States itself. However, it would be the P.R.C. violating the UN Charter if the United States recognizes Taiwan; the United States would just be stepping in to uphold the territorial integrity and political independence of Taiwan.

The official line of the P.R.C. does not rule out violent reunification of mainland China and Taiwan. Aggressive actions, such as the hundreds of Air Defense Identification Zone intrusions, demonstrate this may not be an idle threat. Estimates from within the U.S. military place the intent and capability to invade within the next decade. While it may be tempting to uphold the status quo, especially since it has been effective so far, the outbreak of war could place the United States in a difficult position to respond. If the P.R.C. can be credibly believed to be seeking violent means of resolving the Taiwan issue, then it stands to reason the United States should recognize Taiwan as an independent sovereign nation before that occurs.

Though strategic ambiguity may have been effective in the past, the world is not the same as it was when strategic ambiguity was developed. The current and preceding presidential administrations have demonstrated a steadfast commitment to Taiwan, strengthening relations even in the face of Chinese outcry. With Chinese aggression also on the rise, the context in which strategic ambiguity arose no longer exists. A new time calls for a new policy, one that aligns more closely with the reality of contemporary relations: normalization.

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FATHER, SON, AND GUIDING IDEOLOGY: CHRISTIAN VALUES AND AMERICAN RETRENCHMENT

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

The recent withdrawal from Afghanistan has brought many foreign policy decisions in America to light, but there has not been much consideration of the influence of religion. This paper explores how the influence of Christian beliefs and values in American culture affects the foreign policy decisions made in Afghanistan. To explore this question, this paper isolates religion as a variable and uses the 2020 ANES Data to observe statistical trends and identify any correlations between culture and foreign policy choices. The results are a clear linear relationship between Christian values and foreign policy values, with different interpretations of the variables yielding similar results.

INTRODUCTION

Christian beliefs and values have influenced American politics and American culture since the founding of the nation. They have been at the forefront of many controversial domestic issues, from the Scopes Monkey trial and evolution to Reverend Martin Luther King Jr. and the Civil Rights Movement.[1] Even now, with the Texas abortion law, there is clear evidence of the presence of religion in shaping political decisions. However, much of the focus on Christianity in American politics centers on the domestic side—but if there is so much supposed influence, surely it must have spread to foreign policy as well.[2] This paper seeks to explore that assumption, relating it to another controversial decision like the domestic ones that may have been influenced either by religious values or by religious beliefs directly: the decision to end the war in Afghanistan.

The primary question of this paper is how the exercise of religious power and belief in the United States affects the foreign policy decisions made regarding the Middle East; it looks

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[1] Bellin, Eva. "Faith in Politics: New Trends in the Study of Religion and Politics." *World Politics*, vol. 60, no. 2, [Cambridge University Press, Trustees of Princeton University], 2008, pp. 315–47

[2] Ibid.

specifically at Christian values and the retrenchment of United States forces within Islamic countries. Religious power and belief is everywhere, from the interest groups lobbying Congress to the words of the pastors preaching in local churches.[3] Religious beliefs instill a set of values in individuals, and these values, whether acknowledged or not, eventually shape political beliefs.[4] Religion influences foreign policy as well; as much as there is a separation of church and state in America, there has also been a rise of Islamophobia and partisanship that can also be viewed along a religious axis—consider how much religious ideology comes into play across partisan lines when talking about terrorism, Israel, and our dealings with Iran.[5] Additionally, the situation in Afghanistan is bringing the conflict between the Islamic and Christian worldview to the forefront of the minds of both voters and policymakers. A research question tailored to help individuals think more critically about religion and its influence on policy is more relevant than ever.

LITERATURE REVIEW

The topic of religion and its impact on foreign policy already has considerable scholarship devoted to it. The resultant literature has split into three schools: the Practical Usage school, the Driving Ideology school, and the Moral Compass school. This is not including the older, broader literature that dismisses the influence of religion entirely, and not including the literature that debates the normative question of religion's role in politics. While the three schools all make compelling arguments, the Moral Compass school is the most relevant since it discusses the values that religion imposes on society and how those values are present in American foreign policy, especially in relation to Islamic nations that have differing values and thus differing responses to said foreign policy.

The Practical Usage school, argued primarily by Andrew Fiala (2013) and Carolyn M. Warner and Stephen G. Walker (2011), claims that religion is a tool to be used by either authoritarian leaders or by policymakers to control or otherwise influence a population. This kind

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[3] Amstutz, Mark. 2014. *Evangelicals and American Foreign Policy*. Oxford University Press.
[4] Petrikova, Ivica. 2019. "Religion and Foreign-Policy Views: Are Religious People More Altruistic and/or More Militant?" *International Political Science Review* 40 (4): 535–57.
[5] Ibid; Thompson, Michael G. 2007. "An Exception to Exceptionalism: A Reflection on Reinhold Niebuhr's Vision of 'Prophetic' Christianity and the Problem of Religion and U.S. Foreign Policy." *American Quarterly* 59 (3): 833–55.

of influence will eventually show itself in a nation's foreign policy.[6] The scholars, Fiala in particular, argue that the structures and power of war, states, and religion are mutually reinforcing since they all inherently focus on centralization and control.[7] Centralization and control are used as tools for religion much the same way they are used in conflict and statehood.[8] This school ultimately argues that religion is used by policymakers and government officials as a means of war and state formation or maintenance—a tool, in the grand scheme of international affairs. Therefore, the purpose of the school is in the name: it looks at the practical usage of religion to impact foreign policy. There are strengths and weaknesses to this school. It is easy to use and can be broadly applied, regardless of region, religion, or specific foreign policy situation. However, Warner and Walker's weakness lies in their lack of evidence supporting their multi-faceted theories, and while it is easy to be broad, that does not make the theory correct. Fiala also struggles—while there is plenty of description of the interrelation of religion with the anarchy of the international system, it takes a very realist approach and does not consider the diverse nature of domestic politics, particularly within America, that can act as a confounding factor. The Practical Usage school, while useful and descriptive, is small and relatively broad, so this review now turns to the other two schools in search of a deeper and more specific answer.

The other two schools have a considerable literature base backing them, which means they also come with many strengths and weaknesses. The Driving Ideology school claims that foreign policy is driven by the religious ideology most prevalent in the nation, and it also claims that these ideologies are generally accompanied by warmongering and centralized militancy among the religious within the nation.[9] This school has recent supporting literature from scholars such as Dianne Kirby (2000), Ivica Petrikova (2019), and Kevin Phillips (2006). Petrikova talks in particular about how religion significantly heightens followers' militant internationalist views, and adherence to Christianity makes people less altruistic in their foreign policy views.[10] The surrounding scholarship builds upon this initial theory—that the driving ideology is inherently militaristic and takes a realist stance when it permeates the culture enough to effect foreign

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[6] Warner, Carolyn M., and Stephen G. Walker. 2011. "Thinking about the Role of Religion in Foreign Policy: A Framework for Analysis." *Foreign Policy Analysis* 7 (1): 113–35.
[7] Fiala, Andrew. 2013. *Against Religion, Wars, and States: The Case for Enlightenment Atheism, Just War Pacifism, and Liberal-Democratic Anarchism*. Rowman & Littlefield, 250.
[8] Ibid, 251.
[9] Kirby, Dianne. 2000. "Divinely Sanctioned: The Anglo-American Cold War Alliance and the Defense of Western Civilization and Christianity, 1945–48." *Journal of Contemporary History* 35 (3): 385–412.
[10] Petrikova, "Religion and Foreign-Policy Views."

policy.[11] The purpose of this school is to explore these ideologies and their effects, but with the express view that these ideologies are inherently antagonistic, this school invites debate and exposes its strengths and weaknesses.[12] The strengths include a relatively broad literature base, and the fact that it is the immediate explanation for the theory of influential religion (for instance, some of the first examples put forward in the literature are lobby groups on Capitol Hill that consist of Evangelical Christians).[13] This school also has strong internal validity due to its varied case studies and heavy empirical evidence, particularly within the literature of Petrikova and Kirby. However, the weaknesses of this are related to the varied case studies: while there are unfortunately many cases of radical, aggressive religious ideologies, many religious communities would contest applying these radical examples to an entire ideology.[14] Additionally these ideologies are not represented unanimously among foreign policy, particularly when viewed within the varied nature of American politics, and the variance is hard to demonstrate even in multiple case studies. The Driving Ideology school is stronger than the Practical Usage school in relation the research question, and it makes a convincing argument, but it still focuses on the general concept of religion that isn't applicable to a whole culture, which is crucial for influencing foreign policy.

The Moral Compass school is the last of the schools, and the most compelling to study. This school contains rather recent scholars such as Mark Amstutz (2014), Rebecca A. Glazier (2013), Ralph Reed (1996), and Michael G. Thompson (2007). This school argues that a religion's values are instilled within society, and should be used as a moral compass to guide that society's foreign policy.[15] Most of the scholarship, Thompson and Glazier in particular, argue that religion is not being used to guide society enough, and that radicals pushing for more religious influence in foreign policy are trying to put society back on the right path, which is an admirable goal if not a necessarily correct one.[16] Regardless of their normative goals, every scholar within this considerable literature base discusses the role of religion in instituting values that ultimately relate to foreign policy, and the purpose of this school is to demonstrate the

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[11] Kirby, "Divinely Sanctioned."
[12] Petrikova, "Religion and Foreign-Policy Views."
[13] Ibid.
[14] Ibid.
[15] Glazier, Rebecca A. 2013. "Divine Direction: How Providential Religious Beliefs Shape Foreign Policy Attitudes." *Foreign Policy Analysis* 9 (2): 127–42.
[16] Thompson, "Exception to Exceptionalism."

causality between values and policy. There are several strengths to this school. It draws on and connects the moral basis in religion and in many political fields, which has a strong conceptual sense to it when talking about morally contentious issues like whether to pull out of Afghanistan.[17] There is also strong internal validity throughout the literature, and it has strong external validity too in those arguments made for Christianity within one scholar's work can fit with an argument for Hinduism or Islam in another scholar's work, since values are inherent in all religions and in all controversial political decisions. The school's primary weakness lies in that it does not explore the level of variance within these values (which are more heavily influential than others, for example), nor does it explore the normative questions raised regarding the use of these values in religion (should they be used at all). The former of these weaknesses is an area of study that this research question seeks to investigate. Since the rest of the school is compelling and has a strong literature base and has the best relation to culture and its influence on foreign policy, this is the best school for the purposes of this research paper. Expanding on the weaknesses and exploring new applications of this school is the best way to further the compelling scholarship. It is the values that religion provides to the culture that has the most impact on foreign policy; the rest of this paper will be exploring this causality.

THEORY

This paper will be expanding upon the causality identified from the gap in the scholarly research, with the argument that the high level of influence of Christian beliefs in American institutions led to entrenchment in Afghanistan and a reluctance to withdraw seen across several administrations. The scholarly stances included research regarding religion in foreign policy from every viewpoint ranging from religion not influencing politics at all (the belief that nations could be entirely non-secular) to religion being the backbone of moral values (the argument that every nation should be an informal theocracy). This paper ended up choosing the Moral Compass school since every scholar within this considerable literature base discussed the role of religion in instituting values that ultimately relate to foreign policy, and the purpose of this school is to demonstrate the causality between values and policy. The ultimate theory and thesis reference the scholars from the Moral Compass school but pushes their explanation a little

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[17] Ibid.

further to say that the values and resultant foreign policy influence lead to retrenchment, due to the history between Christianity and Islam. The issue with this theory is that there are an enormous number of potentially confounding variables and alternative explanations, since religion, foreign policy, and influence are all very subjective even when they can be measured. Additionally, the topic of religion within foreign policy as a whole is complicated to begin with—there's a significant amount of variables at work between history, culture, and the policy of dozens of countries over two decades. This paper seeks to try and unravel the potential causality based on the pre-existing scholarly work, and the intuitive and relatively logical basis of the thesis.

The hypothesis derived from this thesis is as follows: a high level of Christian values present in foreign policy leads to a reluctance to withdraw from war or engagement within an Islamic country. The connection between these is linear: if there is a high level of Christian values, and this causes a high level of foreign policy influence, then there will be a high likelihood of retrenchment because of the nature of the Christianity and Islam conflict and the natural progression from values to decisions—decisions do not exist in a vacuum outside of the values that inspire them and the culture around them.

RESEARCH DESIGN

In order to support the hypothesis and the research question, this research design will analyze the interaction between foreign policy decisions and Christian values, with an emphasis on looking for a correlation or interaction effect between retrenchment or a conflict variable, designated here as *policy*, and the level of Christian values in the nation, designated here as *values*. In order to fully analyze the interaction between these variables, while also controlling for a whole host of potential confounding variables, this design will include both a comparative and statistical analysis.

The data for these variables exists already, within the 2020 ANES Full Data set. Multiple different expressions of *policy* and *values* will be expressed to enhance the validity of the argument. The purpose of having multiple representations for these variables is to increase the amount of potential confounding variables that can be added into a multiple regression analysis, as well as to broaden the exploratory data analysis that will go into the results, and try to rectify

the problem that is at the core of this research design: what potential explanatory values are missing from the scholarly analysis that has been done so far? What dimensions of analysis have been missing?

The exploratory data analysis is crucial to this research design because it serves a comparative purpose: being able to see the different, nuanced definitions of the variables, as well as how those variables react and interact, will allow the design to include the best possible operationalized version of both the policy and values variables. Ideally, the variable *policy* will look at incidences of conflict within foreign policy in the United States. Considering that the most recent conflicts in the United States have led to retrenchment in Islamic nations, this kind of definition will safely include these important data points while also allowing the variable to be a little more flexible and applicable to other comparisons.[18] The variable *values* will ideally be a representation, even survey results, of how prevalent Christian values are within domestic politics, or at least the perceived prevalence. This is a less flexible variable in that regard, since it would have to modified to represent other religions or nations, and Christian values already have large samples in these surveys and datasets due to the predominance of the religion within the United States, so changing the variable to be more widely-encompassing (say, of religious values as a whole) would be less reliable and less accurate.[19]

After clearly exploring, defining, and describing the variables in the comparative and exploratory analysis, the variables will then be subjected a multiple regression test, interaction effects, and hypothesis testing—the general null hypothesis would be that there is no relationship between the variables, whereas the alternate hypothesis would be that there is some relationship, either positive or negative. Any statistically significant evidence that shows a relatively positive relationship between the policy and values variables will be considered evidence in support of the hypothesis, if it has substantive significance as well.

This research design will contribute to the knowledge of the research question by highlighting the perspective that has not been quantified or qualitatively studied in existing research: the relation between foreign policy and Christian values, which will then allow for an understanding of Christianity and retrenchment more generally, assuming any evidence exists.

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[18] Bellin, "Faith in Politics."
[19] Amstutz, Mark, *Evangelicals and American Foreign Policy,* 5.

RESULTS

The first stage of completing the research design was exploratory data analysis, in which the ANES dataset was combed through for useful variables, their relations, and any surface-level conclusions that could be drawn from such analysis. All of these graphs, regressions, and interaction effects can be found under the Appendices.

Before getting into the statistical analysis, it is important to redefine the variables *policy* and *values* according to what the ANES dataset was able to provide, keeping in mind that multiple different variables for both *policy* and *values* will be used to broaden the scope of the exploration and statistical analysis. There are four variables that fall under *policy*: *retrench, force, moreAmerica,* and *terror*. These variables describe the willingness of the surveyed Americans to stay out of foreign affairs, use force in international relations, make the rest of the world more like America, and their worry about a future terrorist attack, respectively. Three variables fall under *values*: *importrel, relfreq2*, and *trad*. These describe the surveyed Americans' stated importance of religion, the amount of times the surveyed Americans attended a religious service, and the importance of returning to traditional family values. Each variable was chosen to represent the broader concepts of value and policy in different ways—for example, the willingness of Americans to stay out of foreign affairs could be used to show retrenchment, and whether the average American citizen wants to be involved in forever wars like those of Iraq and Afghanistan, which are the most recent foreign affairs policies that the public seems to have grown weary of. On the values side, the importance of returning to traditional family values could be used to demonstrate the strength of Christian values in society, since the term 'traditional family values' is typically used in a Christian, conservative setting. These variables all interact in the following statistical and exploratory analysis.
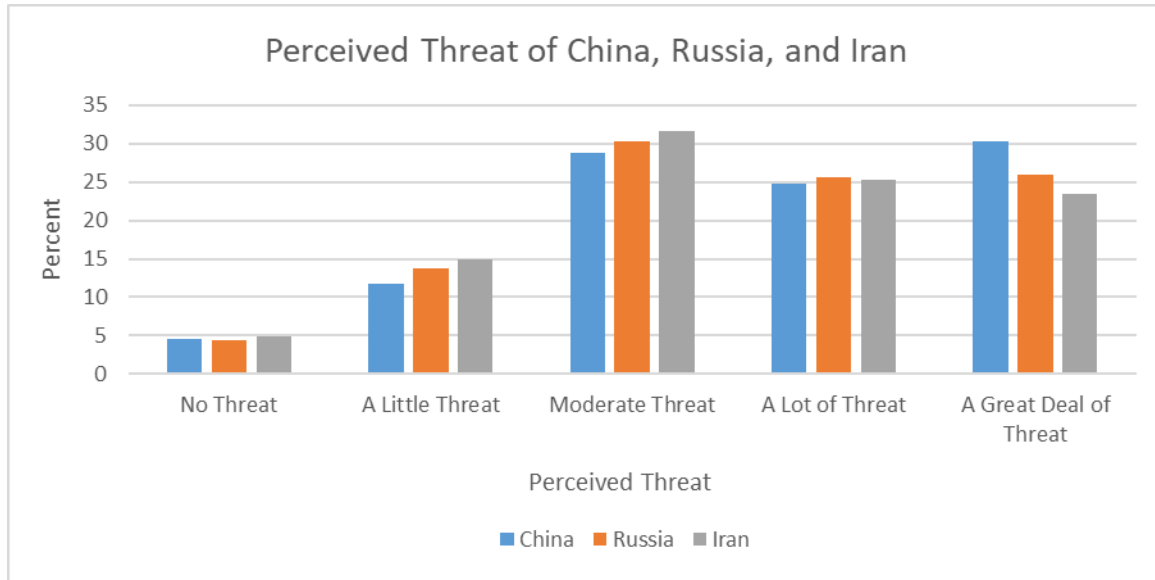
Figure 1. The Perceived Threat of China, Russia, and Iran.

This figure shows the comparison between three different variables: the threat of China, the threat of Russia, and the threat of Iran. It is included in this exploratory analysis because it contains an interesting trend that relates to the overall thesis: it shows that Iran, a country with nuclear capability but nowhere near the same threat level as near-peer competitors like China and Russia, ranks close to the same or even higher in the moderate threat category and above. A potential explanation for this trend could be that Iran is a theocracy based on Islam; there might be bias in the minds of the Americans surveyed those results in ranking Iran higher than it is accredited in national security documents. However, this kind of evidence is speculator at best, and merely highlights a potential trend. The following graph highlights another interesting trend with relation to the thesis.
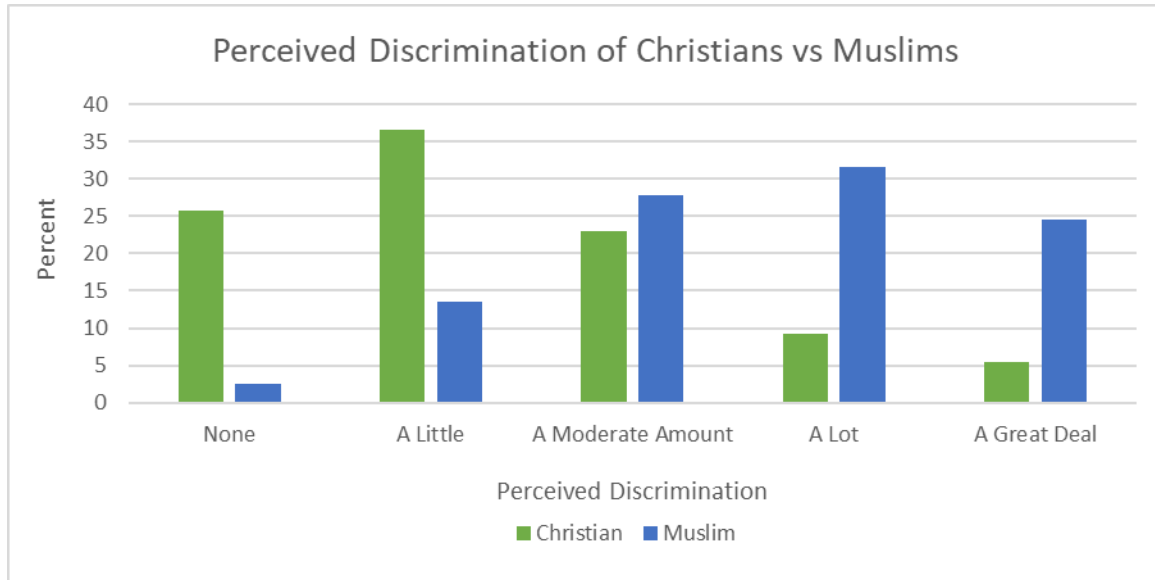
Figure 2. The Perceived Discrimination of Muslims and Christians.

This figure demonstrates the difference between American thoughts on Muslim discrimination and Christian discrimination. Notice that there is an almost inverse relationship; clearly, according to those surveyed, there is more discrimination against Muslims than against Christians. This perception of discrimination plays into the thesis because it shows how there is a divide between these two religions and their treatment within the country, which could extend to foreign policy—if Muslims are discriminated against within America, it is not a large reach to assume that there is discrimination among foreign policy. Again, this is mere speculation, but this kind of assumption could potentially lead to endless wars, where the United States is trying to act in good faith but is ultimately perpetuating that discrimination through nation building.

Those two figures demonstrate the vague nature of this problem, and the ease of speculation with the dataset. They highlight potentially useful trends, but do not provide any actual evidence in support of the thesis: that high Christian values in political institutions, based on the variables under the name *values*, have a linear relationship with the values of desired foreign policy influence, or *policy* variables. The following margins plots highlight the interaction between the many variables. The margins radiating from each point are the margin of error for each point. The regressions made within Stata (all available under the Appendices) that formed these margins plots showed that most of these points are statistically significant, with a statistical significance value of 0.05. The points that are not significant are shown where the

margins of the points extend far out from the point to where it would potentially overlap others, as seen in the first point in Figure 3.
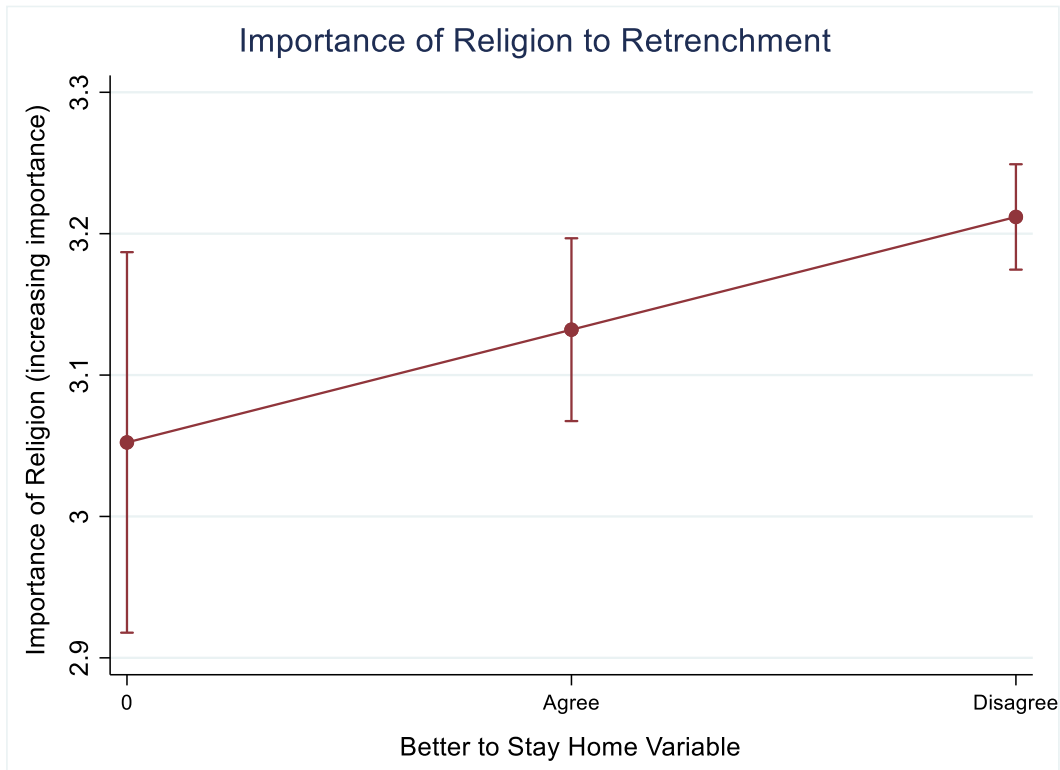
Figure 3. Margins Plot of the Comparison Between *Importrel* and *Retrench*.

This figure has a lower level of statistical significance, which is likely a result of the binary *retrench* variable on the x-axis. However, even with the total significance in question, there is a noticeably positive linear relationship between the importance of religion and the desire to stay out of foreign affairs—the higher the *values* variable, the higher the *policy* variable. This figure is important in supporting the thesis in that it demonstrates the importance of religious values in determining the desire to not be involved in international affairs—in other words, the desire to stay out of other countries, which can lead to retrenchment when policies designed to pull out of countries inevitably get frustrated. This could be a result of what kind of conflicts the subjects of the ANES study have known: conflicts almost exclusively in Islamic states. This further supports the idea that the more important religion is to a person or policymaker, the more likely they will want to use force quickly and decisively in modern conflicts, or just remain isolated altogether. These results also show how even with a different variable under the more

general *policy* variable, contrasted with the same *values* variable as Figure 3, there is still a linear relationship that exhibits support for the thesis from a similar stance.
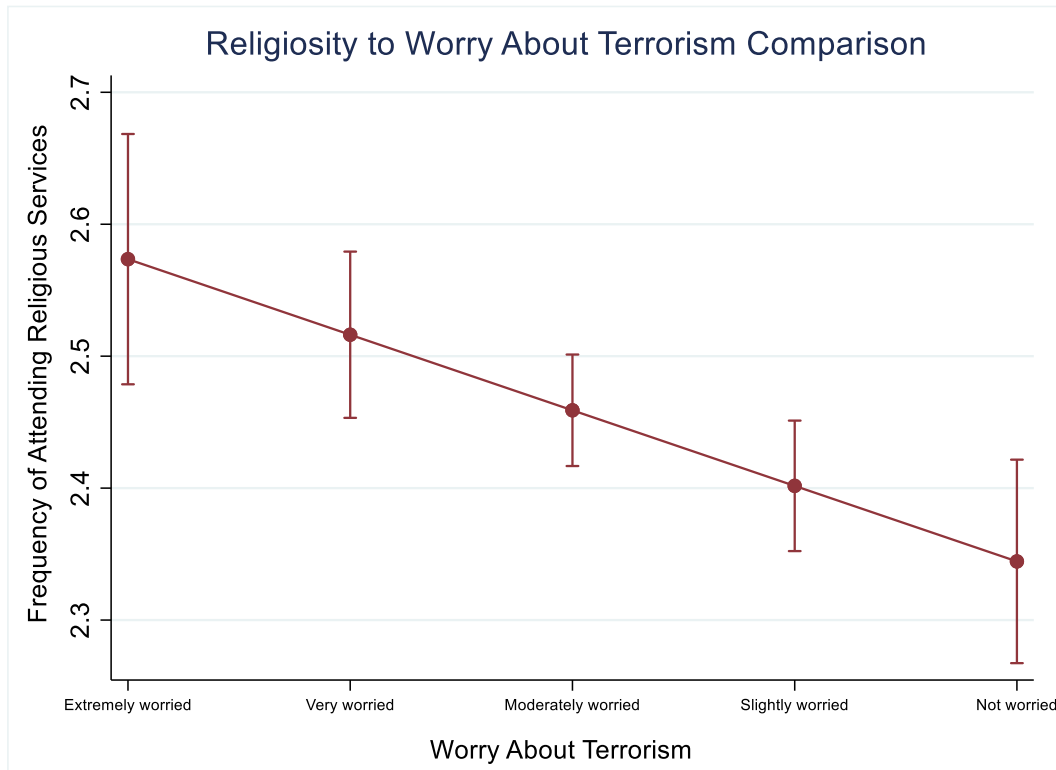
Figure 4. Margins Plot of the Comparison Between *Relfreq2* and *Terror*.

This figure takes two entirely different variables from Figure 3 and contrasts them: *relfreq2*, which measures the frequency of attending religious services, and *terror*, which measures the level of worry about an impending terrorist attack on a categorical scale. A negative linear relationship is shown, although there is not necessarily statistical significance for each individual point. This figure demonstrates that with a high value of worry about terrorism, there is a higher frequency of attending religious services—another linear relationship that supports the high *policy* relationship to high *values* contained within the thesis. Additionally, the *relfreq2* variable on the y-axis is on a five-point scale, so the shift from roughly 2.55 to 2.35 is not as substantively significant, but it is still noteworthy in its support of the thesis, in that there is a common pattern throughout all of these figures supporting religious influence in politics leading to retrenchment, particularly when there is a modern context within the 2020 ANES of America being embroiled in wars in Islamic states.
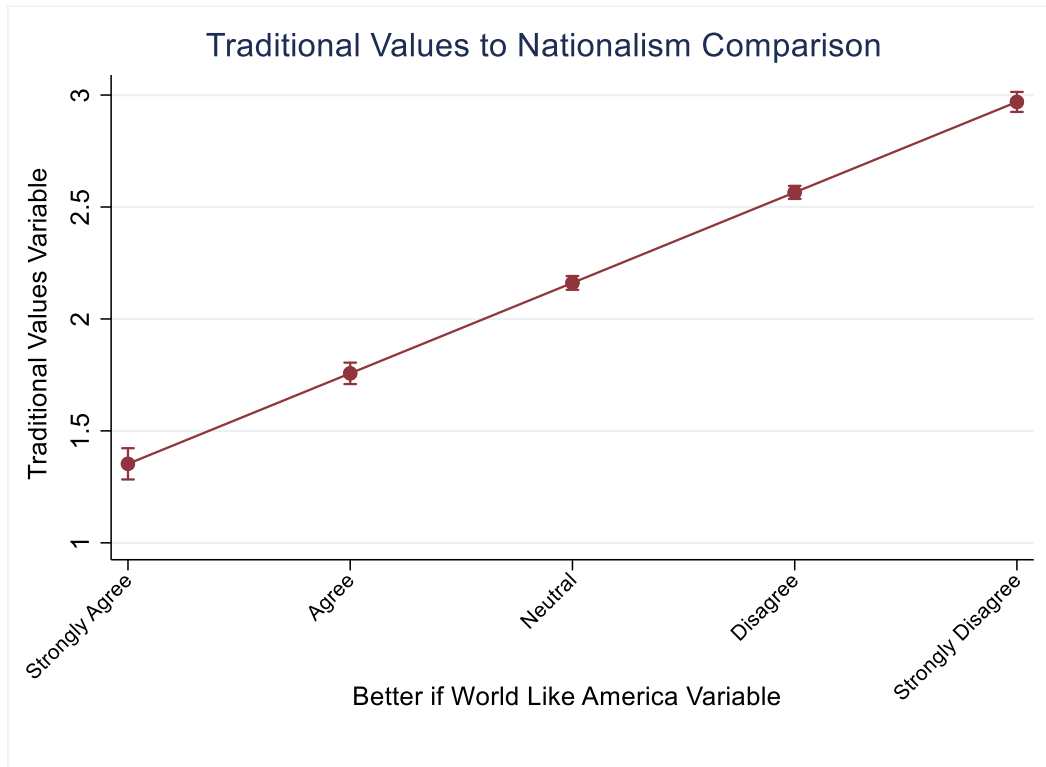
Figure 5. Margins Plot of the Comparison Between *Trad* and *moreAmerica.*

This figure compares the two variables *trad* and *moreAmerica*. The former deals with a return to traditional family values, as measured on a five-point scale with lower values indicating a higher desire to return to tradition. The variable *moreAmerica* deals with the question of whether the rest of the world would be better if it was more like America, with the categorical answers displayed on the x-axis. Note that there is statistical significance for each point, with incredibly small margins of error. This means there is considerable statistical significance for the result of the margins plot, which is a positive linear relationship between the two variables. It is also important to note that the linear relationship spans nearly three whole points on a five-point scale, which is an appreciable substantive significance along with the statistical significance. Overall, this relationship shows that for a higher value of *trad*, there is a higher value of *moreAmerica*, meaning that the more one does not want to return to more traditional family values, the more likely one is to disagree that the world would be better if it was more like America. This holds true in the reverse due to the positive linear relationship: the higher the desire for traditional family values, the higher the agreement with making the rest of the world

like America. This is strong evidence in support of the thesis and holds interesting implications for any assumptions drawn from this—namely that traditional family values, often read as conservative Christian values, are correlated with a desire to be more involved in the world and making the world more like America (which can be read as making the world more adherent to the democratic Christian values that this nation espouses).

Ultimately in trends, statistical analysis, and exploratory analysis, there is a significant amount of support and evidence in favor of the thesis. This paper could expand upon these results with a case study to demonstrate their utility, or dive further into more nuanced definitions and the impact of multiple regressions and confounding variables on the different dimensions of the defined variables. However, it is clear that there is a trend of higher *values* leading to higher *policy*, meaning that there is a strong basis for the thesis, and the potential to build upon the assumptions that can be derived from this evidence.

CONCLUSION

Christian values permeate American culture, particularly domestic politics. They can be found in Congressional discussion, public classrooms, and school board meetings. Recently they have been most prevalent in vitriolic discussions about mask debates and the global pandemic, but domestic politics is not the only place that Christian values play a role. These values are so inherent and often unspoken that they have the potential to influence foreign policy as well as domestic disputes, and these values get particularly strong and amplified when pitted against a competing ideology with different values—Islam being the primary and historic example.

This paper sought to identify whether Christian values in the United States impacted foreign policy decisions in the Middle East, leading to retrenchment. The thesis states that high levels of Christian values lead to high levels of retrenchment, and this was measured using *policy* and *values* variables that attempted to operationalize and more clearly define these relatively vague and flexible terms. The evidence presented by these variables and the associated statistical analysis shows that there is a clear linear relationship between the two, even when one variable on either side is defined with more nuance and the other is held constant. There is clearly more to be done, but the basic nature of this paper shows that high levels of Christian values lead to

higher values of foreign policy influence, with variables such as *terror* highlighting the Islamic nature of the influence.

The implications of this paper apply primarily to foreign policy, but also to domestic politics and personal life. Christian values are the unspoken norm; they are highly prevalent in many aspects of life and are often considered to be the source of morality. This kind of assumption is dangerous when dealing with international affairs that do not share these assumptions, let alone the same precise type of morals. Adding a competing, rival ideology with different morals creates a situation rife with the potential for conflict, and if unaddressed the American public—or the majority Christian portion of it, those with the loudest voices—will lobby for something to be done about this corruption of inherent, supposedly American moral values, often leading to war and retrenchment. This is expanding the assumptions provided by the evidence, for the purpose of illuminating the incredible relevance of this research question and the implications if this question were to be proved true: failing to understand the connection between assumed values and policy can restrict diplomacy and lead to conflict and retrenchment with countries that differ from these assumptions. However, an understanding of this interaction—and the conscious effort to identify it in politics, speeches, and policy—can have effects on future conflicts. Thinking critically about religion's place in society, whether intentional or not, is crucial to developing a more peaceful world.

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APPENDICES OF EXPLORATORY DATA ANALYSIS

Below are the additional graphs that mark the exploratory analysis mentioned in the paper. Following the exploratory analysis is the regression data from Stata that helped fuel the conclusion, as mentioned above, and also aided in generating the marginsplots. The bar graphs are colored so that maroon generally represents *values* variables, and navy represents *policy* variables. Outlying colors are for the purpose of comparison, which is shown in the results.

Importance of Religion

Frequency of Attending Religious Services

Return to Traditional Family Values?

Should the U.S. Stay Out of Foreign Affairs?

Willing to Use Force to Solve International Problems?

Better If Rest of World Is More Like America?

Worry About Terrorism

Religious Prevalence

Proportion of Fundamentalists and Evangelicals

How Often Attending Religious Services

Threat of China

Threat of Russia

Threat of Iran

Presence of Discrimination Against Christians

Presence of Discrimination Against Muslims

The following are images of the regressions that made up a significant portion of the exploratory data analysis:

`. reg trad i.force`

Source	SS	df	MS		Number of obs	=	7,351
					F(4, 7346)	=	46.53
Model	294.093837	4	73.5234592		Prob > F	=	0.0000
Residual	11607.5234	7,346	1.58011481		R-squared	=	0.0247
					Adj R-squared	=	0.0242
Total	11901.6172	7,350	1.61926765		Root MSE	=	1.257

trad	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
force						
Very willing	.0104079	.0886139	0.12	0.907	-.1633008	.1841165
Moderately willing	.3301434	.0793025	4.16	0.000	.1746876	.4855991
A little willing	.6061024	.0812628	7.46	0.000	.446804	.7654008
Not willing	.6127905	.0928939	6.60	0.000	.4306917	.7948892
_cons	2.011111	.0765002	26.29	0.000	1.861149	2.161073

`. reg force moreAmerica retrench terror i.trad`

Source	SS	df	MS		Number of obs	=	7,283
					F(7, 7275)	=	80.94
Model	411.821046	7	58.831578		Prob > F	=	0.0000
Residual	5287.93757	7,275	.726864271		R-squared	=	0.0723
					Adj R-squared	=	0.0714
Total	5699.75862	7,282	.782718843		Root MSE	=	.85256

force	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
moreAmerica	.105451	.0098277	10.73	0.000	.0861859	.1247162
retrench	-.3241722	.0233081	-13.91	0.000	-.3698628	-.2784815
terror	.0849056	.0094715	8.96	0.000	.0663388	.1034724
trad						
Agree	.0674731	.0263274	2.56	0.010	.0158639	.1190823
Neutral	.1232871	.0285057	4.32	0.000	.0674077	.1791666
Disagree	.2249527	.0362235	6.21	0.000	.1539443	.2959612
Strongly Disagree	.2967156	.0398352	7.45	0.000	.2186271	.3748042
_cons	3.071712	.0591126	51.96	0.000	2.955834	3.18759

`. reg importrel trad relfreq2 i.moreAmerica`

Source	SS	df	MS		Number of obs	=	3,539
					F(6, 3532)	=	311.73
Model	1509.66046	6	251.610076		Prob > F	=	0.0000
Residual	2850.83347	3,532	.807144243		R-squared	=	0.3462
					Adj R-squared	=	0.3451
Total	4360.49392	3,538	1.23247426		Root MSE	=	.89841

importrel	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
trad	-.1968382	.0144055	-13.66	0.000	-.2250822	-.1685942
relfreq2	-.4567902	.0124312	-36.75	0.000	-.4811633	-.4324171
moreAmerica						
Agree	-.1047941	.0795558	-1.32	0.188	-.2607741	.0511859
Neutral	-.099046	.0692195	-1.43	0.153	-.2347602	.0366681
Disagree	-.1397631	.072323	-1.93	0.053	-.2815622	.0020361
Strongly Disagree	-.0925262	.0741753	-1.25	0.212	-.2379569	.0529045
_cons	5.701654	.0726786	78.45	0.000	5.559157	5.84415

`. reg importrel trad relfreq2 i.terror`

Source	SS	df	MS			
Model	1520.31564	6	253.38594			
Residual	2814.18492	3,519	.799711544			
Total	4334.50057	3,525	1.22964555			

Number of obs	=	3,526		
F(6, 3519)	=	316.85		
Prob > F	=	0.0000		
R-squared	=	0.3507		
Adj R-squared	=	0.3496		
Root MSE	=	.89427		

importrel	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
trad	-.1933563	.0138835	-13.93	0.000	-.2205767	-.1661358
relfreq2	-.4588131	.0124027	-36.99	0.000	-.4831303	-.434496
terror						
Very worried	-.0070042	.0682812	-0.10	0.918	-.140879	.1268705
Moderately worried	-.1200561	.0588632	-2.04	0.041	-.2354654	-.0046467
Slightly worried	-.20004	.060217	-3.32	0.001	-.3181038	-.0819761
Not worried	-.2754766	.0680113	-4.05	0.000	-.4088222	-.142131
_cons	5.738827	.0646723	88.74	0.000	5.612028	5.865626

These regressions differ slightly in that they explore the interaction effects of certain variables, shown in the top bolded line of each regression chart. The interaction effects were the primary data exploration that led to the development of the margins plots detailed in the results.

`. reg trad c.importrel##c.force`

Source	SS	df	MS			
Model	2312.84437	3	770.948122			
Residual	9568.33502	7,332	1.30501023			
Total	11881.1794	7,335	1.61979269			

Number of obs	=	7,336		
F(3, 7332)	=	590.76		
Prob > F	=	0.0000		
R-squared	=	0.1947		
Adj R-squared	=	0.1943		
Root MSE	=	1.1424		

trad	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
importrel	-.2097728	.0341156	-6.15	0.000	-.2766492	-.1428965
force	.2691521	.0360758	7.46	0.000	.1984333	.339871
c.importrel#c.force	-.0439431	.0099598	-4.41	0.000	-.0634672	-.024419
_cons	2.632777	.1264491	20.82	0.000	2.384901	2.880654

`. reg importrel c.trad##c.moreAmerica`

Source	SS	df	MS			
Model	3063.45302	3	1021.15101			
Residual	13405.9071	7,357	1.82219752			
Total	16469.3601	7,360	2.2376848			

Number of obs	=	7,361		
F(3, 7357)	=	560.40		
Prob > F	=	0.0000		
R-squared	=	0.1860		
Adj R-squared	=	0.1857		
Root MSE	=	1.3499		

importrel	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
trad	-.4515514	.0469104	-9.63	0.000	-.5435092	-.3595936
moreAmerica	-.047767	.0300864	-1.59	0.112	-.106745	.011211
c.trad#c.moreAmerica	-.0084567	.011563	-0.73	0.465	-.0311235	.0142101
_cons	4.513065	.1105264	40.83	0.000	4.296402	4.729729

. reg trad c.relfreq2##c.terror

Source	SS	df	MS		Number of obs	=	3,528
					F(3, 3524)	=	64.97
Model	229.351985	3	76.4506618		Prob > F	=	0.0000
Residual	4146.53464	3,524	1.17665569		R-squared	=	0.0524
					Adj R-squared	=	0.0516
Total	4375.88662	3,527	1.24068234		Root MSE	=	1.0847

trad	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
relfreq2	.1006094	.0455356	2.21	0.027	.0113306	.1898881
terror	-.0018263	.0363353	-0.05	0.960	-.0730666	.0694141
c.relfreq2#c.terror	.0290781	.0131671	2.21	0.027	.0032623	.0548939
_cons	1.535368	.1270847	12.08	0.000	1.286201	1.784535

. reg relfreq2 c.importrel##c.force

Source	SS	df	MS		Number of obs	=	3,954
					F(3, 3950)	=	586.51
Model	1904.40874	3	634.802912		Prob > F	=	0.0000
Residual	4275.20482	3,950	1.08233033		R-squared	=	0.3082
					Adj R-squared	=	0.3077
Total	6179.61356	3,953	1.56327183		Root MSE	=	1.0404

relfreq2	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
importrel	-.7054049	.0548285	-12.87	0.000	-.8128998	-.5979101
force	-.1344827	.0689132	-1.95	0.051	-.2695914	.000626
c.importrel#c.force	.0240233	.0161324	1.49	0.137	-.0076053	.0556518
_cons	5.463087	.2362281	23.13	0.000	4.999947	5.926227

. reg relfreq2 c.trad##c.moreAmerica

Source	SS	df	MS		
Model	270.936057	3	90.3120189	Number of obs =	3,542
Residual	5223.49562	3,538	1.47639786	F(3, 3538) =	61.17
				Prob > F =	0.0000
				R-squared =	0.0493
				Adj R-squared =	0.0485
Total	5494.43168	3,541	1.55166102	Root MSE =	1.2151

relfreq2	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
trad	.4027866	.0651392	6.18	0.000	.2750725	.5305007
moreAmerica	.0251629	.0374616	0.67	0.502	-.0482856	.0986114
c.trad#c.moreAmerica	-.0399158	.0165442	-2.41	0.016	-.072353	-.0074787
_cons	1.836174	.1358258	13.52	0.000	1.56987	2.102479

. reg trad c.importrel##c.retrench

Source	SS	df	MS		
Model	2303.77225	3	767.924083	Number of obs =	7,330
Residual	9570.88805	7,326	1.30642753	F(3, 7326) =	587.80
				Prob > F =	0.0000
				R-squared =	0.1940
				Adj R-squared =	0.1937
Total	11874.6603	7,329	1.62022927	Root MSE =	1.143

trad	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]	
importrel	-.2129418	.0378336	-5.63	0.000	-.2871066	-.1387769
retrench	.5333825	.0728437	7.32	0.000	.390588	.6761771
c.importrel#c.retrench	-.087107	.0208904	-4.17	0.000	-.1280583	-.0461557
_cons	2.624637	.1315734	19.95	0.000	2.366715	2.882559

. reg importrel c.trad##c.retrench

Source	SS	df	MS		
Model	3078.11884	3	1026.03961		
Residual	13335.3689	7,326	1.82027967		
Total	16413.4877	7,329	2.23952623		

Number of obs	=	7,330			
F(3, 7326)	=	563.67			
Prob > F	=	0.0000			
R-squared	=	0.1875			
Adj R-squared	=	0.1872			
Root MSE	=	1.3492			

importrel	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]
trad	-.3704537	.0544355	-6.81	0.000	-.4771629 -.2637444
retrench	.3464961	.0769239	4.50	0.000	.1957032 .497289
c.trad#c.retrench	-.0783018	.02983	-2.62	0.009	-.1367771 -.0198264
_cons	3.79335	.1381454	27.46	0.000	3.522546 4.064155

. reg trad c.relfreq2##c.retrench

Source	SS	df	MS		
Model	232.18886	3	77.3962867		
Residual	4142.63383	3,521	1.17655036		
Total	4374.8227	3,524	1.24143663		

Number of obs	=	3,525			
F(3, 3521)	=	65.78			
Prob > F	=	0.0000			
R-squared	=	0.0531			
Adj R-squared	=	0.0523			
Root MSE	=	1.0847			

trad	Coef.	Std. Err.	t	P>|t|	[95% Conf. Interval]
relfreq2	.1289861	.0611138	2.11	0.035	.0091639 .2488082
retrench	.0965963	.0975595	0.99	0.322	-.0946825 .2878752
c.relfreq2#c.retrench	.0405355	.0339326	1.19	0.232	-.0259941 .107065
_cons	1.348934	.1783675	7.56	0.000	.9992199 1.698648

Traditional Values to Retrenchment

Part 2

The Presidency
& Congress

CSPC

PRESIDENTIAL RESPONSES TO RACIAL UPRISINGS DURING 1968 AND 2020

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In 1968, racial inequalities sparked racial uprisings across the country. In 2020, the police killings of George Floyd and Breonna Taylor, coupled with racial inequalities sparked protest and racial uprisings across the country. This research paper will examine the similarities between those periods. This research project will compare the presidential responses of Lyndon B. Johnson, Richard Nixon, Donald Trump, and Joseph Biden to racial uprisings and the consequences of their responses. Then examine each president's response to the racial uprisings and the response of African Americans, specifically, and all Americans, in general. I will use this information to make suggestions to the presidency on how to respond to racial uprisings to fix their root cause instead of dealing with the perceived symptoms of the racial uprisings.

INTRODUCTION

During 1968 and 2020, race riots erupted throughout urban African American communities. Images of looting, fires, and destruction filled newspapers and newscasts around the country. These moments of civil unrest commonly called race riots were defining moments in the Johnson, Nixon, Trump, and Biden Presidencies. Their responses shaped the political response to these explosive moments of racial anger. The office of the presidency has the power to constructively manage racial unrest or plunge the nation in the dark night of further division and despair. The racial and political similarities between the years of 1968 and 2020 are numerous. Some would argue that 2020 is not 1968 but it feels similar because of racial uprisings and a law-and-order presidential candidate.[1] The correlations between these two years include election years, racialized politics, extreme racial tensions, police brutality, and murders (Martin Luther King Jr., George Floyd, and Breonna Taylor). Throughout this paper the argument will be made that each president had different responses to racial uprisings, yet each of them neglected to use their power and position to alleviate the root causes of racial uprisings.

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[1] Rosenwald, Michael. "Riots, a Pandemic, a Law-and-Order Presidential Campaign: Why 1968 and 2020 Feel Similar but Aren't". The Washington Post. June 4, 2020

1968 HISTORICAL CONTEXT

In 1968, America was engrossed in wars both on foreign soil and domestically. The Vietnam War was being waged in Vietnam. "Lyndon Johnson had committed the prestige of the country and his administration to a conflict great number of Americans now felt we could not afford to lose."[2] This war was the centerpiece of American life that became a source of contention for President Johnson's administrations. The country was divided about American military involvement in the Vietnam War. Martin Luther King Jr.'s opposition to the war cut the Johnson Administration deeply, because of their earlier coalition for Civil Rights. Dr. King in his famous "A Time to Break Silence" sermon posits, that America was "a society gone mad on war…Vietnam continued to draw men and skills and money like some demonic destructive suction tube."[3] Martin Luther King Jr. lifted the war as a moral issue which is the stance that numerous American Vietnam War objectors took. On the other hand, the supporters of the Vietnam War didn't see it as a moral issue, but a political issue. Johnson's purpose for engaging in the Vietnam War can be summed as "I'm not going to let Vietnam go the way of China."[4] This statement is an allusion to the war against communism that America had been waging directly and indirectly since the early 1920s.

The domestic war being waged in America was the war for Civil Rights and Black Equality. The Civil Rights Movement started roughly around 1955 and by 1968 it had won many legislative victories. The Montgomery Bus Boycott signaled the beginning of the Civil Rights Movement.[5] However, the Civil Rights Movement and the Johnson Administration had parted ways due to the Vietnam War. In 1968, the Movement had evolved to more than voting rights and integration. It now sought to tackle issues of war, poverty, and hunger. The night before King was assassinated, he delivered a speech and, in that speech, he asked, "But what does it profit a man to be able to eat at an integrated lunch counter if he can't afford a hamburger and a cup of coffee? "[6] In addition, the Civil Rights Movement was starting to wean as the Black

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[2] Robert Dallek. Lyndon B. Johnson : Portrait of a President. Oxford, England: Oxford University Press, 2004.
[3] King Jr, Martin Luther. 1986. "A Time to Break Silence." In A Testament of Hope : The Essential Writings and Speeches of Martin Luther King Jr., edited by James M. Washington, 231-244. New York: HarperCollins Publishers
[4] Robert Dallek. Lyndon B. Johnson : Portrait of a President. Oxford, England: Oxford University Press, 2004.
[5] King Jr, Martin Luther. 1986. "Our Struggle." In A Testament of Hope : The Essential Writings and Speeches of Martin Luther King Jr., edited by James M. Washington, 231-244. New York: HarperCollins Publishers
[6] King Jr, Martin Luther. "I've Been to the Mountaintop," speech, Rally for Sanitation Workers, Mason Temple, April 3, 1968, video recording, ttps://www.youtube.com/watch?v=ixfwGLxRJU8.

Power Movement started to rise to prominence in the North. The Black Power Movement was a more radicalized option to the nonviolent Civil Rights Movement.[7]

2020 CONTEMPORARY CONTEXT

The year 2020, was rife with sickness from COVID-19 and anger from police brutality as well as police killings of Black men and women. Two police killings that sparked the racial uprisings of 2020 were George Floyd and Breonna Taylor. "The wide-scale unrest in late May and early June was prompted by the death of George Floyd after a Minneapolis police officer knelt on his neck during an arrest. His death brought renewed attention to Taylor's fatal shooting."[8] During this time the organization Black Lives Matter organized protests around the country. Black Lives Matter or BLM was founded in 2013 in response to the acquittal of George Zimmerman after the murder of Trayvon Martin.[9]

Breonna Taylor, a native of Louisville, KY, was shot and killed by police "serving a no-knock warrant."[10] Her death happened on "March 13, 2020"; her shooting and subsequent death were unknown to the masses until a few months later.[11] Once her death became common knowledge, protest and uprisings ensued alongside the protest and uprisings for George Floyd. The social and political environment of 2020 was ripe for the high frequency of protest that took place around the country. Because of the nationwide shutdown due to COVID-19 more people could participate in protest. Also, as people were quarantined because of the nationwide shutdown it gave them the opportunity to view newscast after newscast. Therefore, masses of people both Black and white took to the streets to protest police killings and racial injustice. President Donald Trump and his inflammatory rhetoric added fuel to a racially tense social environment. One of his famed tweets directed at protesters says "…These THUGS are dishonoring the memory of George Floyd, and I won't let that happen. Just spoke to Governor

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[7] Stokely Carmichael and Charles V. Hamilton. Black Power: The Politics of Liberation in America. New York: Random House, 1967

[8] Nickeas, Peter. "Why Sweeping Police Reform Over the Last Year Has Largely Been Elusive" CNN US. March 7, 2021. https://www.cnn.com/2021/03/07/us/police-reform-george-floyd-breonna-taylor/index.html

[9] BlackLivesMatter. "About Black Lives Matter." Accessed January 5, 2022 https://blacklivesmatter.com/about/

[10] Oppel, Richard and Derrick Taylor and Nicholas Bogel-Burroughs. "What to Know About Breonna Taylor's Death" The New York Times. April 26, 2021. https://www.nytimes.com/article/breonna-taylor-police.html?auth=login-google

[11] Ibid

Tim Walz and told him that the Military is with him all the way. Any difficulty we will assume control but, when the looting starts the shooting starts. Thank you."[12]

CORRELATIONS BETWEEN 1968 AND 2020

The years of 2020 and 1968 are separated by fifty-two years but the progression of time does not equate to an advancement in the Black predicament in America. According to Dr. Kevin Cosby, "Blacks have never experienced a day of justice since their feet touched North America in 1619."[13] In 1968 and 2020, Black people faced racism and societal structures that seek to contain and control Black life.

ELECTION YEARS

One thing that runs concurrently between both years is racialized politics. These types of politics are always prevalent in Presidential election years. Both Democrats and Republicans either seek to gain the Black vote or disenfranchise the Black vote. In both election years of 1968 and 2020, Black people were among the hot button issues because of protesting or racial uprisings. The 1968 Presidential election included Richard Nixon as the Republican Party nominee, Hubert Humphrey as the Democratic nominee, and George Wallace as a Third-Party nominee. The two main contenders were Nixon and Humphrey and both of their platforms included issues of race directly and indirectly. For Nixon his media coverage included "the policies of the Johnson administration, the preservation of law and order, and problems of poverty."[14] Likewise, Humphrey's media coverage reveals that he discussed issues such as "race relations, the preservation of law and order, and the policies of the Johnson administration."[15]

A common theme among both Nixon and Humphrey is law and order which is a form of "dog whistle politics"[16] which Lopez defines as "coded racial appeals that carefully manipulate

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[12] Trump, Donald (@realDonaldTrump). "when the looting starts the shooting starts." Twitter, May 29,2020
[13] Cosby, Kevin. Getting to the Promised Land: Black America and the Unfinished Work of the Civil Rights Movement. Louisville: Westminster John Knox Press, 24, 2021. Kindle.
[14] Graber, Doris A. "Press Coverage and Voter Reaction in the 1968 Presidential Election." Political Science Quarterly 89, no. 1 (1974): 68–100. https://doi.org/10.2307/2148116.
[15] Ibid
[16] Lopez, Ian. Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism & Wrecked the Middle Class. New York: Oxford University Press, 2, 2014. Kindle.

hostility toward nonwhites."[17] Because of the race riots that erupted throughout the 1960s especially 1968, law and order became centerpiece in the 1968 election. The issue pursuant of a presidential candidate using the ideology of law and order is that it criminalizes minority groups, especially the Black population.

POLICE BRUTALITY

One of the commonalities that sparked many of the racial uprisings in both 1968 and 2020 was police brutality. With only a few exceptions, "the 1960s riots were precipitated by police actions."[18] Policing of Black communities in the North is often a contentious issue that rings as rallying call for protest and riots alike. In urban Black communities the issues that sparked racial uprisings stemmed from law enforcement that were "policing ordinary, everyday activity."[19] This is true for both 1968 and 2020 policing of Black people and Black communities and it often leads to negative outcomes for Black people. If police had acted differently when arresting George Floyd, he would still be alive. If police had knocked and properly identified themselves Breonna Taylor, would still be alive. Although, those assertions are speculative there is strong correlation between the way Black people are policed and the deaths or murders of Blacks at the hand of law enforcement. The turbulent relationship between Black communities and law enforcement creates explosive moments when police use excessive force due to the historical and present distrust and conflict between Black communities and police. Police often have the proclivity of exacerbating encounters with Black people that lead to communal conflict which turns into protest or racial uprisings.

LYNDON B. JOHNSON - A DIVIDED POLITICAL APPROACH

President Johnson is somewhat of a political quagmire between his strides for racial justice and his repressive policies. Johnson was publicly supportive of Civil Rights legislation to the point that Ralph Ellison remarked," In the views of African Americans Lyndon Johnson was

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[17] Ibid.

[18] Robert Fogelson, Violence as Protest a Study of Riots and Ghettos (New York: Doubleday & Company Inc., 1971), 53.

[19] Hinton, Elizabeth. America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s. New York: W.W. Norton & Company, 2021, pg. 204, Kindle.

the first president wholly committed to Civil Rights; he was their president."[20] Johnson was responsible for passing monumental civil rights legislations such as the Civil Rights Act and the Voting Rights Act of 1964 and 1965, respectively. His presidency in the early years was fixated on "The Great Society." First mentioning the Great Society during a commencement speech at Ohio University, Johnson proposed, "And with your courage and with your compassion and your desire, we will build a Great Society. It is a society where no child will go unfed, and no youngster will go unschooled."[21] The Great Society was meant to be an extension of Franklin D. Roosevelt's New Deal.[22] An adverse effect of the legislations passed to uplift Black Americans was the division of Southern and Northern Democrats. President Johnson remarked "Yes," he said to Bill Moyers, "And we had to do it and I'm glad we did it, but I think we just delivered the South to the Republican party for your lifetime."[23] Although, laws were passed to help the racial situation "race relations in many places in the country actually worsened."[24]

Moreover, between the years of 1968 and 1972 "the United States witnessed 1,949 separate uprisings."[25] Simply passing laws that grant access to African Americans wasn't enough to fix the plights of Black life. This is one of the reasons that racial uprisings continued to occur both then and now. Johnson was at a stalemate with racial uprisings and three major Civil Rights legislations. "The president, like other moderates and liberals, was deeply frustrated. "What do they want?" Lyndon B. Johnson asked referring to the urban rioters and Black Power advocates. "I'm giving them boom times and more good legislation than anybody else did."[26]

The contention with Lyndon Johnson's response to racial uprisings is that he felt that he had done more than enough to help Black people. However, while he was passing legislation to build a great society, he was simultaneously orchestrating a "War on Crime". The War on Crime "offered a response to the threat of future disorder by establishing a direct role for the federal

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[20] Woods, Randall Bennett. "LBJ, Politics, and 1968." South Central Review 16/17 (1999): 16–28. https://doi.org/10.2307/3190073.

[21] Johnson, Lyndon. "President Johnson's speech at Ohio University." Transcript of a speech delivered at Ohio University, Athens, OH, May 7, 1964. https://www.presidency.ucsb.edu/ws/index.php?pid=26225&st=&st1

[22] Nichter, Luke A. Lyndon B. Johnson: Pursuit of Populism, Paradox of Power. First Men, America's Presidents Series. New York: Nova Science Publishers, Inc, 2013.

[23] Gardner, Lloyd C. Pay any Price: Lyndon Johnson and the Wars for Vietnam. Chicago: Ivan. R. Dee, 1995. 124.

[24] Ibid.

[25] Hinton, Elizabeth. America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s. New York: W.W. Norton & Company, 2021, pg. 10, Kindle.

[26] Woods, Randall. "The Politics of Idealism: Lyndon Johnson, Civil Rights, and Vietnam". Diplomatic History 31, no.1 (January 2007): 1-18. https://doi.org/10.1111/j.1467-7709.2007.00599.x

government in local police operations, court systems, and state prisons for the first time in American history."[27] As mentioned previously, increased police presence in urban areas correlates to an increase in racial uprisings. By the federal government funding local law enforcement agencies, it created police states in urban ghettos. The desired effect of this war on crime was to curb crime and rioting but it led to more rioting and resistance. For some reason, the political answer to uprisings is to further oppress those seeking greater liberty and equality. The war on crime in many ways facilitated the deaths of Breonna Taylor and George Floyd along with countless other Black and Brown people. It was sinister for Johnson to propose legislations to advance Black people all the while intensifying police power that led to the further subjugation of Black people.

NIXON - LAW & ORDER

President Lyndon Johnson decided not to seek re-election in 1968. Therefore, the Republican Party nominated Richard Nixon as their presidential candidate for the 1968 election. Nixon masterfully, utilized racial politics to secure a political victory in the 1968 election. He "promised to calm down the heated passions by going slow on racial progress and cracking down on violence and crime."[28] Race was a centerpiece of Nixon's presidency because he was able to capitalize on the high racial tensions of America. Many cities were still smoldering from the racial uprising caused by police, injustice, and the assassination of Martin Luther King Jr. Nixon's victory was aided by a political ideology coined the "Southern Strategy". This strategy "dictated a posture of benign neglect toward the aspirations of Black Americans."[29] Moreover, the Southern Strategy targeted southern Whites to make the Republican Party "the White Man's Party."[30] Therefore, if Nixon was seeking to get the White vote the easiest way to achieve that goal was to criminalize Black people. Blacks had to be the scapegoat or target of political

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[27] Hinton, Elizabeth. From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America. Cambridge: Harvard University Press, 2016. Kindle.

[28] Mayer, Jeremy D. "Nixon Rides the Backlash to Victory: Racial Politics in the 1968 Presidential Campaign." The Historian 64, no. 2 (2002): 351–66. http://www.jstor.org/stable/24450414.

[29] Tindall, George B. "Southern Strategy: A Historical Perspective." The North Carolina Historical Review 48, no. 2 (1971): 126–41. http://www.jstor.org/stable/23518391.

[30] Lopez, Ian. Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism & Wrecked the Middle Class. New York: Oxford University Press, 18, 2014. Kindle.

aggression. It isn't difficult to vilify Black people in a racist nation that has criminalized Blacks since its inception. Blacks were viewed as the problem in American society because "the 1960s produced an image of "riots" as fundamentally Black."[31] Whites around the country saw nightly newscast of Blacks looting and rioting without having a proper context to explain and understand why they were rioting.

Truthfully, Nixon was able to use racism and ignorance as a political tool for his own political gain. The attitude of Nixon and the Republican Party towards Blacks was "the hell with them!"[32] This sentiment collectively expresses the feelings of his voting base that supported his stances on race, law, and order. Nixon ran his campaign on a platform of "Law and Order": during his acceptance speech at the Republican National Convention, he repeatedly used the phrase "law and order". He stated that "the first civil right in America, was the right to be free from the violence of civil unrest."[33] The unrest he was referring to was predominately racial unrest. He made no real attempt to address the underlaying causes of racial unrest, he simply sought to control and contain it. It is a travesty that he spoke so admittedly about "law and order" but ignored the cries for justice coming from Black communities around America. If those in power continue to seek to control Black people through oppression and racially charged rhetoric, there will always be uprisings. Instead of trying to help Black people out of structural oppression he used their plight as ploy to further divide the nation and racial groups.

DONALD TRUMP RACIAL RHETORIC

President Donald Trump in some ways was a second coming of Richard Nixon. He used racially inflammatory rhetoric and appealed largely to the same voting base as Nixon during the late 1960s. Donald Trump has been described as a "demagogue" that favors his "loyal ingroup" and hates "the disloyal outgroup." [34] His presidency can be evaluated through the lens of the

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[31]Hinton, Elizabeth. America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s. New York: W.W. Norton & Company, 2021, pg. 4, Kindle.

[32] Mayer, Jeremy D. "Nixon Rides the Backlash to Victory: Racial Politics in the 1968 Presidential Campaign." The Historian 64, no. 2 (2002): 351–66. http://www.jstor.org/stable/24450414.

[33] Nixon, Richard. "Law and Order." 1968 Presidential Acceptance Speech, Republican National Convention, Filmed August 8, 1968. Video of lecture, 4:03, https://www.c-span.org/video/?c4612766/law-order-richard-nixon-1968-presidential-acceptance-speech.

[34] Nacos, Brigitte L., Robert Y. Shapiro, and Yaeli Bloch-Elkon. "Donald Trump: Aggressive Rhetoric and Political Violence." Perspectives on Terrorism 14, no. 5 (2020): 2–25. https://www.jstor.org/stable/26940036.

ingroup and outgroup. His ingroup consists of "the white working class."[35] However, his outgroup consists of Black people, Democrats, liberals, and immigrants.[36] His dislike for his outgroup was on display throughout his presidency but the year 2020 highlighted his disdain in a most disgraceful manner. An excerpt from one of his campaign trail speeches in 2020 highlights his inflammatory rhetoric:

> "We had some very bad people outside; they were doing bad things. They got rid of a lot of bad people that were there for a long time [they were in fact peaceful "Black Lives Matter" protesters]. Sort of like me in Washington, draining the swamp. I never knew it was so deep. But it's happening. It's happening, I never knew it was so deep. It's deep and thick and a lot of bad characters."[37]

The "very bad people" that Trump was referring to were Black Lives Matter protesters that were peacefully assembled. However, when his supporters stormed the capital, they weren't bad people. For him to call a group of Blacks "bad people" speaks to his racist rhetoric and it reveals his voting base. Another, form of inflammatory rhetoric that Donald Trump utilized was social media, especially Twitter. During, the height of the racial uprisings of 2020 Trump took to Twitter to express his disgust for the protesters and subsequent uprisings. The response of Donald Trump to the racial uprisings of 2020 was to use his words as fuel that engulfed both sides. One study found that "Trump supporters are more extreme on a range of race-related issues."[38] This extremism was a trademark of President Trump and a faction of his supporters. He had the ability to help lead America through the darkness of racism but instead he fueled the racist flames.

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[35] Navarro, Vicente. "The Importance of Considering Social Class to Understand What Is Happening in the United States: The Election of Donald Trump." International Journal of Health Services 47, no. 4 (2017): 601–11. https://www.jstor.org/stable/48513011.

[36] Nacos, Brigitte L., Robert Y. Shapiro, and Yaeli Bloch-Elkon. "Donald Trump: Aggressive Rhetoric and Political Violence." Perspectives on Terrorism 14, no. 5 (2020): 2–25. https://www.jstor.org/stable/26940036

[37] Ibid.

[38] Parker, Christopher Sebastian. "A History of American Reactionary Movements: From the Klan to Donald Trump." Zeitschrift Für Politikberatung (ZPB) / Policy Advice and Political Consulting 8, no. 1 (2016): 38–48. https://www.jstor.org/stable/26427266.

JOSEPH BIDEN - THE POWER OF POSSIBILITY

Joseph Biden is the sitting President of the United States of America. His campaign slogan was "Battle for the Soul of the Nation."[39] President Biden had a masterful way of balancing both racial justice and a call for law and order. This can either be seen as a moderate approach or his attempt to appeal to the less radicalized Republicans. By supporting racial justice and criticizing rioting, Biden walks a tight rope between gaining both Black and White voters. However, Biden does push a strong rhetoric of supporting justice for African Americans.[40] He uses language that posits unity and connects to African American history and experience. President Biden invokes the names of Frederick Douglass, Harriet Tubman, and Martin Luther King Jr. By using these names, it creates a connectivity between himself, and the great political figures connected with the aforementioned historical figures. The imagery of a Harriet Tubman freeing slaves can be conceived as Biden's attempt to paint himself as a freedom fighter. The connection between Frederick Douglass and President Lincoln could be Biden painting himself as a new Lincoln ushering in change and reconciliation to a divided nation. Both Trump and Biden utilized rhetoric during the campaign, but Biden's rhetoric was much more complex. Joe Biden using rhetoric and campaign promises of "healing the nation" and seeking justice for Blacks and immigrants paints him in similar light to Lyndon Johnson.[41]

REFLECTIONS AND RECOMMENDATIONS

Examining the racial uprisings of 1968 and 2020 along with the presidential responses of two successive sets of presidents offers a great deal of reflection. In both years, many circumstances were similar, and the responses were similar. Historically speaking the actions of the past became an indicator of the actions of Donald Trump and Joseph Biden. Because of this connectivity between history and recent events it grants the opportunity to learn from the past and do better in the present. One issue that ran concurrently throughout this research is racism. Racism was the root cause of racial uprisings, and it was a crucial factor in both elections. The hopeful fact is that racism won the day in the 1968 election, but antiracism won out in 2020.

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[39] Biden, Joseph. "Battle for the Soul of the Nation." Campaign Speech, Gettysburg, Pennsylvania, filmed October 6, 2020. Video of lecture, 22:10. https://www.youtube.com/watch?v=UOHD14eVsyY.
[40] Ibid.
[41] Ibid.

Both years saw massive waves of racial uprisings but 2020, was different in the fact that more White's than ever were standing side by side with Black people to protest injustice. Although America still has racist policies and practices the people of America, both Black and White, are standing up against injustice. Joseph Biden ran on a platform largely based on racial justice. The question for the Biden Presidency is will he keep his campaign promises to the best of his ability? The answer is still unknown, but he has the promise of possibility.

The recommendations to the Office of the Presidency are few but impactful. First, President Biden must do what Lyndon Johnson did in 1967. Create a commission to explore the root causes of racial unrest. This can either pick up where the Kerner Commission research ended or start completely over. This commission should include a diverse group that is predominately Black (at least 51 percent) with an interdisciplinary approach that explores the Black plight, policies, group interactions, social structures, and social forces that act on American society to create the conditions of racial uprisings.

The second recommendation is to utilize the findings of the commission report to create targeted policies and social programs that combat the root causes of racial uprisings. This is the fault of previous presidencies that they addressed the fruit of the problem but didn't seek to uproot the tree of racism. To fix the conditions that cause racial uprisings requires action, which go beyond eloquent speeches and unfulfilled campaign promises. The findings from the commission must be translated into decisive actions. It was by design that Blacks ended up in the conditions that have led them to revolt against injustice. Therefore, the actions to fix the conditions that cause racial uprisings must be just as meticulous and methodical.

There is no easy answer to fixing the problems that cause racial uprisings. However, the way the Office of the Presidency responds to racial uprisings in many ways dictates the country's response. Throughout this research paper four different Presidents were evaluated and each one handled racial uprising differently. However, one commonalty that each exhibited was a call for law and order in one way or another. Even, those that had good intentions for Black people couldn't completely break the mode of repression and control through force directly or indirectly. The Office of the Presidency cannot completely fix the issues that cause racial uprisings, but they do have the power to move the proverbial ball of racial justice and progress to alleviate the causes of racial uprisings. It will require bravery and courage to seek policies and practices that

are equitable to place Blacks on a level planning field with their White counterparts. It can be achieved with the support and leadership of the President of the United States of America.

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IS CONGRESS IN THE DARK AGES? THE CURRENT STATUS AND MODERNIZATION OF ROLL CALL VOTING VIA THE PROXY VOTE

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The views reflected here are those of the author and do not represent the official position of the United States Coast Guard Academy, United States Coast Guard, or the Department of Homeland Security.

Roll call voting is a fundamental aspect of Congress and ensures the basic function of a representative democracy. Despite the vital role of these votes, members of Congress regularly miss around 2% of all roll call votes a year due to uncontrollable factors such as health and controllable factors such as running for a higher office. Covid-19 changes to the House of Representative's voting procedures introduced a radical new method of voting that allows members to vote without being physically present. While proxy voting raises important constitutional questions and faces political backlash from the Republican party, proxy voting is the first step towards moving Congress into the digital age and adapting representative democracy to an increasingly interconnected world.

BACKGROUND

Roll call voting in both the House of Representatives and the Senate represents the pinnacle of the American representative democracy: advocating for constituents' ideas and opinions to impact the policymaking process. Roll call voting in both chambers of Congress happens for both procedural and policy issues. According to the Senate rules, "roll call votes occur when a representative or senator votes "yea" or "nay," so that the names of members voting on each side are recorded."[1] While roll call voting is important to creating rules and passing legislation, not all members of Congress attend every vote.

Attendance of roll call votes both in the House and in the Senate has steadily increased over time.[2] One contributing factor to the increase in roll call voting is an increased visibility of Congress to the public.[3] With the increase in publicly available information about Congress and

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[1] "U.S. Senate: Votes". *Senate.Gov*, 2021.

[2] Patrick J. Fett, "Vote Visibility, Roll Call Participation, And Strategic Absenteeism in The U.S. House", *Congress & The Presidency* 23, no. 2 (1996): 87-101, doi:10.1080/07343469609507831.

[3] Patrick J. Fett, "Vote Visibility, Roll Call Participation, And Strategic Absenteeism in The U.S. House."

individual votes through the internet and TV news stations, constituents now can more readily notice when their member of Congress misses an important vote.[4] Additionally, statistics on congressional attendance of roll call votes is easily accessible to both constituents and news sources which encourages congressmen to keep attendance high.[5]

While roll call voting attendance has broadly increased, attendance still varies between groups in Congress. Attendance is also impacted by which party is in control of the Chambers of Congress, but long-standing trends highlight patterns of absenteeism.[6] For example, Republicans are on average less likely to miss votes then Democrats.[7] In 2015, Republicans in Congress missed on average 2% of roll call votes while Democrats missed an average of 4% of roll call votes.[8] In the Senate, the minority party typically has higher turnout rates for roll call votes, while in the House, the majority party typically has higher attendance.[9]

ATTENDANCE FACTORS

The primary pull factor to attend roll call votes for a member of Congress is representing their constituents' needs. Voting in roll call votes can highlight policy areas of focus, build a track record to campaign on or build support upon within the state or district for a senator or representative.[10]

One pull factor that encourages congressional attendance at roll call votes is using vote outcomes to gain support for an upcoming election. While the effect is more pronounced for senators than representatives due to the lower number of senators and higher visibility of their actions, members of Congress will specifically attend certain roll call votes to create a voting history that supports their campaign objectives.[11] This effect promotes reelection which some scholars argue is the entire goal of politicians in Congress.[12]

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[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Nick Wells and Mark Fahey, "Does Your Congressman Show Up for Work?", 2015, https://www.cnbc.com/2015/10/12/does-your-congressman-show-up-for-work.html.

[8] Ibid.

[9] Ibid.

[10] Macrae, Duncan. "The Relation Between Roll Call Votes and Constituencies in The Massachusetts House of Representatives". American Political Science Review 46, no. 4 (1952): 1046-1055. doi:10.2307/1952111.

[11] Hibbing, John R. "Ambition in the House: Behavioral Consequences of Higher Office Goals Among U.S. Representatives." *American Journal of Political Science* 30, no. 3 (1986): 651–65. https://doi.org/10.2307/2111094.

[12] Ibid.

Members of Congress also miss roll call votes for a variety of reasons. One reason why they miss roll call votes is for personal health concerns or family matters.[13] While largely out of a member of Congress' control, events such as personal injury or the birth of a child may force a member to take a period of absence in which they miss a series of roll call votes.[14]

While roll call voting attendance can influence reelection by building a campaign base, it can also harm a member of Congress' campaign by using time that they could spend with constituents to promote a voter base.[15] The choice between attending votes and spending time in their home district creates the typical controllable tradeoff for members of Congress as their time must be split between Washington, D.C. and their home district in the way that seems most advantageous for each member.[16]

While these factors can influence a member of Congress' roll call voting attendance, the motivations for each individual congressman vary greatly depending on the district that they represent.[17] Congressmen balance their time spent at home verses their time spent in Washington differently based on the heterogeneity of their district, proximity of reelection campaign, political concerns in their district, and the political safety of their elected position.[18] For these reasons, most congressmen miss votes throughout their careers.[19]

OUTLIERS

While push and pull factors influence individual members of Congresses' attendance, the median percentage of missed votes for the 116th Congress in the Senate was only 1.8% of votes, while the median percentage of missed votes for the House was 2.0%.[20] This percentage of

[13] Jakson Gode, Molly Reynolds and Kennedy Teel, "Proxy Voting Turns One: The Past, Present, And Future of Remote Voting in The House", *Brookings*, 2022, https://www.brookings.edu/blog/fixgov/2021/05/21/proxy-voting-turns-one-the-past-present-and-future-of-remote-voting-in-the-house/.

[14] Ibid.

[15] Baughman, John and Nokken, Timothy, The Electoral Connection and Participation on House Roll Call Votes, 1819-1921 (August 26, 2011). Available at SSRN: https://ssrn.com/abstract=1917602 or http://dx.doi.org/10.2139/ssrn.1917602

[16] Ibid.

[17] Bullock, Charles S., and David W. Brady. "Party, Constituency, and Roll-Call Voting in the U. S. Senate." *Legislative Studies Quarterly* 8, no. 1 (1983): 29–43. https://doi.org/10.2307/439469.

[18] Ibid.

[19] "Lifetime Voting Records of United States Senators and Representatives", *Ballotpedia*, 2022, https://ballotpedia.org/Lifetime_voting_records_of_United_States_Senators_and_Representatives.

[20] "Lifetime Voting Records of United States Senators and Representatives", *Ballotpedia*, 2022, https://ballotpedia.org/Lifetime_voting_records_of_United_States_Senators_and_Representatives.

missed votes is relatively low, yet still represents a problem that could be solved with modern technology. Missing votes, even if it is only a small percentage, means that a percentage of the population's opinions are not represented in the decision-making process. With modern technology and the ability to meet virtually or communicate instantaneously, missed votes should be an issue of the past. Despite the percentage of missed votes, some members of Congress make a point of high attendance rates or miss votes due to extreme outside circumstances or personal motivations. The outliers that attend abnormally high numbers of roll call votes demonstrate a good model of a representative democracy, where the members that miss an abnormally large number of votes present a challenge to the adequate representation of their constituents.

While almost all senators and representatives miss roll call votes during their time in office, some outliers maintain perfect voting records despite the aforementioned factors. Senator Susan Collins, a Republican Senator from Maine, has never missed a vote in her career in the Senate.[21] Senator Collins began her continuous career in the Senate on January 7, 1997.[22] Senator Collins has cast over 8,000 consecutive votes during her time in office and currently has the third longest streak of consecutive Senate votes.[23]

Senator Collins' consecutive voting run highlights the ability of senators to use voting attendance in campaigning. Senator Collins does not hold a safe seat in the Senate.[24] In 2020, the Democratic Party targeted Senator Collins' seat to gain control of the Senate.[25] Because Maine was a swing state in the 2020 election, the Democratic Party hoped to flip Senator Collin's seat.[26] Senator Collins uses her voting streak to prove her dedication to her elected position by relating her voting record to traditional Maine values such as commitment and a strong work ethic.[27] This

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[21] "Susan Collins, Senator for Maine - Govtrack.Us", *Govtrack.Us*, 2022, https://www.govtrack.us/congress/members/susan_collins/300025.
[22] Ibid.
[23] "Senator Collins Casts 8,000Th Consecutive Vote", *Collins.Senate.Gov*, 2022, https://www.collins.senate.gov/newsroom/senator-collins-casts-8000th-consecutive-vote.
[24] Jada Yuan, "Last Stand of The Republican Moderate", *The Washington Post*, 2020, https://www.washingtonpost.com/lifestyle/style/susan-collins-maine-senate-election/2020/11/01/6341c36a-1940-11eb-befb-8864259bd2d8_story.html.
[25] Patrick Whittle and Andrew Taylor, "'She Knows Maine': How Susan Collins Defied Democrats", *AP NEWS*, 2020, https://apnews.com/article/election-2020-joe-biden-donald-trump-senate-elections-susan-collins-24bf18aa14a2c1178d36e02eaeed6941.
[26] "Maine", *270 To Win*, 2022, https://www.270towin.com/states/Maine; Patrick Whittle and Andrew Taylor, "'She Knows Maine': How Susan Collins Defied Democrats."
[27] "Senator Collins Casts 8,000th Consecutive Vote."

is a powerful campaign tool as the streak demonstrates her ability to accurately represent her state in Congress and advocate for Maine in every vote.[28] Senator Collins balances the tradeoff of vote attendance versus constituent engagement by using the weekends to travel to Maine for work.[29]

On the other side of members of Congress that attend an abnormally large amount of roll call votes is the members of Congress that attend an abnormally small amount of roll call votes. Members of Congress miss roll call votes for a variety of reasons, but running for another office, such as President, causes members to miss an abnormally large percentage of roll call votes. Because active members of Congress can run for President, these members must use time that they could be in Washington to campaign for President.[30]

Using the 2020 Presidential Election as a case study, eleven members of Congress entered the Presidential race with varying length of Presidential Campaigns.[31] Despite the Senate's smaller size, eight acting senators entered the Presidential Race while only four active representatives entered. The senators were Senator Bernie Sanders, Senator Elizabeth Warren, Senator Amy Klobuchar, Senator Michael Bennet, Senator Cory Booker, Senator Kamala Harris, and Senator Kirsten Gillibrand.[32] The four Representatives who ran were Representative Tim Ryan, Representative Tulsi Gabbard, Representative Seth Moulton, and Representative Eric Swalwell.[33] Because these members of Congress needed to spend time campaigning, their voting attendance inherently fell.

Looking at Senator Bernie Sanders, a candidate that performed well in the Democratic Primaries, between Jan 26, 2019, to Jan 10, 2022, Senator Sanders missed 61% of all votes.[34] This record far supersedes the median percentage of missed votes for the Senate which is 1.8%.[35] While abnormally low attendance is not common, large percentages of missed votes leaves

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[28] Ibid.

[29] Ibid.

[30] Jonathan Martin et al., "Who's Running for President In 2020?", *The New York Times*, 2020, https://www.nytimes.com/interactive/2019/us/politics/2020-presidential-candidates.html.

[31] Ibid.

[32] Jonathan Martin et al., "Who's Running for President In 2020?"

[33] Martin et al., "Who's Running for President In 2020?".

[34] "Democratic Presidential Nomination, 2020", *Ballotpedia*, 2020, https://ballotpedia.org/Democratic_presidential_nomination,_2020l; "Presidential Candidates Miss Votes While in Congress - Govtrack.Us", *Govtrack.Us*, 2022, https://www.govtrack.us/congress/votes/presidential-candidates.

[35] BallotPedia, "Lifetime Voting Records of United States Senators and Representatives."

senators' constituents' opinions out of congressional decisions for the senator's period of absence.

THE IMPACT OF COVID-19

In 2020, the Covid-19 global pandemic forced Congress to reimagine its typical operating environment. Washington, D.C. faced strict social distancing requirements and closures to prevent social gatherings which directly contradicted the operation of in person voting and gathering in both chambers of Congress.[36] In an unprecedented move, Congress moved most critical aspects of its operations online, including voting via proxy for floor vote in the House.[37] On May 15, 2020, the House of Representatives approved House Rule 965 by a vote of 217 to 189 which approved the system of proxy voting.[38] This rule allows one representative to cast votes for up to ten other members.[39] To designate a proxy, a representative signs a letter and delivers it to the clerk of the House.[40] This rule overrides the requirement for a representative to be physically present at every House vote.[41] Using this rule, the House can conduct business with as little as twenty members who control the votes of ten other members each.[42]

PROXY VOTING

While the extent of proxy voting greatly expanded through Covid-19 policies, the practice of proxy voting for both the House and the Senate is not new.[43] Both chambers of

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[36] Claire Abernathy, Marci Harris and Kevin Esterling, "Congressional Modernization Jump-Started By COVID-19", *Brookings*, 2020, https://www.brookings.edu/blog/techtank/2020/06/18/congressional-modernization-jump-started-by-covid-19/.

[37] Claire Abernathy, Marci Harris, and Kevin Esterling, "Congressional Modernization Jump-Started By COVID-19." ; Katherine Tully-McManus, "Congress Makes History and Approves Proxy and Virtual Voting", *Governing*, 2020, https://www.governing.com/now/congress-makes-history-and-approves-proxy-and-virtual-voting.html.

[38] Thomas Jipping, "In History of Congress, House Democrats' New Proxy Voting Is Radical", *The Heritage Foundation*, 2020, https://www.heritage.org/political-process/commentary/history-congress-house-democrats-new-proxy-voting-radical.

[39] Ibid.

[40] William Ford and Margaret Taylor, "House Republicans' Unprecedented Lawsuit to Stop Remote Voting", *Lawfare*, 2020, https://www.lawfareblog.com/house-republicans-unprecedented-lawsuit-stop-remote-voting.

[41] Thomas Jipping, "In History of Congress, House Democrats' New Proxy Voting Is Radical."

[42] Ibid.

[43] "EXPLAINER: Proxy Voting in Congress", *Bipartisan Policy Center*, 2020, https://bipartisanpolicy.org/blog/explainer-proxy-voting-in-congress/.

Congress previously allowed proxy voting for committees.[44] This practice in the House ended with the 104th Congress due to fears over abuses of the system.[45] While rules differed by committee, a congressman typically submitted a signed sheet of paper declaring another congressman, or the Committee Chair, as the proxy voter.[46] The practice of committee based proxy voting did not extend to floor votes where members still needed to be present to cast a vote.[47]

Unlike committee-based proxy voting, the Covid-19 voting procedures raise difficult constitutional concerns. Article 1, section 5 of the U.S. Constitution states that:

> A Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.[48]

With the proxy voting system, it is possible to vote on legislation without the presence of a Quorum as required by the Constitution.[49] To avoid this, the Covid-19 legislation defines proxy voting as "present by proxy" to form the required Quorum.[50] This issue raises the question of if the House can change its own rules in violation of the Constitution and if a Quorum actually requires physical presence.[51] Even if proxy voting cannot be used to create a Quorum, that does not inherently make the entire system unconstitutional. If a physical Quorum is present, other representatives can still vote via proxy.[52]

Outside of Constitutional concerns, proxy voting has the potential to undermine customary debate and operations of the House. If Congressmen do not need to be physically present to cast votes, they miss out on the opportunity to participate in debates and conversations with other congressmen that can shape the policymaking process.[53] The ability to vote without being physically present has been described by some Republican law makers, such as House

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[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] "EXPLAINER: Proxy Voting in Congress."
[48] U.S. Const., Article 1, section 5.
[49] Mark Strand and Tim Lang, "Voting Present by Proxy Is an Unconstitutional Oxymoron", *Congressional Institute*, 2021, https://www.congressionalinstitute.org/2020/05/06/voting-present-by-proxy-is-an-unconstitutional-oxymoron/.
[50] Strand and Lang, "Voting Present by Proxy Is an Unconstitutional Oxymoron."
[51] Ibid.
[52] Ibid.
[53] Claire Abernathy, Marci Harris, and Kevin Esterling, "Congressional Modernization Jump-Started By COVID-19."

Minority Leader Kevin McCarthy, as getting paid for not showing up to work.[54] These fears highlight the need for control and regulation over the proxy voting system to avoid congressmen abusing the system by voting by proxy when it is not necessary and simply convenient to do so. A check on the system could be established by members of Congress creating a comprehensive amendment to the rules of their respective chambers that outline when it is and is not acceptable to vote via proxy. This would ensure that members of Congress remain active in the legislative process and do not use proxy voting to defer their vote onto another member.

Representatives' who have issues with the current proxy voting system have introduced bills to curtail its use. Representative Ted Budd introduced H.R. 7044, the No Pay for Proxy Act.[55] This act sought to limit proxy voting by removing a day's worth of pay to a representative each day that they use a proxy to vote.[56] This bill did not ultimately pass but demonstrates the minority opinion in the House that opposes proxy voting and could provide a solution to preventing members from abusing the system while maintaining the positive benefits of greater representation of constituents' opinions.[57] In addition to the bill, Republican lawmakers filed a federal lawsuit against Speaker Nancy Pelosi that challenged the proxy voting system.[58] Both a lower federal court and the U.S. Court of Appeals for the District of Columbia dismissed the case on the basis of lack of jurisdiction and did not rule on the Constitutionality of the proxy voting procedures in the House.[59]

While the proxy voting system was originally intended to protect members of Congress from the global pandemic, the system has unintended positive effects for the health of members of Congress and their families. Before the proxy voting system began, representatives on parental leave had no way to vote without returning to Washington.[60] This forced members to decide if they were going to skip votes, leave their families, or bring infants to voting like

[54] Ibid.
[55] U.S. Congress. House. *No Pay for Proxy Voting Act of 2020*, H.R. 7044, 116th Cong., 2nd sess., introduced in House May 28, 2020, https://www.congress.gov/bill/116th-congress/house-bill/7044?s=1&r=1.
[56] Ibid.
[57] Ibid.
[58] Nicholas Fandos, "An Appeals Court Tosses a G.O.P. Lawsuit Against Pelosi Over House Proxy Voting.", *The New York Times*, 2021, https://www.nytimes.com/2021/07/20/us/politics/republican-lawsuit-pelosi-proxy-voting-house.html.
[59] Fandos, "An Appeals Court Tosses a G.O.P. Lawsuit Against Pelosi Over House Proxy Voting."
[60] Jakson Gode, Molly Reynolds and Kennedy Teel, "Proxy Voting Turns One: The Past, Present, And Future of Remote Voting in The House."

Senator Duckworth in 2018 and Representative Beutler in 2019.[61] In contrast, Representative Colin Allred was able to cast at least 36 votes via proxy while on paternity leave in March of 2021.[62] Just two years earlier after the birth of his first child, Representative Allred missed 21 votes while on paternity leave.[63] The Covid-19 proxy voting system has also benefitted sick or injured members of Congress who are not affected by Covid-19 by allowing them to continue working while receiving treatment. Representative Dan Crenshaw was able to vote via proxy while recovering from eye surgery in 2021.[64] Because of these unintended benefits, the proxy voting system eliminates some uncontrollable push factors that previously forced congressmen to miss votes. By allowing members of Congress to work from home, proxy voting can increase roll call vote participation and therefore constituent representation in the federal government.

INTERNATIONAL SYSTEMS

The Covid-19 pandemic influenced a wide range of countries' legislative procedures and created a sharp increase in remote voting systems. Countries around the world use a wide variety of ways to vote remotely: video conferences, emails, applications, and websites.[65] These methods of remote voting provide examples of modern legislative techniques that could improve U.S Congressional operations by boosting roll call voting participation. While these international systems do not represent an international norm, they do represent a shift towards modernization that the U.S. could emulate.

Before the pandemic, Chile permitted all members of its Congress of Deputies to vote remotely when they were on parental or sick leave.[66] During the height of the pandemic, Chile amended its Constitution to permit all members of the Congress of Deputies and Senate to vote remotely.[67] To ensure security of the voting system, members of Congress are required to appear

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[61] Ibid.

[62] Claire Abernathy, Marci Harris, and Kevin Esterling, "Congressional Modernization Jump-Started By COVID-19."

[63] Ibid.

[64] Ibid.

[65] Aleksander Essex and Nicole Goodman, "Secure Online Voting for Legislatures", *Fifth International Joint Conference on Electronic Voting E-Vote-ID 2020*, 2020.

[66] Victoria Alsina and Dane Gambrell, "Continuity in Congress: Does Spain Lead the Way?", *Crowd Law*, 2020, https://crowd.law/continuity-in-congress-does-spain-lead-the-way-9344cc8cb39c.

[67] Ibid.

on video chat to verbally state their votes.[68] To further ensure security, members must logon with a designated code to ensure the security of legislative votes.[69]

The European Union Parliament introduced a system of electronic voting during the pandemic where members would email in their votes.[70] To vote, members receive a ballot to their official email addresses where they must print, sign, and scan the ballot back for it to be counted.[71] Because the European Union is vast, this allows members of Parliament to not be in the same geographical area of Parliament when conducting operations.[72]

CONCLUSION

The modernization of Congress begins with the proxy voting process. Countries around the world already use this process to allow for more flexibility of their legislatures. By allowing senators and representatives to work and vote remotely, they can represent constituent issues while managing both personal and professional duties. Proxy voting not only better accommodates personal issues, but also allows members of Congress to pursue higher office more easily without the fear of missing votes in their current position.

As Covid-19 restrictions lessen, Congress needs to adapt to changing technology and the rise of digital communications. The extent of proxy voting can be limited or expanded by Congress to encompass either only emergency situations or for more personal reasons such as constituent engagement. The rule making discretion of both chambers could dictate how the practice would work but would still represent a shift towards a more adaptive body that encourages legislative participation and high roll call voting turnout. By decreasing the number of missed roll call votes, Congress benefits all Americans and their ideas.

Proxy voting does raise Constitutional concerns which may require a Constitutional amendment to resolve. Looking back to the formation of American government, the founding fathers could have never predicted the technological advances of the 21st century. By fully embracing modern systems such as proxy voting, the United States can bring representative

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[68] Ibid.
[69] Ibid.
[70] Aleksander Essex and Nicole Goodman, "Secure Online Voting for Legislatures", *Fifth International Joint Conference on Electronic Voting E-Vote-ID 2020*, 2020.
[71] Ibid.
[72] Ibid.

democracy into the modern age and ensure the survivability of American institutions and ideals for future generations.

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AMERICA'S ETHICAL DILEMMA: HOLDING FORMER PRESIDENT DONALD TRUMP ACCOUNTABLE IN THE WORLD'S LAST DEMOCRATIC SUPERPOWER

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Since his inauguration in January of 2017, Former President Donald Trump has faced countless investigations, criminal accusations, and alleged ethical violations. Although never convicted, his actions twice incited impeachment hearings and trials. Following his tenure as the "Leader of the Free World," many legal and ethical scholars debate the need and ability to hold him accountable for his actions, and inactions, from both his time in office and prior to his election as President of the United States. This project will attempt to examine America's own past in holding elected officials, and especially Presidents, accountable for unethical and criminal actions during their occupancy of power. Additionally, it will use case studies from other democratic countries, to understand the overwhelming ethical repercussions of prosecuting leaders, all while understanding the sheer impact of the United States Presidency as a symbolic democratic institution around the world and the national security concerns tied into the decision. Finally, it will consider the fundamental relationship between a legitimate judiciary and a legitimate democracy, and the critical role accountability plays in upholding American values.

INTRODUCTION

"Can our country and our democracy ever be the same if we don't hold accountable the person responsible for inciting the violent attack against our country, our capital, and our democracy, and all of those who serve us so faithfully and honorably?"[1] On February 10, 2021, U.S. House of Representatives Member Jamie Raskin (D-MD 8th District) asked this fundamental question to the U.S. Senate during Former President Donald Trump's Second Impeachment Trial. Throughout the tenure of his presidential term, and before, Trump was accused of several unorthodox, often unethical, and occasionally illegal actions–twice leading to impeachment and failed removal hearings. Currently, criminal investigations in New York relating to bank and tax fraud as well as election interference in Georgia are being pursued by state prosecutors and investigators.[2] As president, he repeatedly obstructed justice into the

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[1] *WATCH: Rep. Raskin on Why the Senate Should Convict Trump*, *YouTube* (PBS Newshour, 2021), https://www.youtube.com/watch?v=osw480x3ktE, 22:30.

[2] New York v. The Trump Organization, Inc (Supreme Court of the State of New York County of New York January 18, 2022); Fani T. Willis (Atlanta, Georgia, n.d.).

investigation of Russia's interference in the 2016 election as laid out in Special Counsel Robert Mueller's report (The Mueller Report), he demanded a foreign nation provide slander on his then political opponent Joe Biden in return for Congressionally approved military aid (The Ukrainian Quid Pro Quo), he committed campaign finance violations, and he incited a violent insurrection on the U.S Capitol on January 6th & perpetuated the "Big Lie" regarding the "illegitimacy" of the 2020 election. [3] Most recently, the National Archives requested the Department of Justice open a criminal investigation into the former president's handling of classified government documents– some of which detail highly sensitive national security concerns.[4] In light of these potentially criminal actions, this paper examines whether former President Trump should be held criminally accountable and how prosecuting a former president could threaten the legitimacy of U.S. democracy.

This paper is split into three sections. Part one will analyze past decisions and lay a foundation for this current dilemma through the historical lens of former U.S. leaders who were held to account, or not, for their actions either within the American judicial system or through the impeachment processes. In particular, this paper will first examine two dark moments of the Nixon Administration: (1) the investigation and prosecution of former Vice President Spiro Agnew and (2) the investigations and attempted impeachment of Nixon's attempts to spy on his political opponents (The Watergate Scandal).[5] Finally, it will examine the Bill Clinton Impeachment Trial, and the extreme partisanship that infected those hearings and the long term effects on the legitimacy of impeachment as a form of accountability.[6] Part two of this research

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[3]Robert S. Mueller, "U.S. Department of Justice," U.S. Department of Justice § (2019), https://www.justice.gov/archives/sco/file/1373816/download; Cantelmo, Cameron. "Trump's call with Ukrainian president is almost certainly an impeachable offense." *UWIRE Text*, September 26, 2019, 1. *Gale Academic OneFile* (accessed March 1, 2022); [3]Devlin Barrett et al., "Michael Cohen Says He Worked to Silence Two Women 'in Coordination' with Trump to Influence 2016 Election," *The Washington Post*, August 21, 2018, https://www.washingtonpost.com/world/national-security/trumps-longtime-lawyer-michael-cohen-is-in-plea-discussions-with-federal-prosecutors-according-to-a-person-familiar-with-the-matter/2018/08/21/5fbd7f34-8510-11e8-8553-a3ce89036c78_story.html; Dan Barry and Sheera Frenkel, "'Be There. Will Be Wild!': Trump All but Circled the Date," The New York Times (The New York Times, January 7, 2021), https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html.
[4]Matt Zapotosky et al., "National Archives Asks Justice Dept. to Investigate Trump's Handling of White House Records," The Washington Post (WP Company, February 10, 2022), https://www.washingtonpost.com/politics/2022/02/09/trump-archives-justice-department/.
[5]Federal Bureau of Investigation, "Spiro Agnew," Spiro Agnew § (2022), https://vault.fbi.gov/Spiro%20Agnew; Federal Bureau of Investigation, "Watergate," Watergate § (2022), https://www.fbi.gov/history/famous-cases/watergate.
[6]Russell Riley, "The Clinton Impeachment and Its Fallout," Miller Center, September 24, 2020, https://millercenter.org/the-presidency/impeachment/clinton-impeachment-and-its-fallout.

will look internationally: both at steps other democratic nations have taken in similar circumstances and the implications of those actions. The former question will examine nations such as Israel, France, and South Africa. The second issue will focus on the reliance of other democracies on the United States to forward and sustain their own egalitarian principles. Finally, the third section will address the counterargument, mainly the national security concerns at play, and how moving forward with investigations and probable prosecutions of the former president could cause irreparable harm to the United States.

During his tenure, as arguably the most powerful person in the world, former President Trump systematically violated long-standing norms and the rule of law for self-advancement. The intention of this research is not to make a case for the effectiveness, or lack thereof, of Trump's presidency nor the virtuosity of his character, but rather to examine the ethical implications, from an institutional perspective, of investigating and possibly prosecuting the former president. Ultimately, it will attempt to examine the fundamental and crucial relationship between a legitimate democracy and a legitimate judicial system, as well as the perception of the United States as a democratic force around the world.

PART I: AMERICAN VALUES & HISTORICAL PERSPECTIVE

There is a fundamental and unrelenting relationship between a legitimate democracy and a legitimate judicial system. At its core, these two separate institutions (importantly viewed as non-overlapping) cannot survive without the other. Although these two systems may seem antagonistic at times, true democratic practices protect honest judiciaries and vice versa. Arguably, should one of these two institutions fail, or be perceived as illegitimate, the other's legitimacy is immediately called into question.[7] The key motivating factor in establishing the United States government was to develop a democratic system of rule capable of withstanding generational changes and advancements. A critical part of that vision was codified in Article III of the U.S. The Constitution which established the American judicial system.[8] It is for this precise reason that democratically elected U.S. leaders have continually been held accountable by the courts through judicial review and supremacy, and the courts have been continually held

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[7]George Washington, "George Washington to Edmund Randolph, September 28, 1789," George Washington to Edmund Randolph, September 28, 1789 § (2022), https://www.loc.gov/resource/mgw2.022/?sp=177&st=text.
[8] U.S. Constitution, art. III.

accountable by those same elected officials through judicial impeachment. This condition of legitimacy is ultimately buttressed by the basic system of checks and balances conceptually developed by the founding fathers.[9]

Since its inception, the Constitution and its authors foresaw the need for accountability at the highest levels of government. Article II, Section IV of the founding document states, "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."[10] The impeachment process was intended to be a form of justice in which the leader's actions are so egregious that special proceedings, ideally transcending partisanship, allow elected officials to hold each other accountable. In the history of the United States, only three presidents have ever been impeached, Andrew Johnson in 1868, Bill Clinton in 1998, and Donald Trump in 2019 & 2021–a rarity signifying its importance and gravity.

The Founding Fathers and later American leaders also recognized the importance of holding treasonous officials accountable. They saw fit to articulate the importance of addressing the crime of treason, specifically, due to its drastic consequences on American democracy and legitimacy. Article III Section III of the U.S. The Constitution limits the scope of criminalizing treason, due to the nature of their previous rulers' use of the term, but still signifies the concept as a singular grave act against the United States comparable to few other actions.[11] Just as the Constitution was written in response to the tyranny of King George III and the British Kingdom, the 14th Amendment was authored in response to the Civil War and the treasonous actions of the Confederate leaders. Section III states:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.[12]

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[9] "Separation of Powers," Legal Information Institute (Legal Information Institute, 2022), https://www.law.cornell.edu/wex/separation_of_powers_0.
[10] U.S. Constitution, art. II, § IV.
[11] U.S. Constitution, art. III, § III.
[12] U.S. Constitution, amend. 14, § III.

The 14th Amendment forbids those leaders who have taken an oath to the United States to engage in "insurrection or rebellion" or provide "aid or comfort" to those offenders. Currently, a key task of the House Select Committee to Investigate the January 6th Attack on the United States Capitol is to discover the influencing factors of the attack.[13] As of January 2022, eleven members, including the leader of the Oath Keepers–a right-wing militant organization–were charged with Seditious Conspiracy (a crime that raises above the mundane criminal code and typically associated with rebellion, insurrection, and treason).[14] This is, thus far, the most extreme charges brought against Capitol rioters from January 6th. Should investigations by the House Select Committee and (hypothetically) the Department of Justice find Former President Trump took part, treasonously, in the January 6th attack, it would prevent him from future office holding–a theory already proposed by U.S. District Judge Amit Mehta suggesting some of the rioters were "pawns" of elected officials in pursuing a message about the "illegitimacy" of the 2020 election.[15]

There was a long-standing question raised countless times throughout the Trump Presidency and others: is a sitting president immune from prosecution? For the Mueller Report, this question received a very simple answer from the Department of Justice: yes.[16] However, during both the Clinton impeachment trial and Nixon's Watergate scandal, this question was raised twice, and both times legal advisors argued a sitting president could be indicted.[17] In modern U.S. history this issue can be examined through Richard Nixon's first Vice President, Spiro Agnew. During his tenure in the office, Agnew was investigated for bribery and tax evasion and eventually resigned due to the impending charges.[18] This, however, establishes the

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[13] Select Committee to Investigate the January 6th Attack on the United States Capitol, "U.S. House of Representatives," U.S. House of Representatives § (2021), https://january6th.house.gov/about.

[14]Scott Anderson et al., "Seditious Conspiracy: What to Make of the Latest Oath Keepers Indictment," Lawfare, January 14, 2022, https://www.lawfareblog.com/seditious-conspiracy-what-make-latest-oath-keepers-indictment; US v. Rhodes (Clerk, U.S. District and Bankruptcy Courts January 12, 2022).

[15]Kyle Cheney, "Judge Faults Trump for Jan. 6 Attack," POLITICO (POLITICO, November 19, 2021), https://www.politico.com/news/2021/11/19/donald-trump-fault-january-6-attack-523059.

[16]Randolph D. Moss, "A Sitting President's Amenability to Indictment and Criminal Prosecution," A Sitting President's Amenability to Indictment and Criminal Prosecution § (2000), https://www.justice.gov/sites/default/files/olc/opinions/2000/10/31/op-olc-v024-p0222_0.pdf.

[17]Robert Reed, "National Archives," *National Archives* (National Archives, 2017), https://int.nyt.com/data/documenttools/savage-nyt-foia-starr-memo-presidential/ac9e49a727223de2/full.pdf.

[18]Rachel Maddow, "Rachel Maddow on Spiro Agnew's Bribery Scandal," NPR (NPR, December 11, 2020), https://www.npr.org/2020/12/10/945085007/rachel-maddow-on-spiro-agnews-bribery-scandal.

basic modern precedent that America's top leaders can and *should* be investigated and potentially indicted if their actions warrant such a decision.

In June of 1972, five men broke into the Democratic National Committee at the Watergate Hotel in Washington, DC on behalf of the campaign for President Nixon and the GOP. After a series of lies, revealed tapes, whistleblowing, investigative reporting, and an FBI investigation, Nixon ultimately resigned the Presidency, due to surmounting pressure by his party leadership, in August 1974 to allow then Vice President Gerald R. Ford to take over. Ford would eventually pardon his predecessor removing the question of further investigation and possible indictment from the national discourse. Ford argued that the country needed to "heal," and a pardon would allow the country to "move on."[19] However, at the time, only 38% of Americans agreed with that decision according to a Gallup Poll.[20] Americans felt betrayed by their top leader, and they wanted to see accountability for Nixon's actions. Eventually, as with all scandals, the approval rating for Nixon's pardon eased and increased, but the initial distaste towards a lack of retribution speaks to the needs of the American people for accountability–even, if not especially–at the highest levels of government. More importantly, however, government professors and analysts, Brian Fry and John Stolarek discovered that should Nixon have remained in office, two articles of impeachment would have been passed by Congress and would have garnered heavy support from his own party.[21] At the time, Nixon's actions seemed so egregious, the GOP was willing to bring shame to their party's leader in order to uphold basic principles of accountability.

During the late 1990's then President Bill Clinton engaged in an extramarital relationship with Monica Lewinsky, a White House intern. After lying to the public on national television, and potentially committing perjury in a deposition, it was ultimately revealed that the former President had engaged in sexual conduct with Lewinsky outside of his marriage.[22] Independent Counsel Kenneth Starr, who was originally tasked with investigating the now debunked

[19] NCC Staff, "The Nixon Pardon in Constitutional Retrospect," National Constitution Center (National Constitution Center, September 8, 2021), https://constitutioncenter.org/blog/the-nixon-pardon-in-retrospect.
[20] Frank Newport and Joseph Carroll, "Americans Generally Negative on Recent Presidential Pardons," Gallup (Gallup, March 9, 2007), https://news.gallup.com/poll/26830/americans-generally-negative-recent-presidential-pardons.aspx.
[21] Fry, Brian R., and John S. Stolarek. "The Nixon Impeachment Vote: A Speculative Analysis." Presidential Studies Quarterly 11, no. 3 (1981): 387–94. http://www.jstor.org/stable/27547720.
[22] Peter Tiersma, "Did Clinton Lie?: Defining 'Sexual Relations' ," *Chicago-Kent Law Review* 79, no. 3 (October 2004), https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3457&context=cklawreview.

Whitewater Scandal, decided to proceed with impeachment recommendations on the basis of Clinton's extramarital affair. This decision received multitudes of backlash from both legal experts and the public, and was widely viewed as, first and foremost, a partisan political attack to take aim at Clinton's approval ratings.[23] This decision, in contrast to Nixon's all but certain impeachment, began the modern tradition of a partisan impeachment process rather than a sacred and impartial system intended to hold American leaders accountable when they have violated their most sacred oaths to the country and Constitution.

With all these modern historical practices accounted for, there is one critical point not addressed. In the United States, the judicial system places values on certain crimes over others. For example, murder receives more time in prison than petty theft. Similarly, attempting to tape one's political opponents or engaging in a consensual, albeit iniquitous, extramarital affair are not of equal misconduct to obstructing the investigation of a foreign nation meddling in a U.S. Presidential Election, asking a state's secretary of state to disregard its voter's decision, or, most importantly, incite a violent insurrection on the U.S. Capitol building. Simply put, Trump's actions quite possibly constitute a higher level of lawlessness and unethicality and, ultimately, require more condemnation and accountability.

PART II: THE INTERNATIONAL COMMUNITY AND GLOBAL DEMOCRATIC IMPLICATIONS

While there are many strong and powerful democracies in the world, the United States is often seen as the democratic superpower and standard bearer. Much of this is due to its overwhelming military prowess, its overreaching treaties around the globe, and its expanding trade relations. America has often used its power and stature in an attempt to expand its values into developing nations and authoritarian regimes–for better or worse.[24] This part addresses that reality in two sections. The first examines three nations in different areas of the world that share democratic values: Israel, France, and South Africa. Section B addresses the ethical and practical implications of America's diminishing legitimacy on burgeoning democracies.

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[23]Russell Riley, "The Clinton Impeachment and Its Fallout," Miller Center, September 24, 2020, https://millercenter.org/the-presidency/impeachment/clinton-impeachment-and-its-fallout.

[24] Sean M. Lynn-Jones, "Why the United States Should Spread Democracy," Belfer Center for Science and International Affairs (Harvard Kennedy School, March 1998), https://www.belfercenter.org/publication/why-united-states-should-spread-democracy.

A. International Case Studies: Israel, France, and South Africa

In November of 2019, former Prime Minister Benjamin Netanyahu of Israel was indicted on three separate charges of bribery, fraud, and breach of trust. The first charge accuses Netanyahu of accepting nearly $300,000 from wealthy individuals to procure visa renewals through the U.S. Government and the support of a television merger deal. Second, Netanyahu is accused of striking a deal with Israeli Newspaper Yediot Aharonot for favorable coverage in return for weakening a rival paper's power and capacity. The third, and final case, accuses Netanyahu of striking another deal with Israeli telecom mogul Shaul Elovitch to allow the prime minister a say in coverage in exchange for leniency regarding the mogul's businesses. The totality of these crimes were investigated and charged during Netanyahu's time as the sitting prime minister.[25]

Throughout the international community, there are countless debates over Israel's actions toward Palestine, including human rights violations. Many of these debates stem from more philosophical questions as to "right v. wrong" in democratic institutions v. authoritarian regimes. Despite this reality, Israel remains one of the United States' most prominent democratic allies around the world and in the Middle East.[26] Ultimately, Netanyahu faces actual jail time if convicted and the nation's willingness to hold their exceptionally powerful and longest elected leader accountable, speaks to the importance of this principle.

In March of 2021, a court found former French President Nicolas Sarkozy (2007-2012) guilty of corruption and influence meddling. In September of the same year, he was later found guilty of spending tens of millions of euros on his presidential campaign over the permitted maximum.[27] Ultimately, Sarkozy took part in systematically defrauding the French people by running an unfair and illegal campaign and taking part in corruption. These actions, while not equal in magnitude to Trump, reflect a similar pattern of leaders leveraging their powerful positions to sustain their influence despite the ultimate fraud it perpetrated on the nation's people. France, a western nation of similar democratic standing and legitimacy to the United States, took steps to hold Sarkozy accountable for his actions despite the fact he was no longer in

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[25] Patrick Kingsley, "The Netanyahu Trial, Explained," The New York Times (The New York Times, February 8, 2021), https://www.nytimes.com/2021/02/08/world/middleeast/benjamin-netanyahu-trial.html.
[26] Ibid.
[27] Aurelien Breeden, "Ex-President Sarkozy Convicted for Campaign Spending Violations," The New York Times (The New York Times, September 30, 2021), https://www.nytimes.com/2021/09/30/world/europe/france-sarkozy-campaign-spending.html.

office. The intent of the prosecution was not to remove him from power, but rather to show the country that no elected official, current nor former, is above the law. Both this case in France and that in Israel prove that presidents can be prosecuted in democratic regimes whether they are no longer in office or during their tenure respectively.

In 1995, South Africa, under the leadership of President Nelson Mandela created the Truth and Reconciliation Commission to help heal the nation from its Apartheid past.[28] The commission was not intended to seek punishment, unlike the Nuremberg Trials after World War II.[29] Rather, the commission allowed both victims and effectuates to come forth and testify about human rights violations and the terrible atrocities that occurred during Apartheid, and if they were truthful, without fear of persecution. While the crimes against humanity and the daily atrocities that were endemic to Apartheid were grave and vast, South Africa's Commission allowed the county to move on while also examining the crimes of its past in an open and frank manner.

Donald Trump's actions to subvert the authority of America's Constitution and norms were unique and unprecedented in modern American history. The exceptional judicial process developed by South Africa to heal from their traumatic period of Apartheid, sets an international precedent for nations to examine their painful histories in open and honest ways and potentially heal and learn from that examination. It would provide an interesting method of getting to the bottom of events such as those that lead to the January 6th insurrection.

B.   America as the World's Last Democratic Superpower

The question: 'how will America's decision to investigate and prosecute a former President affect democracies globally–especially burgeoning democracies?'–is ultimately an impossible question to answer. It relies on a set of assumptions that are unprecedented in the actions and magnitude to contemplate a valid response. Nothing remotely comes close to the January 6th attempted insurrection. The mob was filmed and broadcasted on the world stage–the epitome of an international disgrace. Not only that, it occurred at the symbolic heart of

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[28]Clark, Janine Natalya. 2011. "Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship." International Criminal Law Review 11 (2): 241–61. doi:10.1163/157181211X551390.

[29]Robert Hutchinson, "The Nuremberg Military Tribunals and 'American Justice': The National WWII Museum: New Orleans," The National WWII Museum | New Orleans (The National World War II Museum, September 18, 2021), https://www.nationalww2museum.org/war/articles/american-justice-at-nuremberg-military-tribunals.

democratic values during proceedings which ceremonialize the peaceful transfer of power–a hallmark of any functioning democracy.

In addition to this, another fact remains. Authoritarian regimes notoriously (and illegitimately) imprison political opponents in an effort to consolidate power often using excuses such as their opponents' efforts to promote riots and instability.[30] A modern example of this includes Russian President Vladimir Putin's treatment of Alexei Navalny. Currently, President Joe Biden, Trump's political rival in the 2020 Presidential Campaign, and Attorney General Merrick Garland are responsible for deciding whether to go forward with investigations. For many in the United States and around the world, namely Trump's supporters, this could almost certainly be seen as a politically motivated attack against a rival in an attempt to silence him and remove him from future forms of power. Yet again, this is where the importance of legitimacy in democratic and judicial institutions become so critical.

So, a better question should be posed: 'In the case of international strength, is it more ethical to show accountability at the highest levels in democracy or more ethical to show stability in the last democratic stronghold?' There is an answerable question. A straightforward response embodies John Winthrop's misunderstood "city upon a hill" metaphor as reason enough to employ the most ethical standards of democracy available to leaders through the U.S. Constitution. A more in-depth response relies on George Washington's letter to Edmund Randolph in September of 1789. In the paper, the first president stated,

> Impressed with a conviction that the due administration of justice is the firmest pillar of good government, I have considered the first arrangement of the Judicial department as essential to the happiness of our Country, and to the stability of its political system; hence the selection of the fittest characters to expound the laws, and dispense justice, has been an invariable object of my anxious concern.[31]

Ultimately, a democracy needs a functioning justice system, and therefore this ethical question presented to the world is simple: providing for accountability and justice will *enhance* stability.

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[30] The Associated Press, "Russia Has Officially Named Jailed Opposition Leader Alexei Navalny a Terrorist," NPR (NPR, January 26, 2022), https://www.npr.org/2022/01/26/1075710006/russia-named-jailed-opposition-leader-alexei-navalny-terrorist.

[31] George Washington, "George Washington to Edmund Randolph, September 28, 1789," George Washington to Edmund Randolph, September 28, 1789 § (2022), https://www.loc.gov/resource/mgw2.022/?sp=177&st=text.

PART III: ACKNOWLEDGING NATIONAL SECURITY CONCERNS

At its most basic, President Ford argued that the intent of his pardon of Nixon was to allow the country to heal and move forward.[32] This was not universally supported, but over time, many understood that the foundation of this rationale was to protect economic interests and national security concerns. Bob Woodward, one of two Washington Post reporters to author the breaking story on Nixon's actions, was one of many Americans vehemently opposed to the pardon at the time. Woodward considered it the "final perfect corruption of Watergate."[33] During his investigative reporting into Ford and the pardon, America was at the time already in the midst of the Cold War and financial hardship, and he found evidence of possible economic and national security concerns should the U.S. have to endure additional years of a Watergate investigation, indictment, trial, and conviction. Due to this new information, Woodward's opinion shifted in favor of Ford's decision.[34]

Today, those same concerns are true. The Coronavirus Pandemic coupled with an overwhelming incessant stream of national security concerns, both international and domestic, have embroiled the government and its ability to legislate outside these issues. Domestically, social media misinformation and the influx of conspiracy theories have weaponized and indoctrinated a large swatch of the American public–many of whom are members of Trump's base.[35] In the United States today, 61% of Republicans live in a household with a firearm.[36] Trump supporters are also empowered and activated by an animosity towards marginalized groups, and an inclination towards authoritarianism and aggression.[37] On January 6, 2021, these characteristics were all on show for the world when Trump's supporters attempted to violently

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[32] NCC Staff, "The Nixon Pardon in Constitutional Retrospect," National Constitution Center (National Constitution Center, September 8, 2021), https://constitutioncenter.org/blog/the-nixon-pardon-in-retrospect.

[33] *Woodward: Ford's Pardon of Nixon Was an 'Act of Courage'*, *Woodward: Ford's Pardon of Nixon Was an 'Act of Courage'* (YouTube, 2014), https://www.youtube.com/watch?v=6uUzrvJtZps.

[34] Ibid.

[35] Giovanni Russonello, "Qanon Now as Popular in U.S. as Some ... - The New York Times," The New York Times (The New York Times Company, August 12, 2021), https://www.nytimes.com/2021/05/27/us/politics/qanon-republicans-trump.html.

[36] Statista, "Gun Ownership, by Party Affiliation U.S. 2021," Statista, November 2021, https://www.statista.com/statistics/249775/percentage-of-population-in-the-us-owning-a-gun-by-party-affiliation/.

[37] Danielle Kurtzleben, "Study Looks at What Motivates Trump Supporters," NPR (NPR, July 11, 2021), https://www.npr.org/2021/07/11/1015120444/study-looks-at-what-motivates-trump-supporters.; Matthew Macwilliams, "The One Weird Trait That Predicts Whether You're a Trump Supporter," POLITICO Magazine (Politico, January 17, 2016), https://www.politico.com/magazine/story/2016/01/donald-trump-2016-authoritarian-213533/; Tom Jacobs, "Inside the Minds of Hardcore Trump Supporters," Pacific Standard (Pacific Standard, February 15, 2018), https://psmag.com/news/inside-the-minds-of-hardcore-trump-supporters.

overthrow the U.S. Capitol, a sacred symbol of democracy, with weapons and a seemingly unending source of rage. A years-long battle in the judiciary to indict and prosecute Trump may galvanize more supporters into violence and perpetuate deeper and more dangerous conspiracy theories.

However, these practical national security concerns, while valid, are not enough to negate the ethical decision required in this situation. After Al-Qaeda flew planes into the World Trade Center on September 11, 2001, the United States did not cower in the wake of the terrorist attack. Instead, New York City built a new tower in its place, called The Freedom Tower (One World Trade Center), as a glorious symbol of democratic values persevering through tragedy. Additionally, President Obama's Administration pursued and assassinated their leader, Osama bin Laden in an act of accountability and justice. And the United States government, both in the legislature and the executive, spent years studying 9/11–how it was able to occur, and the steps needed for the future to prevent similar attacks.[38] This is all to suggest that the United States does not need to "forget" and "move past" the January 6th attack. Rather, it needs to rebuild that which was destroyed, hold accountable those who lead the attack, and ensure through thoughtful leadership and discussion this never occurs again.

CONCLUSION

Thomas Paine wrote in the *Rights of Man*, "Because a body of men holding themselves accountable to nobody, ought not to be trusted by anybody."[39] Without accountability, there is no legitimacy. Part I detailed the constitutionally embedded principle of a judiciary and the importance of protecting the nation against treason in relation to the preservation of democratic values. This principle is most eloquently articulated in George Washington's address to Edmund Randolph regarding the "due administration of justice [as] the firmest pillar of good government," and "as essential…to the stability of [the American] political system."[40] This section, however, failed to mention one other critically important aspect of the U.S.

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[38] National Commission on Terrorist Attacks Upon the United States, "9/11 Commission," 9/11 Commission § (2004), https://9-11commission.gov/report/.

[39] Thomas Paine, Rights of Man: Part the Second: Combining Principle and Practice (Cambridge England: Cambridge University Press, 2012), 53.

[40] George Washington, "George Washington to Edmund Randolph, September 28, 1789," George Washington to Edmund Randolph, September 28, 1789 § (2022), https://www.loc.gov/resource/mgw2.022/?sp=177&st=text.

Constitution's 14th Amendment, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States… [and] No State shall… deny to any person within its jurisdiction the equal protection of the laws."[41] This fundamental standard, emphasized by the rule of law and fervently idealized within the United States, is critical to understanding the ultimatum placed before the country. Either the federal government upholds its code of democratic values and forbids it to make a monarch of the presidency, or it allows some of the most egregious and destabilizing actions of the past decade to go unaccounted for simply because of the stature of the offender.

Part I continues to detail this conundrum from an American historical perspective–always setting the precedent towards the former. In the case of Vice President Agnew, the government investigated his illegal actions while he remained in office. President Nixon would have been impeached by members of his own party had he not resigned exemplifying a past acknowledgement that upholding norms far outweighs partisanship. Additionally, even Ford's controversial pardon still shows the country's willingness–and eagerness–to see their leaders held to account. Lastly, President Clinton's impeachment trial, while partisan and arguably not within the tradition of the Constitution's parameters, did show a willingness to hold public leaders, and especially Presidents, to a higher standard of conduct. Ultimately, within the United States, there is a plethora of precedent that would make an investigation and prosecution into former President Trump not only acceptable, but also within the norm.

The second section of this research focused on international precedent and how their administration of justice and accountability compare to the American tradition. Israel, France, and South Africa–three democratic nations of different strengths, ages, and geographic location–all agreed on one principle. Accountability, at all echelons of power, are part of their systems of governance, whether the violation in question is bribery or human rights atrocities. The last part is an acknowledgement that President Trump's situation is unique. This research is not blind to the fact that Trump's stature combined with the nature of his base and the current state of political discord in this country creates a *nearly* unprecedented reality for investigators and the Department of Justice. However, that fact–that it will be more difficult than other normal criminal proceedings–is not valid enough to overthrow our entire system of government, principles of justice, and the rule of law. Simply put, allowing Trump to avoid accountability

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[41] U.S. Constitution, amend. 14, § I.

simply because his actions were so outrageous or the country's partisanship is so diverged, argues that America is too weak and ineffective to uphold the 234-year-old Constitution.

Ultimately, the United States was founded on principles of equality, justice, and democracy. These core ideals set the framework for centuries of stability, and when the nation was most volatile–during the Civil War and the Great Depression for example–these principals set the nation back on course. The ideals were grabbed hold of to right past wrongs and bring the country into a new and more enlightened age. Today, a pandemic, international upheaval, and unprecedented political partisanship are crippling Americans' lives. Just as was done in the past, latching on to these fundamental ethical principles will help guide the U.S. into another great age of democracy, legitimacy, and stability.

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TOUGH ON CRIME: A HISTORICAL ANALYSIS OF DEMOCRATIC PRESIDENTIAL RHETORIC

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Over the past 55 years, Americans—and American presidents in particular—have embraced a "tough on crime" approach, which has contributed to detrimental outcomes for racially minoritized groups. In this project, I examine tough on crime rhetoric among democratic presidents, including Lyndon B. Johnson, Bill Clinton, and Joseph Biden. I then connect this rhetoric to its material consequences, showing how this ideology has contributed to the pervasive surveillance and mass incarceration of Black communities. Finally, I outline an alternative ideology in an effort to begin to reverse the harmful consequences of America's contemporary "tough on crime" culture.

INTRODUCTION

Throughout the twentieth century, the term "tough on crime" gained popularity. Various politicians used this phrase to showcase their fervent opposition to criminal behavior, claiming that "tough on crime" policies could dramatically reduce the growing crime rate. Due to widespread support for such claims, it became a political risk for politicians not to embrace this approach, so leaders on both sides of the political spectrum embraced tough-on-crime rhetoric.

Despite the popularity of the "tough on crime" approach, it has led to adverse outcomes for the victims of this rhetoric, specifically Black communities. Since the era of Black enslavement, the United States has engaged in surveillance and control of Black people. From the explicit enslavement of Black people to the more discreet enslavement in the present-day prison industrial complex, White Americans have sought to control Black Americans for centuries. The development of "tough on crime" rhetoric was part of this effort, though disguised by its emphasis on crime and lack of overt racialized language. This strategy may have seemed successful for a time, but the present-day perspective reveals the detrimental effects this racist language has had on minoritized groups.

Looking back to the mid-twentieth century, one can see increased awareness and discussion around racial injustice in the United States. However, this national attention inadvertently encouraged more discriminatory rhetoric that contributed to the tough-on-crime

culture. Specifically, the Democratic Party endorsed flawed reasoning for the urgency of tough on crime legislation; they believed Black people committed crimes due to the impacts of racial discrimination and believed that by outlawing discrimination on the national level, African Americans would stop committing crimes.[1] This reasoning served as the foundation for the forthcoming themes within following Democratic presidents.

Framing Black communities in this way perpetuated the criminality stereotype, a detrimental assertion that deepened the criminalization of Blackness and fueled future tough on crime rhetoric. This language can be seen in the emergence of the term "social dynamite" in the 1960s.[2] Some used this phrase to describe predominately Black inner-city youth, creating the idea that Black communities are bound to cause mass chaos. This idea, coupled with the criminality stereotype, enforces the belief that Black communities are destined to commit crime. In conjunction with this fear-evoking rhetoric came Black damage imagery. This strategy attempted to appeal to the pathos of White people but, in doing so, destroyed the image of the Black community. Describing Black people as "crippled" and "damaged" only deepened negative stereotypes about the group.[3]

There exists some evidence that this rhetoric had its intended effect, as lawmakers passed legislation to rectify some of the structural issues Black Americans faced. However, the premise of these acts lay on a fragmented foundation which quickly fell apart and led to further harm on the Black community. Despite the focus on Republican politicians of many discussions around the tough-on-crime rhetoric, a bipartisan adoption of this idea exists. Therefore, this analysis seeks to examine Democratic Presidents Lyndon Johnson and Bill Clinton's rhetoric and resulting policies through two main themes: blaming crime on Black behaviors and blaming racism on individual prejudice. Additionally, this analysis will pull on activists' agendas to outline policies President Joseph Biden should adopt to undo the harms perpetuated by this rhetoric.

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[1] Naomi Murakawa, *The First Civil Right: How Liberals Built Prison in America* (Oxford, Oxford University Press, 2014).

[2] The Harvard Crimson, "Conant Warns of Pressing Need to Improve Urban Slum Schools" (The Crimson, 1961).

[3] Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, Massachusetts: Harvard University Press, 2017).

LYNDON B. JOHNSON

Lyndon B. Johnson is often remembered for his monumental Great Society reforms, which increased healthcare, educational, and economic opportunities for under-resourced populations. Many initiatives maintain their prominence today, such as the Medicare, Medicaid, and Head Start programs enacted under his leadership. Johnson may be most recognized for signing the Civil Rights Act of 1964, which sought to outlaw discrimination "on the basis of race, color, religion, sex, or national origin."[4] For many, these achievements epitomized the liberal fight for equal rights, and therefore Johnson has been deemed a "liberal hero."

However, solely using the term "great" to define American society under Johnson's leadership is misleading. While acknowledging those significant advancements, we must not let them overshadow the negative consequences of Johnson's policies for the Black community, which were bolstered by his disconcerting rhetoric about African Americans.

JOHNSON'S RHETORIC

When signing the Civil Rights Act, Johnson stated, "we believe that all men are created equal. Yet many are denied equal treatment… not because of their own failures, but because of the color of their skin."[5] This assertion implies that racism is no fault of the minoritized individual but exists due to structural inequalities that discriminate against dark skin. The Civil Rights Act was Johnson's method of combatting these inequities in an effort to create a more just society. However, one must recall the liberal rationale behind this Act: passing legislation against discrimination would reduce Black criminality. Many Democrats had rationalized Black protests and riots as necessary to fight legalized racism. However, this discrimination was now "outlawed" with the Civil Rights Act. A new explanation for Black crime was necessary.

After the Civil Rights Act of 1964, Johnson shifted the explanations for crime from institutional factors to the nature of Blackness. He adopted a social pathological approach to explaining crime, believing that cultural and behavioral deficiencies of African Americans were at fault for Black poverty.[6] In this way, his administration blamed crime and poverty on

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[4] United States Department of Labor, "Legal Highlight: The Civil Rights Act of 1964" (Department of Labor, 2019).
[5] Lyndon B. Johnson, "Radio and Television Remarks Upon Signing the Civil Rights Bill" (Online by Gerhard Peters and John T. Woolley, The American Presidency Project, 1964).
[6] Hinton, *War on Poverty.*

behaviors that were purportedly inherent to Black people. For example, in a Howard University commencement speech, Johnson described the nature of Black poverty as follows:

> For Negro poverty is not white poverty… there are differences-deep, corrosive, obstinate differences--radiating painful roots into the community, and into the family, and the nature of the individual… These are not racial differences. They are solely and simply the consequence of ancient brutality, past injustice, and present prejudice.[7]

While intending to highlight the historical context of inequity, Johnson shifts the blame from the structural factors impeding the progress of African Americans to purely historical factors that produced Black pathology. Proclaiming that these historical injustices impact the character of Black individuals suggests that these issues cannot be fixed through structural changes. Instead, individual behavioral changes must be employed to rectify these inequities. This is further supported by the word "prejudice" to explain current affairs, which focuses on individual attitudes and actions rather than systemic injustice. Both the reliance on historical wrongs and blaming characteristics inherent to Black people allowed leadership to evade the structural problems necessary for change.

The ambiguous nature of Johnsons' statement became more evident as he continued the Howard commencement speech:

> Perhaps [the] most important [wound] is the breakdown of the Negro family structure. For this, most of all, white America must accept responsibility. It flows from centuries of oppression and persecution of the Negro man… which have attacked his dignity and assaulted his ability to produce for his family.[8]

Once again, under the guise of attacking racist "oppression and persecution," this statement directly attacks Black communities. Johnson attributes the poor living conditions of African Americans to their purported inability to maintain a stable household. In this way, he is shifting liability for these issues and failing to acknowledge the structural inequalities that pervade Black life. This interpretation is reiterated later in the speech:

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[7] Lyndon B. Johnson, "Commencement Address at Howard University: 'to Fulfill These Rights'" (Online by Gerhard Peters and John T. Woolley, The American Presidency Project, 1965).
[8] Ibid.

> Unless we work to strengthen the family, to create conditions under which most parents will stay together--all the rest: schools, and playgrounds, and public assistance, and private concern, will never be enough to cut completely the circle of despair and deprivation.[9]

In this way, African American families served as a sort of scapegoat for Johnson's administration: his leadership could deploy reforms, but if they failed, the policies—and his administration—were not at fault because the actual problem was the Black population itself.

To Johnson, these were not baseless claims. This information was put forth by a report created for him by Daniel P. Moynihan, a sociologist and Democratic advisor to Johnson. In this report, *The Negro Family: The Case for National Action* (often referred to as the Moynihan Report), Moynihan proclaimed that the broken family structure of Black families is one of the leading causes for crime and poverty. Through a series of studies, he displays the vast disparities between Black and White children, noting that the former tended to have lower test scores and engage in more delinquent acts, especially when coming from single-mother homes.[10]

Moynihan originally intended the report only for Johnson's viewing, but it was quickly leaked to the public. Media outlets spread the confidential document around and often accepted it as fact, stating that welfare programs were not working due to the problem of the Black communities themselves.[11] This likely strengthened prejudice against Black Americans while also contributing to the damaging imagery of the population. However, this explanation takes the stereotype further, blaming African Americans for their conditions and justifying ineffective actions to fight poverty and crime.

COMMUNITY ACTION: THE WATTS REBELLION

While the Civil Rights Act was a monumental step forward, it fell short in bringing about the structural changes needed to rectify injustice and inequality. Black communities had needs that the Civil Rights Act did not meet, including improved access to employment and educational opportunities and decreased police brutality. Consequently, a slew of protests broke out throughout the country. These were concentrated in urban areas like Philadelphia, Chicago,

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[9] Ibid.

[10] Office of Planning and Research, United States Department of Labor, *The Moynihan Report: The Negro Family, the Case for National Action* (1965).

[11] Hinton, *War on Poverty.*

and Harlem, reflecting the injustices that hit inner-city communities the hardest.[12] One of the most widely recognized was in the Watts community of Los Angeles, California. The Watts uprising initially started as an aggressive encounter between a Black man and a White police officer but erupted into a massive event spanning six days. Over 34,000 people joined the protest, while 70,000 stood by to watch it unfold.[13] With the involvement of the local police and the national guard, the Watts area resembled a war zone, ending in 34 deaths and over 1,000 injuries, most of which were sustained by Black people.[14]

This was much more than an isolated case of police mistreatment. To many, these riots represented African Americans' ongoing fight against inequality and injustice, including (but not limited to) police brutality. However, not everyone saw the event in the same light. Four days after the 1965 Watts riots, President Johnson shared his thoughts:

> A rioter with a Molotov cocktail in his hands is not fighting for civil rights any more than a Klansman with a sheet on his back and a mask on his face.[15]

By comparing protestors to the Ku Klux Klan, Johnson's statement deems Black protestors as enemies of the system and enemies of racial equality. Although he seems to recognize the origins of the uprising, previously mentioning "the bitter years that preceded the riots," he does not believe that this justifies their actions.[16] This perspective demonstrates how dominant beliefs had shifted from the pre-civil rights era, which explained Black criminality as a demand for equality. Discrimination was made illegal, so protests were no longer seen in the same light. They were seen as blatant disrespect for law and order.

JOHNSON'S RESPONSE: LAW ENFORCEMENT ASSISTANCE ACT

Johnson took swift action to prevent any further lawlessness. In 1965, he signed the Law Enforcement Assistance Act (LEAA), which aimed to strengthen law enforcement agencies' efforts to control crime. With this Act, Johnson declared the war on crime.

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[12] Ibid.
[13] Ibid.
[14] History.com Editors, "Watts Rebellion" (A&E Television Networks, 2017).
[15] Lyndon B. Johnson, "Remarks at the White House Conference on Equal Opportunities" (Online by Gerhard Peters and John T. Woolley, The American Presidency Project).
[16] Ibid.

To help strengthen state and local police forces, the LEAA allocated funding for new police gear, including improved weapons (such as riot shields), rubber bullets, and, in some instances, helicopters and tanks. The Act also funded new policing technologies, such as early versions of predictive policing algorithms.[17] Together, these allowed for the extreme militarization of the police, which, in turn, increased harm against Black communities.

The LEAA funded other endeavors that ignored the community's true needs as well. First, funding was allocated to the diversification of the police force; the hiring of more Black officers aligned with Johnson's belief that individual prejudice is the root issue. Due to this assumption, dispatching more Black officers into minority-populated areas seemed like it would eliminate prejudice of the police as well as toward the police from the community. In turn, this would supposedly reduce crime. While individual discrimination contributed to the issue, the actual problem was the system; police brutality is not only between officers and citizens. The structure behind the individual perpetuates racism by protecting their own and reinforcing discriminatory policing strategies. To instill lasting change, one must first recognize these faults--which Johnson evaded through focusing on racism at the individual level.

Johnson also allocated $29 million in community-based programs, spanning from cultural heritage workshops to recreational activities for urban poor populations. Children and adults were also offered educational programs to increase literacy rates within the Black communities.[18] Through these programs, Johnson attempted to build a sense of community that was supposedly lacking in the Black community. However, ulterior motives were at play, as this was also a strategy to control crime within Black populations. His rhetoric reveals these motives, specifically, "…unless we work to strengthen the family… all the rest… will never be enough to cut completely the circle of despair and deprivation."[19] Johnson believed that the Black family structure, created from community behaviors, was a root cause of crime and poverty. Creating these self-help programs was, in part, a way to correct what he deemed to be Black pathology.

Perhaps these programs were ultimately not very effective because of this flawed reasoning. Although the programs intended to bolster the community, authoritative figures built and oversaw the programs, adding another method of surveilling Black populations.[20]

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[17] Hinton, *War on Poverty.*
[18] Ibid.
[19] Johnson, "Commencement at Howard University."
[20] Hinton, *War on Poverty.*

The execution of these programs highlights one of the administration's main goals: to reduce crime by controlling Black behavior.

These themes from the Johnson Presidency remain in the present-day fight for racial equity. On the one hand, Johnson made multiple advancements, including the Civil and Voting Rights Act, along with other economic improvements to foster the development of under-resourced populations. On the other hand, however, these advancements were undercut by racist rhetoric and policies. This is displayed through his less overt but nonetheless consequential denigration of Black people, which led to increased police presence in their communities.

BILL CLINTON

Today Bill Clinton is often regarded with mixed opinions. America experienced unprecedented economic growth throughout his presidency, as the unemployment rates dropped more than 3.5% over his two terms.[21] In addition, Clinton has been applauded for reducing poverty rates, specifically, the Black poverty rate.[22] Some have also viewed him as a racial justice advocate, given his diverse cabinet and attempt to connect with the Black community.[23] However, at the same time, the incarceration of Black individuals skyrocketed under Clinton's leadership. Black incarceration rates were already disproportionately high due to the tough-on-crime focus of Nixon and Reagan, but Clinton's administration intensified the problem. This is evidenced in his rhetoric throughout his campaign, election, and succeeding years, as he sought to be tougher on crime than any republican ever could.[24]

CLINTON'S RHETORIC

It is easy to see remnants of Johnson-era rhetoric throughout Clinton's speeches. Clinton adopted the community pathology approach, often blaming Black behaviors for poverty and crime. This is particularly evident in his speech at the Million Man March of 1995. The march's goal was to encourage Congress to establish equitable policies to create just conditions for

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[21] The White House, "The Clinton Presidency: Historic Economic Growth."
[22] The White House, "The Clinton Presidency: Building One America."
[23] Michelle Alexander, "Why Hillary Clinton Doesn't Deserve the Black Vote" (The Nation, 2016).
[24] Ibid.

African Americans. Protesters sought structural changes like equal funding for urban education but also a change in the image of Black people.[25] Clinton's speech directly opposed these goals:

> Well, today's march is also about pride and dignity and respect. But after a generation of deepening social problems that disproportionately impact Black Americans it is also about Black men taking renewed responsibility for themselves, their families, and their communities. It's about saying no to crime and drugs and violence… It's about the frank admission that unless Black men shoulder their load, no one else can help them… escape the hard, bleak lives that too many of them still face.[26]

With this statement, Clinton places most of the blame for social inequality on Black Americans. He argues that communities must take responsibility for the social issues they face, as equity is not possible until the culture of Blackness is changed. He also reifies the criminality stereotype by proclaiming that all Black people must say "no" to "drugs and violence." Thus, Clinton is treating the crime and drug problems as Black problems caused by individual choice rather than structures of poverty and joblessness.

Later in the speech, Clinton further endorsed the individualization approach with the following statement:

> As you demand tougher penalties for those who choose violence, let us also remember how we came to this sad point. In our toughest neighborhoods, on our meanest streets, in our poorest rural areas, we have seen a stunning and simultaneous breakdown of community, family, and work, the heart and soul of civilized society.[27]

This explanation places guilt on impoverished communities once more and specifically mentions the "breakdown of the family." This recalls the Moynihan Report's emphasis on the "broken" structure of the Black family. In this way, Black communities continued to serve as a scapegoat for politicians to evade responsibility for fixing the structural inequalities leading to unjust conditions.

In his speeches, Clinton focused on individual rather than structural racism, maintaining that individual prejudice was a key reason for present-day injustices. This can be seen in his Million Man March speech:

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[25] History.com Editors, "Million Man March" (A&E Television Networks, 2021).
[26] Bill Clinton, October 16, 1995: Address on Race Relations (Online by The Miller Center).
[27] Ibid.

> …this great divide requires a public response by democratically elected leaders. But today, we are really dealing, and we know it, with problems that grow in large measure out of the way all of us look at the world with our minds and the way we feel about the world with our hearts. And therefore, while leaders and legislation may be important, this is work that has to be done by every single one of you.[28]

While mentioning the need for legislative changes, Clinton endorses a hands-off state approach to racial inequities. Instead, he emphasizes the role of the American people; everyone must individually combat prejudice if they hope to see equal conditions for Black people. In this view, racial discrimination will end if people stop committing individual acts of racism.

RHETORIC TO ACTION: CLINTON'S CRIME BILL

Clinton's rationale for crime set the foundation for his crime policies. Blaming Black community behaviors allowed for a direct attack on the Black population, and unlike Johnson, Clinton did not try to "fix" their actions through self-help programs. Instead, he focused on punitive measures due to his commitment to be the "toughest" on crime.[29] Additionally, his hyper-fixation on individual discrimination led to ineffective recommendations that ultimately worsened the problems. These consequences originate from the pinnacle of his tough-on-crime legislation: the Violent Crime Control and Law Enforcement Act of 1994.

This Act, often known as Clinton's Crime Bill, aimed to "emphasize punishment, police, and protection."[30] He sought a proactive approach to crime control, supporting methods like increased policing on the streets to prevent crime before it happens. The grants dispersed from this legislation supported causes similar to Johnson's 1965 LEAA, with money for more police hiring, training, and technologies. Specifically, this law brought over 100,000 new police officers to law enforcement agencies across different states.[31] This bill also increased funding for prison creation and maintenance, with an initial budget of $1.3 billion in 1995 and an increase to $1.7 billion in 1999. This helped fund 125,000 new state prison cells in America.[32] In this way, Clinton made clear that he took a punitive rather than rehabilitative approach to crime. Instead of

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[28] Ibid.
[29] Alexander, "Hillary Clinton."
[30] Murakawa, *The First Civil Right, 113*.
[31] German Lopez, "The Controversial 1994 Crime Law that Joe Biden Helped Write, Explained" (Vox, 2019).
[32] Ibid.

addressing the root causes of crime, such as unequal opportunities and financial instability, he focused on expanding and strengthening the carceral state.

Along with strengthened prison structures, the 1994 Crime Bill enforced harsher and longer sentencing for various crimes. To do this, Clinton focused on increasing mandatory minimum sentences and death penalty punishments; Clinton's administration had 116 cumulative expansions compared to the 72 net expansions under republican leadership's Reagan and Bush.[33] These expansions ensured longer sentences for an increased number of crimes. This bill also expanded the number of offenses punishable by death to about sixty. These included crimes such as the murder of law enforcement officers and drug trafficking.[34]

With the already disproportionate incarceration rates of Black Americans, these actions exacerbated the problem. Mandatory minimums meant that people were incarcerated for unnecessary lengths of time, and more often than not, the crimes that had the longest minimums were committed mainly by Black people. This can be examined through the crack and powder cocaine disparity. Although this existed before the 1994 Crime Bill, it was enforced throughout this time period and extended to other crimes. Disparities within sentencing often led to communities of color incarcerated for longer sentences and punished more harshly for them.

Some may argue that Clinton attempted to address structural racism through his economic actions, as indicated by the drastic decrease in the unemployment rate from 1992 to 2001. However, these rates are not representative of the entire population; incarcerated people were not included in the count.[35] Due to individual and structural racism, the prison population was disproportionately Black and Brown people – people at higher risk in the unemployment crises. Removing populations who may have increased the initial unemployment rate decreased the sample size and produced skewed results.

Additionally, Clinton made drastic changes to the welfare system, which were detrimental to Black low-income communities. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 sought to reduce welfare dependency and propel people into the labor market.[36] It was successful in both of these goals. However, this promotion of

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[33] Murakawa, *The First Civil Right.*
[34] Douglas Berman, "Crime Bill – II. Federal Sentencing" (Council on Criminal Justice).
[35] Alexander, "Hillary Clinton."
[36] Isabel Sawhill, Kent Weaver, and Ron Haskins, "Welfare Reform Reauthorization: An Overview of Problems and Issues" (Brookings, 2001).

"personal responsibility" led to thousands of people being cut from welfare assistance and decreased the funding for welfare payments, leading to severe consequences for already under-resourced populations. This exemplifies both Johnson's and Clinton's rhetoric about the need for self-sufficiency: people must take responsibility for and establish agency to fix their conditions.

In sum, Bill Clinton sought to be tougher on crime than any republican might have been. This led to numerous harmful policies, including shrinking the welfare state and expanding the carceral state, which disproportionately impacted Black communities.

JOSEPH BIDEN

The current United States President Joe Biden has a complicated past with crime control. As a senator, Biden significantly contributed to the writing and promotion of the 1994 Crime Bill; due to his heavy involvement, some refer to the bill as Biden's crime Law. During his presidential campaign, video clips of Biden defending the bill emerged that demonstrated his belief that strict, punitive measures were needed to control crime.

Biden recently acknowledged some of the faults of this bill. As current President of the United States, he said that he seeks to rectify the harm that the legislation caused and hopes to target the issues on various fronts. As proclaimed in his presidential campaign, Biden seeks to reduce mass incarceration while reducing crime, decreasing discriminatory policing, and augmenting rehabilitative approaches.[37] However, these lofty goals require concrete steps, which he has not widely discussed. Within his proposed spending budget for 2022, he allocated funds for criminal justice reform, including an expansion of drug and mental health courts, improving officer training for citizens with mental illnesses, increasing training on racial profiling, and many restorative justice responses.[38]

Yet, these actions alone will not rectify the problems. As this analysis suggests, American leadership must focus on proactive strategies to stop crime before it occurs. However, these must not be predatory strategies like racially-biased stop-and-frisks or increased surveillance and control of Black and Brown communities. Instead, the administration must focus on solving the structural inequities that affect under-resourced communities. Specifically, social services serve

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[37] Joe Biden for President, "Joe Biden's Criminal Justice Policy" (2019).
[38] Michael Crowley, "Biden's Budget Steps Up Spending for Criminal Justice Reform" (Brennan Center for Justice, 2021).

as large deterrents to crime. This includes increased financial assistance, equal educational opportunities, and removing employment barriers.

Biden seems to be working toward those solutions, pushing legislation like the Infrastructure Investment and Jobs Act. His administration released a statement consisting of grand aspirations to fix social inequities: This Bipartisan Infrastructure Deal will rebuild America's roads, bridges and rails, expand access to clean drinking water, ensure every American has access to high-speed internet, tackle the climate crisis, advance environmental justice, and invest in communities that have too often been left behind.[39]

This historic legislation, along with law enforcement improvements, marks the beginning of potentially more effective change within the criminal justice realm. However, one must take caution in expressing contentment with these measures. The current presidency may fall into the ways of Johnson, who increased necessary services to people in need, but also increased strain between communities and exacerbated the issues they faced.

PROPOSED SOLUTIONS

Biden should listen to scholars and activists of color who advocate for these issues first-hand to ensure effective results. Specifically, the National Association for the Advancement of Colored People (NAACP) released a list of policy recommendations for the Biden-Harris administration to promote a just and equitable society. These solutions focus on structural changes that will address deeply rooted racism within institutions and benefit American citizens.

Economic empowerment is a key theme throughout the recommendations, including implementing a federal minimum wage ($15/hour), universal paid sick leave, and incentivizing inclusive hiring and promotion practices.[40] These solutions will increase benefits for employees and provide the economic mobility opportunities needed in under-resourced communities. These propositions will support many groups, but specifically, help tackle racist policies that led to the problems marginalized people face today.

The focus on structural change continues within the "reconstructing criminal justice" section of the NAACP recommendations. One suggestion encourages standardization of

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[39] The White House, "Fact Sheet: The Bipartisan Infrastructure Deal" (2021).
[40] NAACP, "Policy Recommendations for Biden-Harris Administration" (2021).

practices to hold police agencies responsible for their actions; if an agency does not adhere to the national policies, they will not receive federal grants.[41] This would incentivize local police to follow national guidelines, ensuring that law enforcement agencies establish uniformity for equitable practices.

In line with police reforms, the NAACP also calls for fully resourced "community mental health and substance abuse programs."[42] This proposition emphasizes the need for treatment and rehabilitation as an alternative to punitive measures. Within these programs, there is an emphasis on collaborating with grassroots organizations to meet this goal, which is crucial to the success of any local community program. Providing these support services will build community networks and simultaneously serve as a deterrent to crime.

Structural solutions to racism must be at the forefront of any fight for racial justice, but one must also address individual prejudice's role in perpetuating racial inequities. I believe acknowledging the language used to discuss marginalized communities is imperative to evoking cultural shifts. While Johnson and Clinton's presidencies demonstrate the harm that language can impose on minoritized groups, recognizing how rhetoric can shape policies and action is the first step in correcting this language. Hopefully, this correction encourages the use of asset-based rhetoric to flip detrimental narratives about marginalized groups.

Reversing this damaging rhetoric will promote a more accurate representation of minoritized populations and, in turn, can contribute to beneficial policies that address social problems at their core. These solutions are not aligned with past democratic presidents' methods to evade responsibility for systemic racism, but instead, propose a combination of structural and individual-level changes. These propositions will help overturn the previous tough-on-crime approach to encourage political leaders to be tough on the *root causes* of crime created through years of racial inequity in America.

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[41] Ibid.
[42] Ibid.

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THE EFFECT OF CAMPAIGN FINANCE
ON LEGISLATIVE BEHAVIOR

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

Two avenues of approach in campaign finance are its effect on the outcome of an election and the impact it has on the legislative behavior of the candidate after assuming office. While many studies in political science have examined the impact of campaign fundraising on election outcomes, few studies have examined whether or not campaign fundraising impacts Members of Congress behavior once in office. This study's primary goal is to examine the effect of a U.S. Senator's percentage of campaign contributions on legislative behavior, specifically bipartisanship measured by the Lugar Center's Bipartisan Index Scores. Utilizing a comprehensive dataset comprised of U.S. Senators elected from the 103rd (1992) through 116th (2018) Congresses, this study examines the potential effect of campaign finance in new ways.

INTRODUCTION

In the 2020 election cycle, former lobbyist and South Carolina state Democratic Party Chairman Jaime Harrison found himself a worthy opponent to three-term, incumbent Senator Lindsey Graham. With no previous experience in elected office, Harrison was able to mount an attack against the experienced senator with so much force that many considered the race a toss-up in the weeks leading up to the election. Harrison was backed by large amounts of money from all over the United States, setting records within the campaign finance books. Come time for the November 2020 election, Harrison was unable to secure the seat in the U.S. Senate despite raising $130 million, including out-of-state contributions, and the $22 million lead in funding over Senator Graham.[1] Harrison may have been unable to win the election, but he was able to garner extreme support from his financial constituency towards a common goal.

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[1] "South Carolina Senate 2020 Race OpenSecrets", Center for Responsive Politics. Accessed April 22, 2021. https://www.opensecrets.org/races/candidates?cycle=2020&id=SCS2&spec=N.

The 2020 senatorial election that took place in South Carolina may have been an example of an instance when campaign contributions had little to no effect over the outcome of an election. Despite the fact, the race in South Carolina demonstrated the importance of money within the legislative branch of the United States by showing how far financial constituencies are willing to go by raising a substantial amount of money in hope for success. The high amount of funds was not enough to win Harrison the seat in the U.S. Senate even though it is commonly believed that more money equals success. But did this fundraising disparity impact the subsequent legislative behavior of Senator Graham?

A key point for those in an elected office, as well as those seeking one, is to understand that success is not only defined by winning an election, but also by the passing of legislation and even determining if an issue is important for deliberation.[2] Understanding the dynamics of constituency influence is crucial to the way money flows from donor to candidate and then to legislative action. The effects of campaign contributions on legislative behavior has been shown to be ambiguous, leading to a misunderstood relationship between the two. Therefore, the broad purpose of this study is to surrounding the question: What is the impact of campaign contributions on legislative behavior in Congress?

LITERATURE REVIEW

A member of Congress' constituency is defined as the community of people that they represent within their respective states. Although a simple definition, the funds which support candidates in campaigns do not come primarily from the constituency they represent. Rogers (2019) makes a point to question why the majority of money comes from outside of a legislator's constituency, but first distinguishes between various types of constituencies, such as geographic, reelection, primary, and personal constituencies.[3] The constituency is said to play a critical role in the decision-making process for a member of Congress due to the fact that the constituency is the group of people that gets a member reelected. Oftentimes the legislator is then controlled by the preferences of their constituents due to the reality of their constituency's ability to determine

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[2] Hall, Richard L, and Frank W Wayman. 1990. "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees." *The American Political Science Review* 84 (3): 797-820. Accessed April 18, 2021. doi:10.2307/1962767.

[3] Rogers, Josephine. 2019. "Financial Constituencies in the 2018 Senate Midterm Elections."

their reelection status. To support this idea of a constituency's effect on legislative behavior, Miller and Stokes (1963) find evidence that a member's behaviors are influenced by their own predispositions and by their perception of the preferences held by their constituents.[4] The actuality of a constituency knowing enough information necessary to make decisions is unlikely which causes a member to resist this idea of constituency control.[5] However, it would make sense to believe that out-of-state money which fuels a representative's campaign does have some control over said representative's decisions.

Financial constituencies, as described by Rogers (2019), are where the out-of-state contributions originate from and are significant because they are made up by a majority outside of the member's real constituency. The formation of financial constituencies has not been meaningless or without intention. The addition of money into the mix sparks questions relating to the effects of this money on legislative behavior. Discussions on the effects of campaign contributions on legislative behavior have led to varying conclusions. The bulk of academia on the topic of campaign finance and legislative behavior can be separated into two groups. These groups are distinguished by evidence of what kind of influence money had on legislative behavior. Whether it be directly affecting legislative behavior or by affecting the actions that lead to a greater chance of favored legislative behavior, understanding money's role when it comes to influencing members of Congress and their decisions is an important foundation for relating this idea with the concept of financial constituencies.

When one thinks about the role of money in politics, examples of direct effects are the easiest and most straightforward to come up with. Examples of direct effects of money are similar to an everyday transaction at your local grocery store, the campaign contributor would give money to a candidate while expecting some type of action in their best interest. W. P. Welch found that members of Congress who received contributions from milk PACs were more likely to vote for legislation that favored milk PACs a year later.[6] Although contributions determine very little according to Welch, his findings support the idea that contributions directly influenced the behavior of specific legislators. On the other hand, Stratmann (1991), Roscoe, and Jenkins

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[4] Miller, Warren E, and Donald E Stokes. 1963. "Constituency Influence in Congress." *The American Political Science Review* 57 (1): 45-46. Accessed April 18, 2021. doi:10.2307/1952717.
[5] Ibid.
[6] Welch, W P. 1982. "Campaign Contributions and Legislative Voting: Milk Money and Dairy Price Supports." *The Western Political Quarterly* 35 (4): 478-95. Accessed April 18, 2021. doi:10.2307/447336.

find that contributions are actually a key determinant of demonstrating legislative behavior, challenging Welch's previous assertion.[7] Stratmann found that in eight out of ten models, contributions explained the legislative behavior of select members' votes on bills relating to farm subsidies. Stratmann's (1991) findings are important because they evolve the traditional idea on campaign contributions by saying that, regardless of their size, contributions can bring substantive effects to the outcomes of elections. Roscoe and Jenkins go on to support the direct effects of contributions on legislative behavior by showing that one in three roll call votes are influenced by campaign contributions. Through their meta-analysis of roll call voting, the scholars conclude that this relationship between contributions and behavior is likely to support the member's goal of reelection.[8] Lastly, Fellowes and Wolf discuss the effects of business campaign contributions on voting behavior in Congress. Although they mainly find indirect effects within their study, Fellowes and Wolf present findings that business campaign contributions influence pro-business policy voting behavior in Congress.[9] Their findings ride the line between direct and indirect effects of campaign contributions.

Indirect effects of campaign contributions on legislative behavior can be regarded as contributions which do not necessarily buy a vote, but instead, they buy the attention from members of Congress. The concept of buying access to a member of Congress was introduced by Hall and Wayman and it has significantly influenced the way in which money is thought of. Their findings showed that money bought a donor "time, energy, and legislative resources" which they argue greatly affects the legislative behavior of members.[10] In line with this sphere of literature, Joshua Kalla and David Broockman's research design provides a real world example of buying access through the use of phone calls and specific wordage to congressional staff.[11]

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[7] Stratmann, Thomas. 1991. "What Do Campaign Contributions Buy? Deciphering Causal Effects of Money and Votes." *Southern Economic Journal* 57 (3): 606-20. Accessed April 18, 2021. doi:10.2307/1059776., Roscoe, Douglas D, and Shannon Jenkins. 2005. "A Meta-Analysis of Campaign Contributions' Impact on Roll Call Voting." *Social Science Quarterly* 52-68. Accessed April 18, 2021. http://www.jstor.org/stable/42956049.

[8] Roscoe, Douglas D, and Shannon Jenkins. 2005. "A Meta-Analysis of Campaign Contributions' Impact on Roll Call Voting." *Social Science Quarterly* 52-68. Accessed April 18, 2021. http://www.jstor.org/stable/42956049.

[9] Fellowes, Matthew C, and Patrick J Wolf. 2004. "Funding Mechanisms and Policy Instruments: How Business Campaign Contributions Influence Congressional Votes." *Political Research Quarterly* 57 (2): 315-24. Accessed April 18, 2021. doi:10.2307/3219874.

[10] Hall, Richard L, and Frank W Wayman. 1990. "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees." *The American Political Science Review* 84 (3): 797-820. Accessed April 18, 2021. doi:10.2307/1962767.

[11] Kalla, Joshua L, and David E Broockman. 2016. "Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment." *American Journal of Political Science* 60 (3): 545-58. Accessed April 18, 2021. http://www.jstor.org/stable/24877480.

Disclosing the fact that callers were political donors caused members of Congress to become more available suggesting the influence money can have.

Money also can be used as a means to secure a desired legislative outcome through timed instances of donations, as introduced by Stratmann (1995). This idea can still be categorized as an indirect effect of campaign contributions because of the way voting can be influenced depending on the timing of the donation. Stratmann (1995) finds that contributions given at the same time of a vote have a larger impact than the contributions donated during the last election.[12] In this instance, money does not directly purchase outcomes, but instead, money's timing has an influence on the decisions members of Congress make. A very important point in this literature has been made by Fellowes and Wolf which states that money is sought out carefully by members of Congress to avoid the accusations of quid pro quo. The scholars refer to this action as "tactical rationality" which can be thought of as a way for members to artificially create the facade of an indirect effect of money when their legislative decisions may have been due to a direct effect of campaign contributions. In other words, Fellowes and Wolf find that extra steps may be added between donor and recipient in order to disguise direct effects.[13]

The relationship between campaign contributions and legislative behavior is a critical aspect to the way our system works. The dangers of overstepping and practicing quid pro quo, while still being realistic about how reelection will occur without securing contributions, is a complex and delicate process for members of Congress to consider. Linking the idea of constituency influence and campaign contributions effects on legislative behavior will provide the necessary, latent view into the effects of a financial constituency and its influence over legislative behavior in Congress. Lynda Powell makes a nod to the idea that there is a relation between affluence and influence and this very relation is supported by Kalla and Broockman, where they find that Americans without a source of wealth are at a disadvantage when it comes to political participation.[14] Much of the current research has focused on the broad notion of money in general having an effect on legislative behavior. This research focuses on shrinking the

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[12] Stratmann, Thomas. 1995. "Campaign Contributions and Congressional Voting: Does the Timing of Contributions Matter?" *The Review of Economics and Statistics* 77 (1): 127-36. Accessed April 18, 2021. doi:10.2307/2109998.
[13] Fellowes, Matthew C, and Patrick J Wolf. 2004. "Funding Mechanisms and Policy Instruments: How Business Campaign Contributions Influence Congressional Votes." *Political Research Quarterly* 57 (2): 315-24. Accessed April 18, 2021. doi:10.2307/3219874.
[14] Powell, Lynda W. 2014. "The Influence of Campaign Contributions on the Legislative Process." *Duke Journal of Constitutional Law & Public Policy* 9 (2): 75-101. https://scholarship.law.duke.edu/djclpp/vol9/iss2/5.

scope down into a manageable view of a larger topic. The research community will be able to benefit by attaining a greater insight into the relationship between Congress and their financial constituencies in a specific way.

THEORY AND HYPOTHESES

The impact of campaign contributions on legislative behavior in Congress is an area of interest too large to research without distinct parameters. With the direct and indirect effects of campaign contributions on legislative behavior covered, it is crucial that these concepts are considered while evaluating the study. The following hypothesis, supported by a thorough dataset, will guide my exploration into the dynamic between members of Congress and their donors. Before evaluating said hypothesis, the theory driving the dynamic in play concerning elected legislators and their donors should be discussed in further detail through the frame of received campaign contributions.

For a member of Congress, partisanship is a tool that propels the policy-making decisions forward. It enables the legislator to best serve the constituency they represent by uniting goals and policies with other members of their party to bring consistent results to all. It can be considered one of many measurable actions taken by elected officials while in office. Often times, however, a member of Congress is faced with opportunities or motivations to behave in a more bipartisan manner than they normally would. One reason for this behavior can be attributed to an increase in campaign contributions for the legislator. Legislators are focused on staying in office and the way this is achieved is through more funds. As Miller and Stokes convey, "a member's behaviors are influenced by their own predispositions and by their perception of the preferences held by their constituents," and an interpretation of their statement can mean that a member of Congress is constantly considering not only their constituency's needs, but the needs of their financial constituency as well.[15] The goals of the financial constituency are not always in line with the goals of the legislator, so a choice is created for the member of Congress: Take bipartisan action in order to secure funds, or, remain completely partisan while risking the fact that funds may not be provided to the extent that they could have been if bipartisan action was

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[15] Miller, Warren E, and Donald E Stokes. 1963. "Constituency Influence in Congress." *The American Political Science Review* 57 (1): 45-46. Accessed April 18, 2021. doi:10.2307/1952717.

taken. In the case for legislators who must delicately balance the desires of their constituency and party, bipartisan financial action is attractive as it enables members to gain funds while appealing to their constituency. The degree of bipartisanship that a member of Congress exhibits depends on the amount of reliance they have on campaign contributions from their financial constituency. In order to guide this theory about the impact that campaign contributions may have on legislative behavior, bipartisanship specifically, a testable hypothesis will be examined.

The guiding parameter that will bound this study relates campaign contributions to the bipartisan behavior of various senators:

> *H1: If a U.S. Senator has a higher percentage of campaign contributions compared to their general election opponent, then they will be less bipartisan in their legislative role in the U.S. Senate.*

If a senator is able to garner a significant amount of financial support compared to their opponent, then their actions while in office can be more in line with their own party. Accordingly, the legislator will not be required to make a choice between their constituency and party based on the pressures of their financial constituency, meaning the senator would not have to act in a bipartisan manner. The hypothesis will allow the study to define a specific scope in line with campaign contributions and legislative behavior. Bipartisanship is a significant piece of legislative behavior and the appropriate data and methods are readily available to allow for testing and a deeper examination. Therefore, providing a focused view into the role of campaign contributions and legislative action is beneficial to understanding the role of money in politics as a whole, such as the role financial constituencies play in influencing the decisions of members of Congress while in office.

DATA AND METHODS

This research examines the effects of campaign contributions on legislative behavior by looking into the degree of bipartisanship of U.S. Senators. To examine the hypothesis above stating that if a senator has a higher percentage of campaign contributions then they will be less bipartisan in their legislative role, a substantive dataset has been constructed representing independent and dependent variables. The dataset will be used to conduct linear and multi-

variate regressions of models suited to support the hypothesis. However, the methods behind creating a complex and thorough dataset must first be appropriately discussed.

The data set includes U.S. Senators ranging from the 103rd Congress (1992) through the 113th Congress (2018). It is organized by Congress with a listing of the senators belonging to their respective congressional number. This means that many senators are listed multiple times within the dataset if they have served more than a single term. An important point to note is that there are several senators excluded from each Congress due to a couple of reasons that will be touched on later. Furthermore, the dataset consists of 1318 individual data points each including twenty-five variables, not including basic identification data such as first and last name, year, state, and the Congress which they belong to. The primary variables of interest include percent of received campaign contributions associated with each individual senator ranging from 1992 through 2018 as well as their corresponding academia scores which include the Legislative Effectiveness Score, DW-NOMINATE Score, and the Lugar's Bipartisan Index Score. For the purposes of this research, the Lugar Center's Bipartisan Index Scores and the senator's percentage of received campaign contributions are the main dependent and independent variables, respectively.

First off, percent spending is defined as the percentage of campaign contributions that a senator received in comparison to their general election opponent. The data on percent spending was sourced from the Political Science Department at the United States Naval Academy and the necessary information was transferred to the main dataset pertaining to this study. Each percent spending value was individually entered to account for the proper dates of funding. Additionally, the percent spending value prioritizes the percentage of campaign contributions leading up to the year of the election and never uses a percentage from a future campaign. However, if there is insufficient data on a prior election for a senator, then the percentage associated with the current year being examined will suffice as it is the most current data. For example, if the percentage of campaign contributions for a senator in 1992 is being analyzed, a value six years before or less (most recent being preferred) is used. If there is data available for the years of 1986 and 1988, the 1988 data is most recent and will be used. If there is no data available before 1992, the percent spending in the year of 1992 is used since it is the closest we have to accurate data. If there is no data available, the entry is annotated and a reason is provided. Equally important, Lugar's Bipartisan Index Score is attained from the Lugar Center and is used to objectively

measure the degree of bipartisanship of members of Congress. This is accomplished by measuring the frequency that a legislator co-sponsors a bill introduced by the opposite party and the frequency of attracting co-sponsorships to the legislator's own bill.[16] It is important to note that bills, rather than votes, are used to attain their score because bills are "carefully considered declarations of where a legislator stands on an issue," according to the Lugar Center.[17] Also noteworthy, any score that is positive is considered bipartisan action and any score that is negative is not considered bipartisan action for the respective legislator, according to the Lugar Center.

As mentioned before, several senators were excluded from their respective Congress due to a lack of data from both the percent spending and Lugar Center databases. The majority of percent spending absences were attributed to senators who were appointed to their elected position or participated in a special election. Freshman senators with no prior data on their percentage of received campaign contributions were also excluded. As for a majority of other senators not listed in the dataset, the Lugar Center intentionally excludes senators based on time in office and their leadership role in the Senate. Senators who have either served less than ten months of a full Congress, are the Minority Leader, or the Majority Leader are excluded from the dataset since their score is undeterminable or based on other factors.[18] A listing of these excluded senators can be found in the tab labeled "Appendix" in the dataset file. Lastly, the remaining supplemental variables contribute to the study by allowing the main variables to be tested in conjunction with other factors as described in the models that will be described below.[19]

This research uses the R Commander package within the R Program in order to run models on the created dataset. Results from four models have been collected, however, before analyzing results, it is important to discuss the organization of each model individually. All of the tested models are types of regressions which test the dependent and independent variables along with a set of supplemental variables. Model 1 is a single linear regression which consists of two variables: percent spending and Lugar's Bipartisan Index Score. This model is meant to show the simple linear regression between bipartisanship (the dependent variable) and amount of contributions received by a senator (primary independent variable of interest). Model 2 and

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[16] 2022. The Lugar Center. https://www.thelugarcenter.org/ourwork-Bipartisan-Index.html.
[17] Ibid.
[18] Ibid.
[19] See tab "Codebook" in Dataset Excel file for an extensive listing of supplemental variables and their descriptions.

Model 3 are expanded multiple regression models meant to enhance the overall understanding of certain variables on bipartisanship and percent spending. First, Model 2 is organized to reflect the percentage of campaign contributions received, gender, and prior military service and their effect on the dependent variable of bipartisanship, measured by Lugar's Bipartisan Index Scores. Model 2 is significant because it is composed of the independent variables which represent a few of the senator's past experiences. Next, Model 3 is organized to reflect the specific parts of senator's past legislative experiences relating directly to public service in addition to the variables included within Model 2. The added variables include their vote share in the last election as well as any experience while serving in a state legislature. Model 3 provides significant variables relating to a senator's career before the Congress being analyzed which may have a large impact on bipartisanship. Lastly, Model 4 is a multiple regression consisting of nine independent variables to model their relation with bipartisanship. Model 4 is the full model considering all relevant independent and control variables that likely impact legislative behavior in Congress.

The dataset that has been constructed is a comprehensive array of testable variables. Primarily, the main independent variable is the legislator's percentage of campaign contributions in comparison to their general election opponent. The main dependent variable is the senator's measurable degree of bipartisanship using Lugar's Bipartisan Index Scores. A wide array of other independent variables has been gathered to enhance the results of the research being conducted. The four models test the hypothesis that senators with higher percentages of campaign contributions are less bipartisan in their legislative role. Using simple and multi-variate regressions, results are able to be gathered for analysis purposes.

RESULTS AND ANALYSIS

The simple and multi-variate regression models are tools that help predict values for a dependent variable when given the values for others, such as one independent variable or multiple of them. In this research there is one simple regression model and three multi-variate regression models. The simple regression model uses one independent variable to predict the value of the dependent variable while the multi-variate regression models use several independent variables to do so. The models then give two values for each of the independent

variables listed. The value on top, which is not in parentheses, is known as the coefficient while the value in parentheses is defined as the standard error. The standard error is defined as the slope of the coefficient provided which gives an indication as to the rate of change of the value of the dependent variable being analyzed. The intercept value is a measure of the dependent variable when all independent variables have been set to zero to provide a reference frame when analyzing results. A detailed analysis of each model will be provided, organized by the models listed in Table 1.

In Model 1, a simple linear regression was run to predict the value of the dependent variable, a senator's Lugar Score. When provided with the value of a single independent variable, the percentage of campaign contributions received, the regression suggests the impact that the independent variable may have on the dependent variable. This is annotated in Table 1 as Percent Spending in Last Campaign and shows that as the percentage of campaign contributions spent in a senator's last campaign increases by a single percent, their Lugar's Bipartisan Index Score increases by a value of 0.002552. This result is statistically significant. An increase in their Bipartisan Index Score suggests that their degree of bipartisanship has also increased, which goes against the hypothesis that an increase in percent spending will cause a senator to behave in a less bipartisan manner. Although this illustration of percent spending on bipartisanship is relevant, it should be used as a baseline for understanding since Model 1 represents the Lugar Score when only the single independent variable of interest is being examined. In addition, Graph 1 is a visual representation of the simple linear regression. It shows a very small positive slope indicating that although bipartisanship increased, it occurred at a slow rate. The slope of the regression line is also annotated by the standard error value in Model 1 of the percent spending value. A more comprehensive understanding of the effect of campaign contributions on bipartisanship can be found when modeled with multiple independent variables.

Model 2 and Model 3 within Table 1 are multi-variate regressions which aim to supplement the results from Model 1 and Model 4. They include the percentage of campaign contributions and gradually add independent variables to serve a specific purpose. The intentional grouping of certain independent variables in Model 2 and Model 3 will indicate if a specified grouping explains bipartisan behavior of senators based on experiences, whether in gender, military service, state government, and previous vote share.

In Model 2, the specified grouping of independent variables aims to include independent variables which pertain to specific background experiences. These experiences include their percentage of campaign contributions received, gender, and prior military service which are capable of being measured in a dataset. Similarly, to Model 1, as a senator's percentage of campaign contributions spent in a senator's last campaign increases by a single percent, their Lugar's Bipartisan Index Score increases by a value of 0.002867. This result is also statistically significant. Again, an increase in their Lugar Bipartisan Index Score suggests that their degree of bipartisanship has also increased, which goes against the hypothesis that an increase in percent spending will cause a senator to behave in a less bipartisan manner. Also, of significance, it is shown that a senator's prior military service increases their Lugar's bipartisanship score by 0.007635 which is not a very large increase compared to the effect of a senator's gender on bipartisanship at 0.127363. When all independent variables in Model 2 are set to a value of zero, the intercept's value is a representation of this and for Model 2, its value is -0.168259 suggesting a decrease in bipartisanship among senators in Congress. The most significant independent variables found within Model 2 are percentage of campaign contributions and gender and have a positive effect on the degree of bipartisanship of senators in Congress.

In Model 3, the specified grouping of independent variables aims to describe a senator's public service experience. These variables include the legislator's percentage of campaign contributions received, gender, military service, vote share in the last election, as well as any experience while serving in a state legislature. Compared to Model 1 and Model 2, the percentage of campaign contributions had a lesser effect on the degree of bipartisanship with a value of 0.001206. This suggests a possible negative trend in bipartisanship when there is an increase in campaign contribution percentage. The two most significant independent variables in Model 3 were gender and a senator's vote share in their last election. Although contradictory to H1, being a female has a positive effect on a senator's bipartisan action in Congress just as it did in Model 2. The vote share that a senator received in their last election still positively affects their degree of bipartisanship, although small, with a value of 0.006924. Most statistically significant, Model 3's intercept is at a value of -0.473557 which is defined as a decrease in degree of bipartisanship when all independent variables are set to a value of zero. Despite the fact that the legislator's degree of bipartisanship increased in all independent variables but one, this is useful information to supplement models 1 and 4 as it suggests the importance of past

congressional experience when behaving in a bipartisan manner. The model's purpose is to relate variables from a senator's career before the Congress and their impact on bipartisanship which can be drawn off to support results in models 1 and 4. Model 2 and Model 3 refine the scope of research by breaking up the several independent variables into two distinguishable groups that show the degree of bipartisanship with the impact of percent spending.

A multi-variate regression was used in Model 4 including all of the independent variables. The model is the most comprehensive since it combines all prior models into one regression to provide a clearer understanding of the effect of campaign contributions on bipartisanship. First, the regression supports the hypothesis as Model 4 suggests that as the percentage of campaign contributions spent in a senator's last campaign increases by a single percent, their Lugar's Bipartisan Index Score decreases by a value of 0.0001148 with a standard error of 0.0013113. Although this is not statistically significant, the negative score indicates that as a senator's percentage of contributions increases, the degree of bipartisanship decreases by a very small factor. Since this small decrease in bipartisanship accounts only for a single percentage increase, then as campaign contributions increase the degree of bipartisanship decreases at a very minimal rate as bounded by the standard error. These results conflicts with the results from the simple linear regression in Model 1 showing the crucial role of the other independent variables on bipartisanship. Model 4 also suggests that a senator's prior military service decreases their bipartisan score opposed to the increase shown in Model 2. The most statistically significant independent variable came from a senator's membership within a power committee. Simply by participating in a power committee, the legislator's degree of bipartisanship increased by a factor of 0.2800816. Despite the fact that this was not a part of the hypothesis, it is a noteworthy finding for senatorial behavior.

CONCLUSION

The 2020 election between incumbent Senator Lindsey Graham and Jaime Harrison illustrated the cruciality of money in the role of campaigns. Even more interesting, Senator Graham's Lugar bipartisan index score in the 2018 election was a 0.76101.[20] This value suggests that, according to the Lugar Center, Senator Graham behaved in a bipartisan manner while

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[20] 2022. The Lugar Center. https://www.thelugarcenter.org/ourwork-Bipartisan-Index.html.

serving as South Carolina's senator due to the positive value indicated. In 2018, Senator Graham gained 96.45 percent of the campaign contributions in comparison to his general election opponent which goes against the stated hypothesis that a high percentage of campaign contributions will cause a senator to be less bipartisan. Since Senator Graham gained a low percentage of the campaign contributions in the 2020 election even though he was successful, it will be interesting to see how the level of bipartisanship varies from his 2018 score.

The results of this research, while not substantively and statistically significant in the full regression model, have provided a path forward for the future research of legislative behavior, specifically in the Senate. The use of Lugar Index Scores is a new method of measuring legislative behavior, and this study did uncover a statistically significant result in the simple regression model. It is important to note that this study focused solely on Senate data. There may be something unique about legislative behavior, and specifically bipartisanship, in the United States Senate that impacted the results. The next steps in this research agenda should examine the impact of campaign financing on legislative behavior and bipartisanship in the House of Representatives.

APPENDIX

Regression Table 1:
Campaign Spending Impact on Bipartisanship in Congress (Lugar Index)

	<u>Model 1</u>	<u>Model 2</u>	<u>Model 3</u>	<u>Model 4</u>
Percent Spending in Last Campaign	0.002552 * (0.001030)	0.002867 ** (0.001044)	0.001206 (0.001252)	-0.0001148 (0.0013113)
Female		0.127363 * (0.064069)	0.126663 * (0.064265)	0.1073065 (0.0637095)
Military Veteran		0.007635 (0.047852)	-0.014451 (0.047860)	-0.0512858 (0.0481602)
State Legislative Experience			0.023684 (0.044018)	0.0177781 (0.0434562)
Vote Share Last Election			0.006924 * (0.002902)	0.0053906 (0.0029014)
Majority Party				0.0996068 (0.0721153)
Power Committee Member				0.2800816 *** (0.0532207)
Seniority in Congress				0.0068528 (0.0051590)
Subcommittee Chair				0.0016082 (0.0727833)
Intercept	-0.130293 (0.074985)	-0.168259 * (0.078061)	-0.473557 ** (0.147275)	-0.5854532 *** (0.1511731)
Adjusted R^2	0.003884	0.005722	0.008772	0.03493
N	1318	1318	1318	1318

Graph 1:
Campaign Spending Impact on Bipartisanship in Congress (Lugar Index)

Percent Spending on Bipartisanship
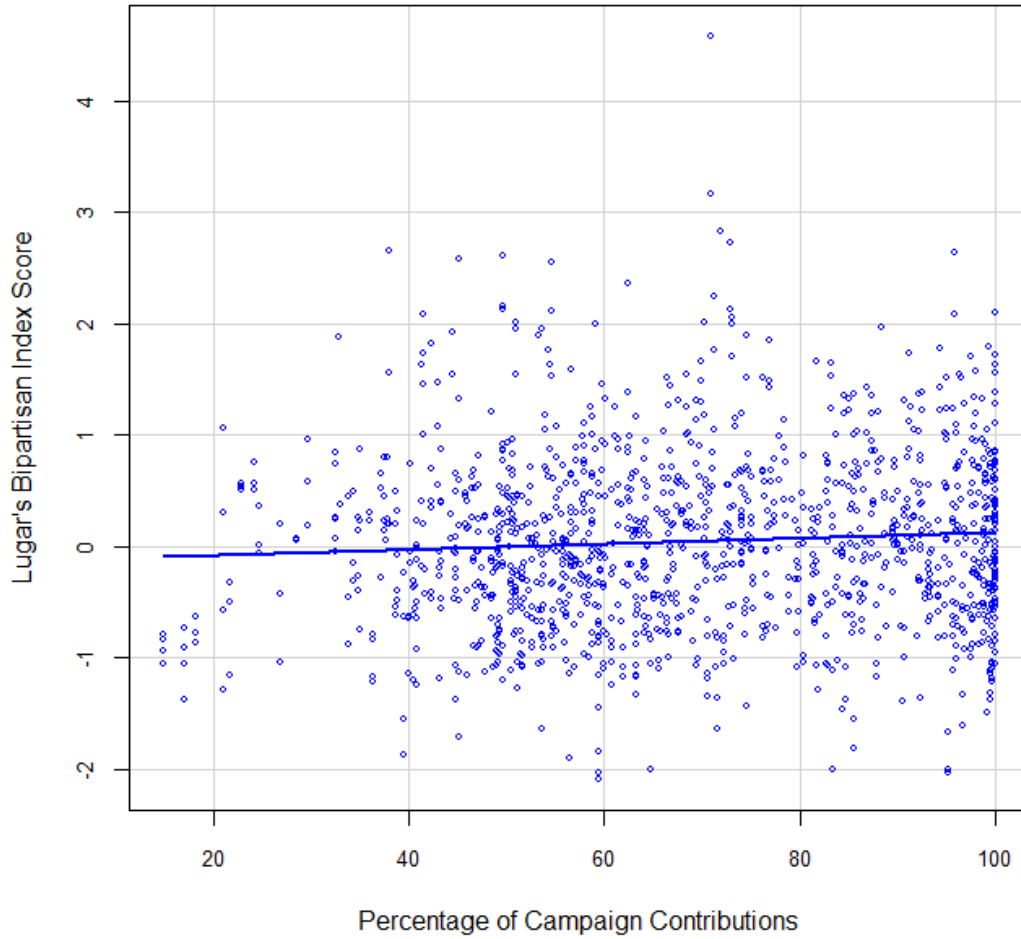
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"BY THE WILL OF GOD":
ANALYZING THE INTERSECTION OF FAITH AND THE RHETORIC OF FOREIGN POLICY WITHIN EARLY TWENTIETH CENTURY PRESIDENTIAL INAUGURAL ADDRESSES

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Despite Thomas Jefferson's call for a wall of separation between church and state in his letter to the Danbury Baptist association in 1802, religion inevitably and consistently infuses the minds, hearts, and maybe most importantly, the rhetoric of chief policy makers in U.S. history. This project will examine how U.S. presidents have utilized faith-based rhetoric to promote foreign policy initiatives to the U.S. public. This analysis focuses specifically on inaugural addresses, those missives to Americans which are meant to establish the incoming president's vision for the future of the country and their assessments of the needs of the nation. Of particular interest are Presidents Woodrow Wilson, Warren G. Harding, Calvin Coolidge, and Franklin Delano Roosevelt, who each contributed to the development of internationalism and/or nationalism within U.S. foreign policy during the early twentieth century and incorporated faith-based language into their inaugural addresses in order to present such approaches.

INTRODUCTION

In his first inaugural address, President Dwight D. Eisenhower, the famed five-star general and former Supreme Commander of the Allied Forces, opened his missive to the nation with a prayer. Asking the crowds to bow their heads, the new president called upon "Almighty God" to grant the members of his administration the powers of discernment, concern for others, and that "all may work for the good of our beloved country and Thy glory."[1] Eisenhower had been raised in a strong religious tradition by his Mennonite parents.[2] In 1953, following his first inaugural address, he would newly affiliate with the Presbyterian Church, USA. Contemporary journal articles at the time would ponder the influence of such faith in his politics, arguing that a certain piety consistently manifested itself in his presidential character.[3] Whether such religious

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[1] Dwight D. Eisenhower, "First Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., January 20, 1953).

[2] William I. Hitchcock, "How Eisenhower Found God in the White House," History Channel, August 22, 2018, https://www.history.com/news/eisenhower-billy-graham-religion-in-god-we-trust.

[3] Robert E. Fitch, "Piety and Politics in President Eisenhower," *The Antioch Review* 15, no. 2 (Summer 1955): 148-158. https://www.jstor.org/stable/4609783.

rhetoric as his inaugural benediction truly did issue from strong spiritual conviction, a more calculated political strategy, or both, the meaning would not be lost upon the American people.

In the 1950s, over 90% of the U.S. population identified as Christian.[4] Faith was their common language, acts of devotion were social currency, and the characters and morals of Christian scripture framed the national culture. President Eisenhower's prayer in his first inaugural address may have been one of the most overt references to faith within this body of speeches. However, he was not the first president to speak the language of faith in this political forum, and he certainly would not be the last. Generations of presidents with varying levels of devotion have been reliant upon the language of Christian faith in order to share with the American people their political visions for the country and generate public engagement with their proposals. This reliance on faith-based language has woven itself into the spoken and written materials of countless presidents, evidencing itself in an especially prominent manner within the inaugural addresses of U.S. chief executives. Within this body of examples is a common thread; presidents translate their theories on foreign policy and the U.S.' place in the world, an area of policy over which the Executive Branch has the autonomy to exert such control, into this language.

Between a relative lack of autobiographical information and the common-sense restrictions against accurately reading another person's true thoughts, it is difficult to fully gauge the extent of religious devotion each president internally felt, especially those who served decades and centuries ago. Primary testimonies and secondary sources at least support variations in the intensity of presidents' external religious actions, from making church attendance and prayer a public piece of presidential identity to treating faith as a deeply personal matter for the heart, not for the public.[5] Despite this ambiguity in determining actual conviction and spectrum in outward religious practice, the employment of faith-based language within presidential rhetoric on foreign policy remains both consistent and frequent. Inaugural addresses and other pieces incorporate such faith devices more often than not, as they aim to cater to a U.S. population who also is and historically has been religiously convicted, more often than not.[6]

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[4] Frank Newport, "Percentage of Christians in U.S. Drifting Down, but Still High," Gallup, December 24, 2015, https://news.gallup.com/poll/187955/percentage-christians-drifting-down-high.aspx.

[5] "God in the White House," *PBS: American Experience,* accessed on February 20, 2022, https://www.pbs.org/wgbh/americanexperience/features/godinamerica-white-house/.

[6] United States House of Representatives, *Inaugural Addresses of the Presidents of the United States: From George Washington 1789 to Richard Milhous Nixon 1969,* House Document 91-142 (Washington, DC: United States

Church and state may claim to be separated, but faith still appears to hold cultural and even moral capital to support the contrary.

The early twentieth century, decades which saw the United States through some of its most influential foreign policy shifts, featured presidents who took full advantage of religious language to paint portraits of their understandings of the country in an international context. Whether promoting a liberal, internationalist conception of the U.S. role in the global community or a more nationalist, isolated path, the presidents especially spanning from 1913 (Woodrow Wilson) to the 1940s (Franklin D. Roosevelt) each coded their perspectives on the matter into the spiritual lexicon of the American people. The specific purpose for each president's rhetorical choices may vary. Yet, these policy preferences were undoubtedly shaped by the historical and political context in which these presidents were leading. Through an exploration of these choices and contexts, I argue that the faith-based language employed to explain or justify these preferences earns its significance through the dual purpose it effectively and consistently serves: to create cohesive, unified visions in presidential foreign policy approaches throughout the decades, specifically internationalism and nationalism; and to communicate to the contemporary U.S. public the ways in which such policy is to be understood and thereby supported and believed in.

INAUGURALS, INTERNATIONALISM, & ISOLATIONISM

For the purposes of examining the rhetoric of the early twentieth-century presidents within a common setting, the inaugural addresses of each president, from Woodrow Wilson to Franklin D. Roosevelt, have been selected for examination. Inaugural addresses are distinguished from the remaining speeches presidents give. These keynotes, given following a president's formal profession of the oath of office on the west façade of the U.S. Capitol, are meant to "outline the more permanent aspects of U.S. public policy that constrain the future behavior of the president and the nation."[7] Ultimately, the significance of the inaugural address extends past that of a State of the Union, which also outlines policy initiatives before both houses of the

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Government Printing Office, 1969), Print. Newport, "Percentage of Christians in U.S. Drifting Down, but Still High," https://news.gallup.com/poll/187955/percentage-christians-drifting-down-high.aspx.

[7] David F. Ericson, "Presidential Inaugural Addresses and American Political Culture," *Presidential Studies Quarterly* 27, no. 4 (Fall 1997): 728. https://www.jstor.org/stable/27551797.

legislature. It is a cultural performance, one reinforced with recurring themes and visions for the United States which unite people with both the U.S. historical legacy and future presidential outlook for the country.[8] The nature of these addresses thus provides a richness in content for use in this analysis. Not only are presidents more apt to tie their policy approaches into rhetorical techniques, but the goal which these addresses hold for grandly appealing to the emotions and motivations of the American people better connects to the purpose of marketing policy frameworks to the nation which this study investigates. Finally, every president who has assumed the office following an election (four assumed the office following the deaths or resignations of their predecessor) has delivered an inaugural address of varying lengths, detail, and literary flourish. Standardizing the settings of such speeches allows a closer examination of each speech's intricacies, isolated from confounding variables.

The foreign policy approaches predominant in U.S. political discourse during the early twentieth century also require attention prior to contextualizing them within both historical settings and rhetorical devices. Often arranged dichotomously, the doctrines of nationalism and internationalism each hold the partiality of presidents throughout the forty years studied. Shifts in the power and popularity of one often occur in response to the consequences of employing the other. To begin with, internationalism is a political framework most associated with a liberal theory of international relations. It stresses the power of collective action among nations and calls upon states to interact integratively with each other to create value through mutually beneficial relationships. The approach is commonly referred to as Wilsonianism in tribute to one of its first major articulators, President Woodrow Wilson, who outlined the doctrine in his Fourteen Points for resolving World War I (WWI). President Wilson, among other U.S. internationalists, foresaw a leading role for the United States in facilitating an internationalist community, manifested in the League of Nations. Conflicts between countries would thus be handled through detached negotiations, an alternative to the violence and war so destructive to the European continent during WWI. This international community would consist of states who, once considered mature enough by global leaders like the United States, would self-determine and declare their right to statehood from underneath the hefty empires which had precipitated the scale of world war. Again, the United States, according to President Wilson and other

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[8] Ibid.

internationalist figures, was to play a key role in policing this community and the legitimacy of its members.

A nationalist approach to foreign policy is posed as the converse to internationalism. It did not imply strict isolationism; however, it did discourage the idea of sacrificing any U.S. sovereignty to any international body (the League of Nations) or community. Reminiscent of George Washington's forewarning against involvement in foreign entanglements in his farewell address, nationalists wish to structure U.S. intervention in the world on U.S. terms.[9] International engagement is not an obligation, as Wilson proposes, but rather one opportunity of many. Nationalists do not have to be isolationists, shunning the strengthening of relationships with other countries. They do, however, always wish to maintain a wide, autonomous range of motion for the country, especially in the face of pending conflict. The theory of realism in international relations finds its political iteration often in nationalism, as the maintenance of power in relation to other countries is a central concern. Ultimately, the vision for the United States in a nationalist perspective is the upholding of national sovereignty and excellence in relation to other countries. The country is seen as having a destiny for greatness; progress towards that fate slows when other states are deemed to be prioritized over the United States.

It is also important to initially note the religious demographics of the U.S. presidents thus far. Levels of devotion vary throughout the decades. Denominations change from term to term. The understanding of the separation of church and state evolves, resulting in different roles for religious institutions in leadership. Some factors remain consistent though. Any president with a religious affiliation (which includes nearly all) falls underneath a Christian denomination.[10] On an even broader level, most, if not all, presidents have served in the position while proclaiming a monotheistic religion that utilizes similar versions of Christian scripture. The series of characters and parables recounted in Sunday sermons are connected to a much broader cultural memory. It is against this background of shared religious background and context that the analysis of these presidents' speeches is made.

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[9] "President Washington's Farewell Address (1796)," OurDocuments.Gov, accessed on February 25, 2022, https://www.ourdocuments.gov/doc.php?flash=false&doc=15.

[10] Aleksandra Sandstrom, "Biden is only the second Catholic president, but nearly all have been Christians," *Pew Research Center*, January 20, 2021. https://www.pewresearch.org/fact-tank/2021/01/20/biden-only-second-catholic-president-but-nearly-all-have-been-christians-2/.

FALLING SCALES: WILSON & ENLIGHTENED INTERNATIONALISM

It was March 5, 1917. The second inauguration for President Woodrow Wilson was underway, and it was time for the inaugural address of the man who had "kept [Americans] out of war," according to his campaign slogan.[11] In less than a month, the United States would enter World War I, nearly three years after its original declaration. Wilson was a Presbyterian whose Calvinist tendencies lent him an "austere moral idealism;" this idealism would translate itself into the trademarked Wilsonianism brewing in the 28th president's political mind at the time.[12]

Prior to World War I, the United States had engaged in conflicts in which it had flexed imperialist tendencies, such as the Spanish-American War. The idea of the United States as a military power had begun growing in the late nineteenth century, and the country chose when to flex its muscles and when to wait. However, the idea of the United States holding a long-standing partnership with a country was newer, especially if that agreement was to cost any rights of sovereignty. Wilson had a foundation to build prior to introducing his citizens a year after his second inaugural address to the actual tenets of his foreign policy approach. His address in early 1917 serves as a primer for that.

Woodrow Wilson was one of, if not the most, educated men to hold the office of the presidency. Paired with his impressive education pedigree was also a heightened sense of purpose for himself, one which shaped internal desires for achievements which would mark him as great in the records of history.[13] These internal attributes combine well with the manner in which he perceived the credibility of his form of internationalism. To Wilson, his ideas (to be later enumerated in his 1918 Fourteen Points) were in a sense enlightened. They consisted of a higher calling for the United States to pursue, emerging in the midst of a devastating international conflict in order to assume its naturally ordained role as leader of a new type of global community. The role the United States would play then at the helm of the international arena would be technically new, but in the eyes of Wilson, would have consisted of the fated end goal following a long line of political forms and developments for the United States.

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[11] "Woodrow Wilson," The White House, accessed on January 13, 2022, https://www.whitehouse.gov/about-the-white-house/presidents/woodrow-wilson/.

[12] Fitch, "Piety and Politics in President Eisenhower," https://www.jstor.org/stable/4609783.

[13] W. Barksdale Maynard, *Woodrow Wilson: Princeton to the Presidency* (New Haven: Yale University Press, 2008), 51.Woodrow Wilson, "First Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., March 4, 1913).

In beginning to present his internationalist principles within his inaugural addresses, Wilson employs the use of Biblical allusion to help lay out his policy vision for the U.S. public. His first inaugural address, held in 1913 and slightly predating the core of his internationalist movement, includes a reference to the conversion of St. Paul in explaining his goals for a government reaffirmed in its mission of service to the American people. He laid out a commitment to identify and correct issues of morality and ethics which permeated public institutions and return the U.S. government back to the rightful place of integrity that Wilson envisioned. He discusses how, in working towards that task, "scales of heedlessness [would] fall from [their] eyes" to create a clearer, more enlightened understanding of the moral state of the U.S. government.[14] Similarly, St. Paul following his blinding encounter on the road to Damascus would have scales fall from his own eyes and regain sight as a man newly enlightened to the power and calling of a higher being, God, and commissioned to pursue the mission fatefully ordained to him.[15]

This theme of enlightenment from God to a true purpose or calling continues into the second inaugural address of Wilson, especially in discussions on the role the United States was being called to play in the world. The role itself was divinely given, just as St. Paul's post-conversion commission.[16] The United States had only to wipe the scales from its eyes and accept the task it had been gifted. President Wilson saw himself as the leader to do so. He continues on, describing how "the shadows that lie dark upon [America's] path will soon be dispelled."[17] Furthermore, he connects this enlightenment with the discovery of the United States' full calling to internationalism, musing how "we shall walk with the light all about us if we be but true to ourselves," an appeal to identity which Wilson hopes to shape.[18] Both of these affirmations resemble Scriptural verses in the book of Isaiah, declaring too the introduction of a newfound light to a people previously living in darkness.[19] Additionally, Wilson recognizes the "new unity [being forged] amidst the fires that now blaze throughout the world," a reference to the ongoing

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[14] Wilson, "First Inaugural Address."

[15] Bible, New American Version, Acts 9.

[16] Ibid.

[17] Woodrow Wilson, "Second Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., March 5, 1917).

[18] Ibid.

[19] Bible, New American Version, Isaiah 9:2.

World War I and the call towards internationalism for which he foresees a space.[20] He appeals to "God's Providence" as he discusses the cleansing nature he hopes these fires have on the states involved, almost as a baptism which should lend "a new dignity of national pride and spirit."[21] Each piece of this lofty dialogue and focus on correction to the true, morally upright and directing nature of the United States reflects the aforementioned Presbyterian character of the man himself.[22] Through these devices' employment, Americans can begin understanding the international trajectory which Wilson foresees for the nation and the enlightenment which the nation and its citizens are called to in order to fully endorse the path forward.

A NORMALCY IN NATIONALISM:
HARDING, COOLIDGE, & DIVINE NON-INTERVENTION

The United States was involved in World War I for just under twenty months, a fractional amount of time when compared to the four devastating years invested by the allied Triple Entente powers. Yet, the relatively shorter amount of time at war did not lessen the effects of fatigue which the American populace experienced at the close of the first, but not last, intercontinental conflict of the twentieth century. This exhaustion with the draining of resources and morale which war brought to the United States manifested itself in policy outcomes and tides of public opinion, even towards the end of Woodrow Wilson's second term. Americans were not looking for the pioneering, supposedly enlightened approach of internationalism in their foreign policy; rather, Americans were looking for the restoration of what they deemed to be normal. This state of normalcy actually indicated a desire for the restoration of a pre-intervention United States - one with little to no obligations to other countries, but with terms of engagement set at the country's will. To the American people, this spirit of self-confinement between the vast geographic barriers of sea was optimal. Post-war economic prosperity in the country enabled such a situation to be achieved.

Warren G. Harding, the nation's 29th president, campaigned on the broad promise of a "Return to Normalcy."[23] After years of trials due to international engagement, the idea of

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[20] Wilson, "Second Inaugural Address."

[21] Ibid.

[22] Fitch, "Piety and Politics in President Eisenhower," 155.

[23] Jeff Wallenfeldt, "Return to Normalcy," Encyclopædia Britannica, accessed on January 10, 2022, https://www.britannica.com/topic/return-to-normalcy.

prioritizing U.S. interests and returning to a position of disinterest in the affairs of other continents sounded like an enticing way to both maintain national autonomy and avoid future wars. Harding's brand of nationalism promised that approach to the American people. This separation of the United States from the World War I fray and rejection of internationalism is leveraged upon an assumption of American exceptionalism which, in the presentation of Harding, was divinely crafted and blessed. The spiritually exceptional nature of the country then is what enables the nation to reclaim its nationalist, non-involvement roots.

In attempting to sell internationalism to the American people, now-former President Wilson had expressed the essentiality of his foreign policy approach to the establishment and maintenance of peace. If further war was to be avoided, internationalist principles would have to be upheld as the United States assumed its roles as global leader and directed other states in the founding of the League of Nations as an area for alternative dispute resolution and integrative collaboration. However, in his first and only inaugural address, Harding rejects that argument. He does not see internationalism as essential to the maintenance of peace globally and indeed rejects the idea that nationalist practices are mutually exclusive with peace ("This is not selfishness, it is sanctity. It is not aloofness, it is security").[24]

It is indeed this call towards peace which Harding believes to be divinely inspired, and it is the approach of nationalism which Harding believes to be essential to achieving that godly goal. In his address, Harding establishes aims towards peace manifested in protecting "that brotherhood of mankind," immediately affirming the spiritual identity of such a peaceful bond through his labeling of this brotherhood as "God's highest conception of human relationship."[25] He goes forth from this declaration of aims for holy, peaceful brotherhood by declaring both "an era of good feeling" in response to "the earth [...] thirsting for the cup of good will," and "the era of the Golden Rule [...crowned…] with the autocracy of service."[26] Each of these provide, according to Harding, "reassurance of the belief in the God-given destiny of our Republic."[27] Harding's audience is not just being told that peace, fraternal and divine in nature, can issue from nationalist principles. They are also being assured that the common tenets of good will, service

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[24] Warren G. Harding, "First Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., March 4, 1921).
[25] Ibid.
[26] Ibid.
[27] Ibid.

to the common good, and "dependable prosperity" in the post-war period can be directly tied to the spiritually ordained destiny of their exceptional republic being fulfilled in Harding's nationalism.[28] The "worldwide benediction of understanding" Harding calls for among mankind would thus replace the need for strong partnerships or engagement with other nations; rather than relying upon the internationalist model to maintain peace, Harding argues that increasing the level of comity and fraternity among nations (not equivalent to reliance) would instead replace the need for international involvement with values which are divinely inspired and recommended.[29]

Following the unexpected death of Harding on a presidential vacation in 1923, Calvin Coolidge would be sworn in at his home by his notary father to be Harding's successor. The former vice president-turned-chief executive would not have his opportunity to deliver an inaugural address until he was re-elected for his second term. Coolidge was a Congregationalist, known to support his policies, such as the *laissez-faire* doctrine which permeated his signature economic agenda, "only with symbolic acts and moral preachments."[30] Otherwise known as Silent Cal, Coolidge is not known for having a signature rhetorical presidency. The abundance of addresses made via radio though, a technology popularized during this time, means that the audiences for his speeches were able to grow much larger in size, buying into the president's ideas as they listened to the soft voice of their president.

In his 1925 inaugural address, Coolidge would again have an opportunity to broadcast his message to the U.S. public, both in person at his ceremony and through a broadcasted radio recording of the event. In his speech, he appeals to many of the same core values which Harding did as well. The idea of "the common brotherhood of man" is again presented as "the highest law of all our being," one which requires a "religious conviction" in order to exist in its fullest form.[31] Conversely, the "desire for peace," one especially politically relevant as the memory of World War I still loomed large, was identified as the "fundamental and only natural source of brotherly love."[32] Peace, especially the peace through non-intervention which both Harding and Coolidge ascribe to, is linked again to the "brotherhood of man," a universally conceived bond

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[28] Ibid.
[29] Ibid.
[30] Fitch, "Piety and Politics in President Eisenhower," 155.
[31]Calvin Coolidge, "Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., March 4, 1925).
[32] Ibid.

identified later as of a spiritual nature that would triumph over the whims of conflict.[33] While the emphasis on global fraternity among men may seem more reflective of internationalist ideas, it is important to note that appeals to these brotherly bonds are meant to manifest themselves through the provision of distance and serve as a replacement for other means of the more involved, permanent international engagement that Wilson advocates.

Indeed, Coolidge identifies such a detached approach to building international comity as a part of the spiritually-ordained purpose and identity for the United States. Forming international obligations is not essential to achieving that higher purpose; rather, "the higher state to which she seeks the allegiance of all mankind is not of human, but of divine origin."[34] He rejects the idea that the United States must seek an "earthly empire built on blood and force," what an internationalist approach over leading other nations might imply, and instead declares that the United States "cherishes no purpose save to merit the favor of Almighty God."[35] Unlike Wilson's conception of the United States as on a divine trajectory towards internationalism, Coolidge instead declares that the only obligation the United States has is to serve the Christian God and that engagement with the world beyond the simple strengthening of universal brotherhood is not essential to achieving that purpose and resulting peace. There is not a compelled obligation towards nationalism that Coolidge identifies; rather, nationalism is presented as an option sufficient for the nation without breaking normalcy or hindering Americans' callings to provide lived examples of "a conscientious and religious life."[36] For Americans hoping to align their political and social structures with the ideals preached to them on Sundays and contained within their Christian scriptures, this message dissipates the idea of spiritual obligation towards internationalism which Wilson promoted and finds religious justification for the innate desire for post-war non-involvement and U.S. nationalism. The United States, according to Harding and Coolidge, exists along a spiritually exceptional path and does not have to sacrifice any of its autonomy or resources in order to achieve that most holy state.

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[33] Ibid.

[34] Coolidge, "Inaugural Address."

[35] Ibid.

[36] Ibid.

THE GOOD NEIGHBOR:
FDR & RETHINKING THE US' OBLIGATION TOWARDS PEACE

When Franklin Delano Roosevelt assumed the presidency, he did so in the midst of a domestic crisis. The debate over foreign policy approaches was superseded by a domestic economic catastrophe, the Great Depression, which would dominate U.S. politics and large portions of Roosevelt's initial inaugural addresses out of his total four. In those domestically-focused sections of his speeches, Roosevelt ties in scriptural allusions to, for example, "the money changers [fleeing] from their high seats in the temple" and "a sacred obligation with a unity of duty" for service to each other in times of need.[37] These references serve to instill hope and purpose within the American population in response to the predominantly domestic ills.

Other references prove much more notable for the understanding of Roosevelt's foreign policy approaches. In his first inaugural address, given in 1933, Roosevelt strikes a nationalist tone as he declares,

> I would dedicate this Nation to the policy of the good neighbor - the neighbor who resolutely respects himself and, because he does so, respects the rights of others - the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors.[38]

The idea of the good neighbor is common in Christian scripture. In fact, in the Gospels, Jesus instructs his followers to "love [one's] neighbor as thyself" as the second greatest commandment.[39] This new policy of the good neighbor would be one easily understood by the American populace. Additionally, this policy allows one to begin charting the evolution of Roosevelt's foreign policy approaches. As suggested by his brief presentation of the idea, he sees a good neighbor policy as concurrent with nationalism. Just as good fences make good neighbors, the 32nd president believes that affording other nations more autonomy rather than compelling them towards international agreements is the type of healthy, friendly, and detached relationship which the United States should strive to maintain with the international community. Nationalist practices are posed as an enabler of the United States growing in this spiritual sense

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[37] Franklin D. Roosevelt, "First Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., March 4, 1933).
[38] Ibid.
[39] Bible, New American Version, Mark 12:31.

of the good neighbor, rather than mutually exclusive with it. These types of policies would have been informed by the country's traumatic experiences with financial mayhem during this time.

The approach of Roosevelt to the United States' place in the world begins to shift though in his later inaugural addresses, as the second World War begins to unfold. Strains of internationalism begin to emerge and strengthen; whether this choice is voluntary or more so compelled by the obligations on the United States and its dominant resources at the time is unclear, but the shift is present all the same. Roosevelt's third inaugural address was presented on January 20, 1941; the United States would not enter World War II for another eleven months, attempting to opt for neutrality for as long as possible. Yet, as tensions were already brewing overseas in either direction, Roosevelt most certainly had on his mind the premonition that some form of international engagement might be in store for the country if conflict continued to escalate.

At this 1941 inauguration, the second to be held on a cold January day, Roosevelt would elevate for Americans the idea of "the spirit - the faith of America."[40] This national spirit is the result of a historical legacy Roosevelt stresses and "calls forth the most sacred guarding of its present," the contemporary iteration of the American nation.[41] Rather than connecting this to an exceptionalist, nationalist vision for the nation as Harding may have done (the idea of the American spirit being one above the international milieu), Roosevelt instead intends to rally the American population's willingness to protect the faith-filled spirit of the United States, should it come to U.S. entry into the war. Fighting for the United States then, for "the preservation of the spirit and faith of the Nation," becomes a spiritual cause, not just a political one.[42] This connection sparks the pathos of Americans towards this potential international engagement, hoping to mobilize a religious people and spark their willingness for conflict in the name of national defense. Roosevelt asserts the cultural and spiritual stakes of non-involvement in the face of danger. The superficial elements of borders and resources would not just be at risk; allowing "that sacred fire [... to] be smothered with doubt and fear" would "reject the destiny which Washington strove so valiantly and so triumphantly to establish."[43] Roosevelt is

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[40] Franklin D. Roosevelt, "Third Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., January 20, 1941).
[41] Ibid.
[42] Ibid.
[43] Ibid.

attempting to create buy-in from the American people for an internationalist, engaged approach by framing this conflict as a battle for the soul of the nation, one in which the claimed religious and historical exceptionalism of the country would be at stake.

Roosevelt also frames the guidance towards such a policy in terms of faith as well. Woodrow Wilson, in his vision for the future role of the United States as a global leader, declared that this role for the country was evident and deserved, if only the country would be enlightened enough to accept its responsibility to the international community. In Roosevelt's eyes, and in his presentation of the internationalist approach to the American people in his third and fourth inaugural addresses, Roosevelt forgoes the idea of divine enlightenment and instead identifies the trajectory of the United States as being guided by divine will. It is the hand of the Christian God who directs the country, and it is the goals of this God to which Americans are trying to abide by in shaping their foreign policy. Such acknowledgements of God's will and attempts to align with it appear both in 1941 and 1945. After asserting to Americans the importance of protecting the spirit of America, Roosevelt in his closing statement calls for the American people to "go forward, in the service of our country, by the will of God."[44] Moving towards protection of the country within international conflict is not just a secular act to Roosevelt; he wants the American people to consider it as one of spiritual significance.

This same strain is repeated in the president's fourth inaugural address, shared on the dusk of World War II in January 1945. Roosevelt remarks on God's gift to the United States of "a faith which has become the hope of all peoples in an anguished world."[45] Such language is nearly Wilsonian in its placement of the country as a beacon and guiding force for the rest of the international community. He also sees the ability of his countrymen to "strike mighty blows for freedom and truth" as a blessing from "Almighty God," couching again his pride and idealism for his people in grand, religiose terms meant to highlight their special identity of faith, morale-boosting in its claimed exceptionalism.[46]

All of this engagement on the international stage, embodied through extensive military and political involvement in World War II, is dedicated by Roosevelt in his fourth inaugural

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[44] Roosevelt, "Third Inaugural Address."
[45] Ibid.
[46] Ibid.

address to the "achievement of His will to peace on earth."[47] In contrast to the nationalism of Harding and Coolidge, the reality of the accomplishment of global peace has shown that non-intervention cannot always be the approach for ensuring conflict is avoided. Rather, if the United States as a Christian nation has an obligation, as Roosevelt posits, to upholding God's will and desires for global peace, then the United States inherently in the historical context of the 1940s has an obligation as well to adopt an internationalist approach as a proactive global leader and constructor of peace. With this religiously-infused framework of understanding not just the U.S. role in, but her responsibility to the world, a firm foundation is laid for the ensuing internationalist foreign policies of Harry Truman, Dwight Eisenhower, John F. Kennedy, and more.

CONCLUSION

Presidents are not bound by the statements made in their inaugural addresses. They can change opinions on policies they preach, emphasize certain priorities for the sake of public approval, shift national visions in response to the needs of the time, and more. These are, as aforementioned, cultural performances; their significance is not always found in the printed word, but in the underlying meanings and emotions which they signal. In the case of faith-based language employed to describe approaches to foreign policy within inaugural addresses, both cases may often apply. The rhetorical decisions and emotional intentions are intertwined, meant to engage the American people in the presidents' visions for the United States' role in the world.

Between 1913 and 1945, American foreign policy moved along a dialectic. Internationalism was pioneered following the establishment of the United States as a global force in World War I; nationalism soon increased in popularity in response throughout the 1920s and 1930s. Finally, the looming threat of World War II forced a shift again, solidifying U.S. internationalism out of an obligation to avoid another global war and maintain peace at all costs. The visions for each of these transitions, often laid out by the president in their inaugural addresses, were explained in the terms of faith familiar to the predominantly Christian American population. Not only could they better understand and buy into the perspectives of the president

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[47] Franklin D. Roosevelt, "Fourth Inaugural Address" (Speech, Inauguration of the President of the United States, Washington, D.C., January 20, 1945).

on the topic when religious language was in use, but the use of divine appeals lent the topic of foreign policy and America's international position a special weight in consideration. The idea that foreign engagement was intimately linked with concepts such as the spirit and faith of America, the common brotherhood of man, love of neighbor, divine enlightenment and the shedding of scales, sacred duty, and more, could communicate a certain gravitas and urgency around foreign policy more efficiently to the American people.

If Americans saw their country as "One Nation under God," foreign policy especially in the early twentieth century could function as a vehicle for aligning their nation with their personal faith convictions and obligations. As the twentieth century ushered in decades of significant political, economic, geographic, and social change, the language of faith served as a consistent, shared lexicon depended upon by president after president to generate support and belief in their visions for the United States' role in the world.

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EVALUATING GOVERNMENT SIMPLIFICATION EFFORTS: A CASE-STUDY OF PRESIDENT CLINTON'S ALTERNATIVE DISPUTE RESOLUTION REFORMS' EFFECT ON GOVERNMENT COMPLEXITY

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Steven Teles's article, Kludgeocracy in America argues that the procedural complexity of the U.S. government stems from the founders' decisions to create a federal system with checks and balances that produce an onerous amount of veto points. The research's point of departure is the seeming inefficiency of the government in providing services, introducing regulatory change, and the difficulty of producing effective legislation. In the proposed research, I try to test an aspect of Teles's theory with respect to one domain, the Clinton administration's reforms to reduce the time and expense of rising civil disputes through the Alternative Dispute Resolution Act (ADRA) of 1998. Specifically, I ask what enabled the Clinton administration to win support for these reforms and institutionalize alternative dispute resolution? Furthermore, I seek to understand how these reforms overcame Kludgeocracy and to understand whether the ADRA legislation facilitated the handling of large caseloads and diminished government complexity?

INTRODUCTION

The United States' government is characterized by a complex bureaucratic framework. American bureaucratic complexity is a product of the government's federalist structure and the division of power amongst individual states and the federal government. The complexity of the federal bureaucracy is particularly apparent in the enforcement of federal statutes and programs in each state. In *Kludgeocracy in America*, Steven Teles specifically attributes this federal complexity to the U.S. government's separated powers and "numerous veto points."[1] Teles coins the term, *kludgeocracy* by using the meaning "kludge" or a "clumsy but temporarily effective solution to a particular fault or problem" to describe American public policy.[2] He indirectly attributes this complexity to the Founders' vision of creating a governing structure in which tyranny does not unfold under an intricate system of checks and balances. Teles highlights how this complex government foundation has produced an inherent inefficiency in providing federal services and making regulatory changes through legislation.[3]

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[1] Steven Teles, "Kludgeocracy in America." (*National Affairs*, 2013), 97-114.
[2] Ibid, 98.
[3] Ibid, 103-107.

In this paper, I attempt to examine the reaches of Teles' theory through a case study of the Clinton administration's attempt to reform the rise of civil cases filed in court in the 1990s. The courts became particularly overburdened in handling these rising civil caseloads as America transitioned to becoming a more litigious society. In order to alleviate this, President Clinton promoted the Alternative Dispute Resolution Act (ADRA) of 1998 in Congress, which sought to institutionalize alternative dispute resolution (ADR) strategies at the federal level to efficiently handle increasing caseloads. The research specifically seeks to address how the Clinton administration was able to gain sufficient support to enact the ADRA of 1998 and effectively institutionalize alternative dispute resolution at the federal level. I utilize process tracing in order to examine how the 1998 legislation evolved from earlier relevant legislation, namely the Administrative Dispute Resolution Acts (ADRA) of 1990 and 1996. The ADRA of 1998 is an ideal case study to test Teles' theory because each iteration of the ADRA legislation is useful in examining whether partisan congressional veto points affected the legislation's coherence throughout the development of the 1998 law and its previous two iterations. Moreover, the ADRA of 1998 is also useful in analyzing Teles' theory since it is a legislation designed to improve government complexity and inefficiency.

This paper explores how government officials overcame the obstacles of *kludgeocracy* to pass each piece of legislation and examines their effect on civil caseloads. To do so, two different sets of hypotheses are proposed to explain the ADRA legislation's bipartisan support and address whether the legislative efforts were effective in reducing caseloads. The first set of proposed hypotheses contend that bipartisanship resulted in the legislation passing without veto points affecting it, and argue that Republican efforts to restrict access to the judiciary led to their support of the legislation. The second set of hypotheses attempt to distinguish whether the legislation reduced government complexity or exacerbated the effects of *kludgeocracy* with the mishandling of cases. Ultimately, the findings suggest that overwhelming bipartisan support produced legislation unhindered by veto points, and Republican support is proven to have been rooted in limiting access to the courts. However, an evaluation of civil caseloads following the ADRA legislation indicates that it only stabilized the existing high number of caseloads without producing either a significant reduction or increment.

This research endeavor first begins by analyzing the congressional record to take note of the congressional veto points raised against the ADRA legislation. To analyze the ADRA

legislation's effects on civil caseloads, the paper's focus shifts to using a pre-test and post-test model by analyzing the data of civil caseloads before and after the adoption of the legislation. Overall, this research is of unique importance since it will highlight possible alternative government strategies to diminish government complexity and produce more efficient government functions.

BACKGROUND

Prior to considering the developments that led to the passage of the ADRA of 1998, it is important to revisit Teles' *kludgeocracy* theory as it provides this research's guiding theoretical basis. Teles introduces the term as a way of capturing the federal government's inefficiency by describing it as "clumsy but temporarily effective."[4] Teles first underscores federal "grant-in-aid" programs as particularly inefficient in carrying out policies.[5] He emphasizes that state governments implement these policies, while the federal government only serves as the "funder, regulator, standard-setter, and evaluator."[6] Consequently, Teles contends how these overlapping governing jurisdictions lead to a "complicated marble-cake federalism" without "clear lines of responsibility."[7] In other words, Teles suggests that the U.S. has deviated from its intended federalist system in which governing responsibilities are "clearly differentiated between the national and state government."[8] On another note, Teles also describes the congressional policymaking process as a part of *kludgeocracy*. He specifically outlines how "veto points" generated from a separation of powers complicate the adoption of legislation.[9] When referring to veto points, Teles suggests these to be the power wielded by partisan Congress members to alter legislative bills.[10] He argues bills are complicated by "multiple referrals" to congressional committees and veto points in the form of partisan efforts to safeguard "favored programs from substantive changes."[11] Thus, these efforts lead to complex laws in which "new ideas" are

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[4] Ibid, 98.
[5] Ibid, 100.
[6] Ibid, 105.
[7] Ibid, 105.
[8] Ibid, 105.
[9] Ibid, 104.
[10] Ibid, 104.
[11] Ibid, 104.

"layered over old programs."[12] Overall, Teles concludes that *kludgeocracy* could be lessened if "extra-constitutional veto points" are reduced, "referrals to congressional committees" are condensed, and federal grants are reevaluated.[13]

Furthermore, before examining the development of ADRA legislation as a means of reducing rising caseloads, it is also significantly important to understand what prompted the rise in civil caseloads. John Skrentny's *The Minority Rights Revolution* is particularly useful to understand how civil rights expansions created new legal avenues for their enforcement. Skrentny emphasizes how 1965-1975 was defined by "a minority rights revolution" as "federal legislation, presidential executive orders, bureaucratic rulings, and court decisions" expanded "nondiscrimination rights."[14] The minority rights revolution could also be considered to have had far-reaching implications with regard to rising civil caseloads. The introduction of numerous nondiscrimination statutes provided a new means of challenging rights violations and ensuring that these laws were enforced through litigation. Most relevantly, the Civil Rights Act of 1991 might have particularly produced an increase in civil caseloads by reducing legal representation fees and extending litigation rights for "international employment discrimination" cases.[15]

LITERATURE REVIEW

Prior to outlining the proposed hypotheses and broader experimental structure for the research, it is also important to note the previous research on administrative dispute resolution and its relationship—or lack thereof—to the goals of this paper. It is particularly noteworthy that most research on the ADRA of 1998 has been published within the legal field; after a thorough search, I located only one article published with a political and social science focus. Specifically, Tina Nabatchi's "The Institutionalization of Alternative Dispute Resolution in the Federal Government" analyzes the efficiency of the implementation of the ADR legislation described above. For instance, Nabatchi points to the pieces of legislation not requiring the use of ADR techniques and failing to provide "human and financial resources" for federal agencies.[16]

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[12] Ibid, 104.
[13] Ibid, 109-110.
[14] John David Skrentny and John David Skrentny. *The Minority Rights Revolution* (2004), 2-4
[15] U.S. Employment Opportunity Commission (website), Civil Rights Act of 1991, 2021, https://www.eeoc.gov/civil-rights-act-1991-original-text.
[16] Tina Nabatchi, "The Institutionalization of Alternative Dispute Resolution in the Federal

Furthermore, Nabatchi also concludes that despite the creation of the Interagency ADR Working Group, there was a "limited ability" to enforce the usage of ADR strategies and institutionalize these techniques within agencies.[17] Nabatchi's findings provide a useful social science framework for this research endeavor by highlighting the shortcomings of Congress in its three attempts to regulate ADR.

Other relevant research on the ADRA of 1998 includes Caroline Crowne's "The Alternative Dispute Resolution Act of 1998: Implementing a New Paradigm of Justice." In this article, Crowne specifically indicates how the law's emphasis on "customer service" caters to "disputants' interests" and leads to "adjudication" measures to meet "public interests."[18] Crowne's contributions are significant since they point to how alternative dispute resolution strategies as a customer service tool can improve the judiciary's efficiency.[19]

Lastly, Donald Swanson's "ADR Act of 1998: A Reflection of Its Effectiveness and Shortfalls" provides a comprehensive analysis of the legislation's points of success and shortcomings. Swanson notes the ADR legislation's effectiveness by highlighting how district courts readjusted their handling of civil cases in the wake of the legislation so that "mediation" would serve "as a primary case-resolution tool."[20] However, Swanson also concludes that "mandated mediations" by the courts overstep its "legal authority" and constitutional powers as mediation should be a "voluntary process."[21]

Contextually framing this research endeavor within these research publications will be useful in accurately uncovering the ADR legislative pieces' efficiency in reducing rising civil caseloads and its role in reducing government complexity. Most importantly, pursuing this research endeavor is of significance since it will expand a limited scope of research through a political and social science lens. Using Teles' theory within this field of research provides an

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Government," *Public Administration Review* 67, no. 4 (2007): 659, https://doi-org.ezproxy.princeton.edu/10.1111/j.1540-6210.2007.00750.x.

[17] Ibid, 659.

[18] Caroline Harris Crowne, "The Alternative Dispute Resolution Act of 1998: Implementing a New Paradigm of Justice." *New York University Law Review* 76, no. 6, (2001): 1777-1779. https://heinonline.org/HOL/P?h=hein.journals/nylr76&i=1788.

[19] Ibid, 1788-1791.

[20] Donald Swanson, "ADR Act of 1998: A Reflection of its Effectiveness and Shortfalls." *American Bankruptcy Institute Journal* 37, no. 11 (2018): 28. https://search-proquest-com.ezproxy.princeton.edu/scholarly-journals/adr-act-1998-reflection-effectiveness-shortfalls/docview/2136007687/se-2?accountid=13314.

[21] Ibid, 29.

opportunity to apply it to a case study with three different iterations of the same legislation and specifically analyze whether *kludgeocracy* derailed these legislative efforts. I intend to fill a hole in this research field by examining if the ADR legislation improved government efficiency and more broadly analyze the implications of simplification policies on *kludgeocracy*.

THEORY AND HYPOTHESIS

In order to enhance our understanding of how government complexity might have affected the ADR legislation and the law's attempt at reducing government inefficiency, this paper advances several hypotheses. The hypotheses are aimed at addressing the question of how the Clinton Administration successfully passed the 1998 ADR legislation, despite the presence of what might have been potentially devastating congressional veto points, as per Teles' theory of *kludgeocracy*. If Teles' theory holds, then the congressional veto points should prove to have been a challenge to passing this reform. Given this, I use the congressional record as a tool for determining which legislative actors advanced these veto powers. With regard to the second part of this research, Teles' theory should also predict the policy's effectiveness in reducing government complexity. According to Teles, the legislation should lead to a reduction in caseloads initially; but with the reintroduction of reform efforts and the reappearance of congressional veto points, we might expect that the initial legislation's effects would be limited and thus, produce a rise in caseloads or maintain the high caseloads.[22] In other words, because the ADRA of 1990 was reformed in both 1996 and 1998, Teles' theory suggests that the policy's "coherence" will be diminished with new programs being "layered over old programs."[23]

To address the first area of focus, I hypothesize that the ADRA of 1998 was not affected by any traditional constitutional veto points because of bipartisan interest in reducing the number of caseloads at the time (hypothesis 1.a). In other words, due to each party's interest in alleviating the strain on the judiciary and improving its efficiency, both parties supported the legislation. I also hypothesize that President Clinton's congressional Republican opponents supporting the measure was a result of their possible interest in reducing access to the courts (hypothesis 1.b).

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[22] Steven Teles, "Kludgeocracy in America." (*National Affairs*, 2013), 104.
[23] Ibid, 104.

To address the second area of focus and determine the legislation's effectiveness in reducing government complexity, I hypothesize that the legislation reduced caseloads through ADR resources and thereby also reduced government complexity by improving the courts' efficiency (hypothesis 2.a). However, a second possible hypothesis could be framed around the idea that limited access to the courts through alternative litigation strategies only further contributed to the judiciary's mishandling of rising caseloads (hypothesis 2.b). Thus, this second possible hypothesis alludes to government simplification reforms actually producing greater government complexity.

RESEARCH DESIGN

The variables of this study are based on the proposed analysis of the ADR legislation. The independent variable is the Clinton administration's support of alternative dispute resolution efforts. The dependent variable will involve analyzing the passage of the ADRA of 1998, despite congressional veto points, and the effect of the legislation on the efficiency of handling the rising caseloads.

The research design consists of a process-tracing model to analyze each ADR legislations' effect on litigation caseloads. The study will specifically identify the role of the congressional veto power in each of the ADR legislations' negotiations and determine how a resolution was achieved. The study will also track party alignment changes within the legislative branch of government to determine the effect of divided government on the passage of these statutes. The congressional record will be used as a resource to determine the extent to which veto powers were used and their possible effect on the subsequent legislation itself.

The case study will also compare the amount of all types of civil caseloads at the U.S. District Court level for years prior to each ADR legislation and after each law's passage. Gathering data on all forms of civil caseloads will specifically be helpful in understanding the degree to which civil cases overburdened the courts. Relying on a pre-test and post-test model will reveal the effectiveness of the Clinton Administration's efforts to reduce caseloads through the ADRA of 1998. The civil caseloads before and after the Clinton administration's alternative litigation efforts will also prove to be useful in determining whether the ADR legislative acts effectively reduced government complexity.

FINDINGS

To evaluate the role that veto points played in the passage of the ADRA of 1998, I review the congressional record for the 1990 and 1996 legislation in order to analyze veto points' influence on the first two iterations of ADR legislation. The congressional record for the ADRA of 1990 revealed that the House and Senate both passed the bill with overwhelming bipartisan support. The Senate and the House simultaneously introduced two different bills in May of 1989 that aimed to establish ADR resources within the federal government's judiciary.[24] Upon the House of Representatives' passage of the H.R. 2497, the Senate sought to amend the bill with its own version, S.971.[25] However, the substitution of the House bill with the Senate bill's language led to confusion "for the purposes of referencing the pages and lines" when considering the Senate's proposed amendments.[26] Ultimately, the Senate passed the House version of the bill with four amendments.[27] The amendments included authorizing the use of dispute resolution techniques "under Federal administrative programs," but rejected the use of dispute resolution if a dispute was centered around "significant policy questions" or if it would lead to an "authoritative precedent."[28] Moreover, "voluntary, binding arbitration" was authorized with the "consent" of "all parties," and "standards of confidentiality in ADR proceedings" were established.[29]

At the time of the bill's passage, both chambers of Congress were led by a Democratic majority. The House of Representatives was made up of 265 Democrats and 180 Republicans, while the Senate had 56 Democrats and 46 Republicans.[30] Despite differences in party affiliation, the Senate passed the House's amended bill with unanimous consent.[31] Similarly, the House

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[24] Congress.gov, "H.R. 2497 – Administrative Dispute Resolution Act," 2021, https://www.congress.gov/bill/101st-congress/house-bill/2497/all-actions.

[25] ProQuest Congressional, "Congressional Record Daily Edition – Senate: Administrative Dispute Resolution Act – Technical Corrections," Vol. 136, no. 148 (1990): S18225, https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t17.d18.c4b0a0e611000179?accountid=13314.

[26] Ibid

[27] Ibid

[28] ProQuest Congressional, "Congressional Record Daily Edition – Senate: Administrative Dispute Resolution Act." Vol. 136, no. 147, (1990): S18082. https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t17.d18.c45260040a0001a3?accountid=13314.

[29] Ibid

[30] Lewis, Jeffrey B. et al. "Voteview: Congressional Parties Database, 101st Congress (1989-1991)," https://voteview.com/data.

[31] Congress.gov, "H.R. 2497 – Administrative Dispute Resolution Act," 2021, https://www.congress.gov/bill/101st-congress/house-bill/2497/all-actions.

passed the bill without nearly any objections.[32] This overview of the federal legislature's passage of the ADRA of 1990 highlights how the bicameral structure of the U.S. Congress often undermines its efficiency in producing legislation. For example, each chamber concurrently produced bills focused on ADR resources rather than actively collaborating on restructuring just one bill. In other words, rather than needlessly reconciling the differences between each chamber's proposed bill, a more collaborative approach might have resulted in the Senate simply amending the original House bill from the very beginning. However, while the passage of the ADRA of 1990 could have been more efficient, this is an inescapable feature of bicameralism. In light of this, it was the clear bipartisan interest in passing the bill that likely made the process "efficient" in the context of the U.S. system of government. Given the overwhelming evidence, this bipartisan interest serves as the best indicator of why the legislature's veto points did not derail the passage of the bill and further perpetuate the effects of *kludgeocracy*.

The ADRA of 1996 was introduced as H.R. 4194 in the House of Representatives. The bill worked to amend the ADRA of 1990 to "permanently authorize" dispute resolution resources in the federal judiciary and to remove the previous legislation's sunset clause.[33] The bill also reformed the previous ADR legislation's to "increase the use of binding arbitration" and improved the "confidentiality of dispute resolution communications."[34] Once passed, Senator Charles Grassley proposed Amendment No. 5421 to expand the jurisdiction of "hearing bid protests" to district courts rather than just the U.S. Court of Federal Claims.[35] The amendment also called for this expansion of jurisdiction to be limited by a sunset clause.[36] The amendment was passed unanimously, and the amended ADRA of 1996 was passed by both the Senate and House with unanimous consent.[37]

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[32] ProQuest Congressional, "Congressional Record Daily Edition – House: Administrative Dispute Resolution Act," Vol. 136, no. 149 (1990): H12967. https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t17.d18.c4b0a0e611000df3?accountid=13314.

[33] ProQuest Congressional, "Congressional Record Daily Edition – House: Administrative Dispute Resolution Act of 1996." Vol. 142 no. 136 (1996): H11446. https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t17.d18.c4b088c70e00098b?accountid=13314.

[34] Ibid

[35] ProQuest Congressional, "Daily Edition – Senate: Alternative Means of Dispute Resolution Act of 1996." Vol. 142, no. 138 (1996): S11848. https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t17.d18.c45cd4c709000b69?accountid=13314.

[36] Ibid

[37] Congress.gov, "H.R. 4194 – Administrative Dispute Resolution Act of 1996," 2021, https://www.congress.gov/bill/104th-congress/house-bill/4194/all-actions?q=%7B%22search%22%3A%5B%22HR+4194%22%5D%7D&s=10%5C&r=1.

Importantly, the ideological composition of Congress underwent a significant shift between the passage of the 1990 and 1996 ADR legislation. Republicans held the majority in both the House of Representatives and Senate.[38] While Democrats might have been in the minority for this iteration of ADR legislation, the uniformity of bipartisan support of ADR resources produced a similar outcome as in 1990 with the unanimous passage of the ADRA of 1996. Most importantly, the efficiency in the passage of the bill and a limited number of amendments also underscore how the congressional veto points did not influence the passage of the legislation because of bipartisan interests.

The ADRA of 1998 was introduced in the House of Representatives as H.R. 3528 and was designed to permanently extend ADR resources to federal district courts following the ADRA of 1996.[39] The bill specifically required that federal district courts offer ADR services to all litigants.[40] Upon being introduced in the House, the bill was passed with bipartisanship support in a 405 to 2 roll call vote outcome.[41] Furthermore, once considered by the Senate, Senator John McCain proposed "technical modifications" as minor amendments to the wording used for some lines of the bill.[42] The Senate would then pass the bill with unanimous consent, and the House also passed it without any objections.[43]

In 1998, the 105th Congress was marked by a Republican majority in both the Senate and the House of Representatives.[44] Yet, the continued bipartisan support for the ADR legislation led to a nearly unanimous passage of this legislation. In this regard, the analysis of the passage of the ADRA of 1998 and its past two iterations underscores how bipartisanship interest resulted in congressional veto points not holding a significant inhibiting influence in the adoption of the

[38] Lewis, Jeffrey B. et al. "Voteview: Congressional Parties Database, 104th Congress (1995-1997)." https://voteview.com/data.

[39] ProQuest Congressional, "Bills – Bill Text: Alternative Dispute Resolution Act of 1998. 105 H.R. 3528," https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t01.d02.105_hr_3528_eh?accountid=13314.

[40] Ibid

[41] Congress.gov, "H.R. 3528 – Alternative Dispute Resolution Act of 1998," 2021, https://www.congress.gov/bill/105th-congress/house-bill/3528/all-actions.

[42] ProQuest Congressional, "Congressional Record Daily Edition – Senate: Alternate Dispute Resolution Act of 1998," Vol. 144 no. 139 (1998): S11808. https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t17.d18.c45998f20d00207c?accountid=13314.

[43] Congress.gov, "H.R. 3528 – Alternative Dispute Resolution Act of 1998," 2021, https://www.congress.gov/bill/105th-congress/house-bill/3528/all-actions.

[44] Lewis, Jeffrey B. et al. "Voteview: Congressional Parties Database, 105th Congress (1997-1999)," https://voteview.com/data.

series of ADR legislation. Each congressional chamber's consistent and unanimous support of each ADR legislation further bolsters this finding.

This review of the House of Representatives' roll call votes for the ADRA of 1998 reveals a resounding bipartisan support of alternative dispute resolution efforts by both parties: just one Republican and one Democrat voted against the legislative measure.[45] These findings suggest that the Republican majority's legislative veto power in the House of Representatives was not wielded against this legislative bill. Furthermore, this finding lends support to the hypothesis that contends that bipartisan interests in the ADRA of 1998 circumvented the expected veto power's role in derailing the reform effort. However, it is still important to uncover whether Republicans' motivations were rooted in improving the judiciary's handling of rising caseloads or reducing litigants' access to the courts—as the latter would be more consistent with a conservative legal agenda.

ANALYZING THE IMPACT OF ADR LEGISLATION ON CIVIL CASELOADS

Prior to outlining the findings from the proposed case-study design, it is important to take note of the rising caseloads before the ADRA of 1998. A legislative report for the ADRA of 1998 specifically highlights how caseload filings increased by historically high margins in nearly every category in 1997.[46] These large increments in case filings are of significance since it possibly points to the 1996 ADR legislation's ineffectiveness in reducing caseloads and the burden on the judiciary. Furthermore, these initial findings might not just be indicative of ADR strategies' inability to reduce caseloads, but also highlight how these measures possibly contribute to the government's growing complexity. The initial results also emphasize the limitations of the 1996 legislation, as the ADRA of 1998 expanded alternative dispute resolution efforts by requiring that these services be offered to all litigants at a federal level.[47]

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[45] ProQuest Congressional, "Bills – Bill Text: *Alternative Dispute Resolution Act of 1998*. 105 H.R. 3528," P.L. 105-315, https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t01.d02.105_hr_3528_eh?accountid=13314.

[46] ProQuest Congressional, "House of Representatives Report 105-487: Alternative Dispute Resolution Act of 1998," Pub. L. 105-315. 112 Stat. 2993, (1998):1-19. https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t49.d48.14509_h.rp.487?accountid=13314.

[47] Key ADR Statutes, Interagency Alternative Dispute Resolution Working Group, https://www.adr.gov/adrguide/04-statutes.html#:~:text=The%20Administrative%20Dispute%20Resolution%20Act%20of%201990%20(ADR%20Act

To comprehensively analyze the effectiveness of the ADRA of 1998 in reducing rising caseloads, it is helpful to begin analyzing the legislation's first two iterations and the subsequent effect on civil caseloads. The effect of the ADRA of 1990 on civil caseloads is outlined below in Figure 1.1. The data focuses on the years 1989 through 1995 so as to fully capture the sustained effect of the legislation until its suspension in October 1995. The data suggests the law's ineffectiveness in considerably reducing caseloads. Since its passage in 1990, the statute only led to a considerable reduction in caseloads during 1991, with a decrease of over 25,000 cases compared to 1989. The reduction in cases during 1990 cannot be considered a result of the ADRA of 1990 since the law was passed towards the end of that year and was therefore yet to be enforced. The statute also led to a reduction in caseloads during 1993, with a decrease of a mere 659 cases. However, in 1994 civil caseloads began to surpass the previously high range of 230,000 cases from 1989. Yet, before rendering the 1990 ADR statute ineffective, possible confounding variables must first be considered. For instance, the impact of the Civil Rights Act of 1991 must be accounted for, as the very purpose of the legislation was to expand litigation rights for "international employment discrimination" cases and increase accessibility to legal representation by lowering attorney fees.[48] It should be expected, then, that the Civil Rights Act of 1991 would produce increased civil caseloads and undermine the intended effect of the 1990 ADR legislation. Consequently, reviewing the effect of the 1996 and 1998 legislations might be most illuminative in understanding whether these laws reduced caseloads and government complexity.

)%3A&text=101%2D552%2C%20104%20Stat.&text=The%20ADR%20Act%20encouraged%20Federal,adopt%20policies%20on%20ADR%20use.

[48] U.S. Employment Opportunity Commission (website), Civil Rights Act of 1991, 2021, https://www.eeoc.gov/civil-rights-act-1991-original-text.

Figure 1.1 Civil Caseload Data Following the ADRA of 1990 [49]

Year	Total Number Civil Cases
1989	233,529
1990	217,879
1991	207,742
1992	230,509
1993	229,850
1994	236,391
1995	248,335

In comparison to the initial legislation, the ADRA of 1996 was slightly more successful at reducing civil caseloads. While 1997 might have been marked by a historically high number of civil case filings as indicated by the 1998 legislative report, after a year of implementation, the 1996 law did reduce caseloads.[50] Figure 1.2 specifically points to a decrease of over 15,240 cases in 1998. The 1996 ADR legislation's reform of adding an Interagency ADR Working Group might have directly impacted this significant reduction, given its role in advancing ADR strategies. Specifically, the working group's resources expanded ADR programming by supporting federal agencies in their adoption of ADR efforts.[51] However, while the legislation was effective in reducing caseloads, the 1998 caseload data proved to still be an increase of over 8,000 cases in comparison to 1995, under the 1990 ADR legislation.

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[49] Caseloads: Civil Cases, U.S. a Party, 1870-2017. Federal Judicial Center, (website). https://www.fjc.gov/history/courts/caseloads-civil-cases-private-1873-2017; Caseloads: Civil Cases, Private, 1873-2017, Federal Judicial Center, (website). https://www.fjc.gov/history/courts/caseloads-civil-cases-us-party-1870-2017.

[50] ProQuest Congressional, "House of Representatives Report 105-487: Alternative Dispute Resolution Act of 1998," Pub. L. 105-315. 112 Stat. 2993, (1998):1-19. https://congressional-proquest-com.ezproxy.princeton.edu/congressional/docview/t49.d48.14509_h.rp.487?accountid=13314.

[51] Key ADR Statutes, Interagency Alternative Dispute Resolution Working Group, https://www.adr.gov/adrguide/04-statutes.html#:~:text=The%20Administrative%20Dispute%20Resolution%20Act%20of%201990%20(ADR%20Act)%3A&text=101%2D552%2C%20104%20Stat.&text=The%20ADR%20Act%20encouraged%20Federal,adopt%20policies%20on%20ADR%20use.

Figure 1.2 Civil Caseload Data Following the ADRA of 1996 [52]

Year	Total Number Civil Cases
1997	272,027
1998	256,787

Lastly, the 1998 ADR legislation could be considered effective in minimally reducing caseloads. After its implementation, the statute's most significant caseload reduction was by about 10,000 cases in 2001, compared to the 1999 caseload. However, in 2002 there was a significant increase by nearly 24,000 cases, with the uptick specifically occurring under tort Asbestos case filings. The following year in 2003, caseloads stabilized to about 250,000 case filings again under the ADRA of 1998. Yet, this seemingly stabilizing effect appears to have been the 1998 legislation's most significant outcome. Rather than reducing caseload levels to be lower than the 230,000 case range of the early 1990s and under the 1990 legislation, the ADRA of 1998 only worked to maintain caseloads at around the 250,000 case range.

Figure 1.3 Civil Caseload Data Following the ADRA of 1998[53]

Year	Total Number Civil Cases
1999	260,271
2000	259,517
2001	250,907
2002	274,841
2003	252,962

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[52] Table C-2A. U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the Twelve-Month Periods Ended September 30, 1993 Through 1997 (website), United States Courts, https://www.uscourts.gov/sites/default/files/statistics_import_dir/c2asep97.pdf; Table C-2A. U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending September 30, 1998 Through 2002 (website), United States Courts, https://www.uscourts.gov/sites/default/files/statistics_import_dir/c02asep02.pdf.
[53] Table C-2A. U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending September 30, 1999 Through 2003 (website), United States Courts, https://www.uscourts.gov/sites/default/files/statistics_import_dir/c2a.pdf.

DISCUSSION AND CONCLUSION

This research's findings suggest that Hypothesis 1a holds to be accurate as a thorough review of the congressional record revealed that ADR legislation received overwhelming bipartisan support. Each ADR legislation was minimally referred to congressional committees, and partisan veto points did not significantly hinder its passage. Although the congressional record was not as useful in proving that congressional Republicans' support of the ADR legislation was grounded in their interest to limit access to the courts, prior research does affirm Hypothesis 1b to be accurate. More specifically, Sarah Staszak's *No Day in Court: Access to Justice and the Politics of Judicial Retrenchment* emphasizes Republicans' objectives in "constricting access to the judiciary" in response to "the rights revolution."[54] Staszak also highlights how the "modern era of conservative retrenchment" has resulted in bipartisan support of laws centered on "reducing litigation rates" by diminishing the courts' accessibility.[55] Overall, Staszak's findings are illuminative of Republicans' overwhelming support of ADR legislation being a result of their interests to reduce access to the courts.

However, the evaluation of the first set of proposed hypotheses underscores another possible element of *kludgeocracy* that Teles does not account for in presenting his theory. While the ADR legislation might not have been affected by partisan congressional veto points, the passage of the Civil Rights Act of 1991 represents another factor of *kludgeocracy.* The Civil Rights law directly counteracted the ADR legislation's efforts to reduce civil caseloads by improving accessibility to the courts. In other words, the passage of the Civil Rights Act of 1991 signals another aspect of *kludgeocracy* given that Congress passed two legislative pieces that counterintuitively worked against each law's intended goals. This should be considered yet another element of Teles' theory of government complexity and inefficiency because it underscores how Congress undermines its own efforts and produces incoherent policies. Hence, this research's findings highlight how Teles' theory should be extended to account for pieces of legislation that counterproductively work against other law's objectives.

The findings also show how that the second set of hypotheses do not hold to be accurate. In other words, the data collected on civil caseloads before and after the implementation of the

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[54] Sarah Staszak, *No Day in Court: Access to Justice and the Politics of Judicial Retrenchment*. Oxford Scholarship Online, 2015, 4-6.
[55] Ibid, 6.

1990, 1996, and 1998 ADR legislation did not indicate a significant reduction or increase in civil caseloads. Instead, the ADR legislation only worked to maintain and stabilize the already high number of civil caseloads. More broadly, these findings suggest that simplification policies are ultimately ineffective in minimizing the effects of *kludgeocracy.*

In sum, this research paper applied Teles' theory of *kludgeocracy* to the 1998 ADR legislation to understand if it effectively reduced civil caseloads and government inefficiency, as intended. The ADRA of 1998 presents an ideal case study to analyze Teles' theory since the effect of partisan veto points on the passage of the 1998 ADR legislation and its previous legislative versions in 1990 and 1996 can be clearly tracked. The ADRA of 1998 also proves to be an ideal case study since it is a simplification measure designed to reduce government inefficiency in the courts' handling of rising caseloads. The goals of this research involved understanding how congressional veto points hindered the passage of the ADR legislation and determining whether it was effective in reducing government complexity. The research findings suggest that while veto points did not alter the outcome of the ADR legislation due to bipartisan support and Republicans' interests in reducing the courts' accessibility, the intended influence of the ADR legislation was undermined by the Civil Rights Act of 1991. Hence, this research concludes that Teles' *kludgeocracy* theory should be extended to account for congressional actions that directly interfere with a previous law's objectives. Lastly, the research findings also reveal that legislative efforts to simplify government complexity are largely ineffective as the ADR legislation did not reduce increasing civil caseloads, but only stabilized these already high caseloads.

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Part 3

Elections
& Campaigns

CSPC

SOCIAL MEDIA IN THE 2016 AND 2020 PRESIDENTIAL ELECTIONS: HOW SHOULD MEDIA CHANGE MOVING FORWARD?

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Media is a growing topic in the political realm, especially in the twenty-first century with the rise of social media platforms. These platforms allow users to have instantaneous access to news, coupled with the challenges from the rise in disinformation. Presidential elections highlight benefits associated with social media, as demonstrated by the candidates in both the 2016 and 2020 presidential elections. The 2020 presidential election presented a special case in campaigning in light of COVID-19. Candidates presented an evolution in campaigning strategies, as the pandemic forced presidential candidates to move to virtual events. The online media presence of political candidates during an election can be classified as professionalism or amateurism. With the rise of social media in presidential elections, as well as the online presence of candidates and the proliferation of disinformation, this paper evaluates the need for and recommendation of policy for presidential candidates when posting on social media.

INTRODUCTION

Media is a growing topic in the political realm. Much of the news and information dispersal stems from media publication. However, as we have advanced from the late twentieth century into the twenty-first century, there has been an upheaval in media transmissions through the development of social media. The emergence of social media, including platforms like Twitter and Facebook, have allowed members of the general population to acquire their news while scrolling through an app rather than listening to a radio show or reading a newspaper. This emergence of social media has significantly lowered the information cost of news. While there are benefits to the progression of social media, such as instantaneous communication and automatic access, there are also drawbacks like disinformation.

The benefits and drawbacks associated with social media are especially prevalent in the presidential election cycle. As demonstrated by the 2016 presidential election, both candidates, Secretary Hillary Clinton and President Donald Trump, took diverging routes in their respective social media presence and campaign strategies. The 2020 presidential election encountered something that no prior candidate had to face in the twenty-first century: the COVID-19

pandemic. This international crisis shaped the way in which both President Donald Trump and Vice-President Joe Biden were able to utilize social media in their campaign strategies. This paper aims to analyze social media as it relates to presidential elections, specifically the 2016 and 2020 presidential elections, as well as it relates to the COVID-19 crisis. The online presence of each candidate portrayed what could be categorized as professionalism and amateurism. The online presence of candidates provides the need for policy recommendations to better maintain behavior on social media platforms for presidential candidates.

MEDIA

While media remains a prominent contributor to elections and the distribution of news as it relates to the political realm, the rise of social media has made access to news and information virtually instantaneous. This transition from traditional types of media, including radio broadcasts, print, and television broadcasts, to more modern types of media, including social media, permits "an advance in efficiency and distribution."[1] There has been a dramatic increase in the number of media users, specifically social media users, since the mid-2000s.[2] There were "2.85 billion users on a monthly basis" recorded worldwide in 2020 when looking at the number of Facebook users; when looking at the number of Twitter users on a monthly basis in 2019, there were approximately 330 million individuals who used Twitter worldwide.[3]

Social media plays a pivotal role in the spread of political news and the political learning process, as it "[shifts] who controls information, who consumes information, and how that information is distributed."[4] On the individual level, social media permits individuals to select information that aligns with their personal and ideological beliefs while simultaneously allowing for the rejection of information that does not.[5] While individuals are able to select information that is agreeable to them, actors of all types on the political level are also able to morph their

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[1] Jason Gainous and Kevin M. Wagner, *Tweeting to Power: The Social Media Revolution in American Politics* (New York: Oxford University Press, 2013), 5.
[2] Ibid., 1.
[3] "United States: Number of Facebook Users 2017-2026," Statista, January 28, 2022, https://www.statista.com/statistics/408971/number-of-us-facebook-users/; "Twitter: Number of Monthly Active Users 2010-2019," Statista, January 28, 2022, https://www.statista.com/statistics/282087/number-of-monthly-active-twitter-users/.
[4] Ibid
[5] Ibid

content because social media is separate from what is termed the "traditional media machine."[6] Social media has increased efficiency and user participation, ultimately making the retrieval of news "user-driven," as there is direct user control of what type of media a user obtains rather than being dependent on traditional outlets.[7] Additionally, social media presents its users with an interconnected platform that combines aspects of modern and traditional media outlets:

> At its most basic level, social media captures all of the elements of the previous mediums. In operation, social media can distribute everything that television, magazines, radio, and newspapers do, and in a more timely manner with an easily accessible and interactive interface on demand (Tewksbury 2003). Beyond being simply a compilation of the previous mass media, the social media presents a mass, multidirectional conversation.[8]

When looking at the 2020 Election, there was an increase in online engagement and participation when compared to the 2016 election.[9] However, while there is individual liberty to search for and post information that relates to an individual's preferences and interests, this liberty poses a threat through the rise of disinformation and the manipulation of facts on social media. A prime example of this would be the 2016 presidential election, as there was involvement by Russia in an attempt to manipulate social media as demonstrated by Congressional investigations.[10] In this regard, while social media promotes conversations between individuals, disinformation ultimately "reduces trust in online systems, because of its ability to influence both individual opinions and social dynamics."[11] As it relates to the 2016 presidential election, the United States Department of Justice reported that Douglass Mackey, a Florida resident, was using social media, specifically Twitter, to disperse of disinformation to 58,000 followers pertaining to voting in the election:

> As alleged in the complaint, between September 2016 and November 2016, in the lead up to the Nov. 8, 2016, U.S. Presidential Election, Mackey conspired with others to use social media platforms, including Twitter, to disseminate fraudulent messages designed to encourage supporters of one of the presidential candidates

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[6] Ibid

[7] Gainous and Wagner, *Tweeting to Power*, 6.

[8] Gainous and Wagner, *Tweeting to Power*, 7.

[9] "Charting Congress on Social Media in the 2016 and 2020 Elections," Pew Research Center, Washting, D.C. (September 30, 2021), https://www.pewresearch.org/politics/2021/09/30/charting-congress-on-social-media-in-the-2016-and-2020-elections/.

[10] Karishma Sharma, Emilio Ferrara, and Yan Liu, "Characterizing Online Engagement with Disinformation and Conspiracies in the 2020 U.S. Presidential Election," *arXiv,* October 20, 2021, 1, http://arxiv.org/abs/2107.08319.

[11] Ibid.

(the "Candidate") to "vote" via text message or social media, a legally invalid method of voting.[12]

The use of social media as demonstrated through the actions of Mackey threatens the very core of the benefits provided by social media as it pertains to elections.

2016 PRESIDENTIAL ELECTION

With millions of social media users, this type of platform makes instantaneous access to constituents feasible through a media presence. This alone poses the question as to what created the evolution of campaigning between the 2012 and 2016 presidential elections. According to the Pew Research Center, 44 percent of adults in the United States learned information about the election through social media.[13] Further, 24 percent of adults used social media posts for the means of gathering information about both candidates during the 2016 presidential election.[14]

In a study conducted by Gottfried and Shearer from the Pew Research Center, 62 percent of adults within the United States utilize social media for the purpose of acquiring their news.[15] Within this 62 percent of the population that uses social media as a source to find news, Gottfried and Shearer found that 18 percent of adults use social media frequently, or "often," as a means to acquire their news.[16] In the same study, Gottfried and Shearer evaluated popular social media sites, including, but not limited to, Facebook, Twitter, Reddit, and Instagram, to see the prevalence of news material on these platforms.[17] While each platform yielded a different number of users who might encounter news while using the outlet, Gottfried and Shearer found that the aforementioned platforms provided many of their users with news material: 66 percent of Facebook users, 59 percent of Twitter users, 70 percent of Reddit users, and 23 percent of

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[12] US Department of Justice Office of Public Affairs, "Social Media Influencer Charged with Election Interference Stemming from Voter Disinformation Campaign," United States Department of Justice, January 27, 2021, https://www.justice.gov/opa/pr/social-media-influencer-charged-election-interference-stemming-voter-disinformation-campaign.

[13] "2. Candidates Differ in Their Use of Social Media to Connect with the Public," Pew Research Center, Washtington, D.C. (July 18, 2016), https://www.pewresearch.org/journalism/2016/07/18/candidates-differ-in-their-use-of-social-media-to-connect-with-the-public/.

[14] Ibid.

[15] Jeffrey Gottfried and Elisa Shearer, "News Use across Social Media Platforms 2016," Pew Research Center, Washington, D.C. (May 26, 2016), https://www.pewresearch.org/journalism/2016/05/26/news-use-across-social-media-platforms-2016/.

[16] Ibid.

[17] Ibid.

Instagram users get news when using the social media platforms.[18] Furthermore, it is important to pay attention to the number of Americans who simply use social media outlets versus those who acquire news on these platforms. For instance, 67 percent of adults in the United States use Facebook, with 44 percent of Facebook users obtaining their news through this platform.[19] When looking at Twitter, 16 percent of adults in the United States use this outlet, with 9 percent of Twitter users obtaining news through the application.[20] This distinction of users versus news obtainers, as well as the popularity of Instagram, Reddit, Facebook, and Twitter, is a topic that is especially important for the 2016 presidential election.

Focusing on Twitter specifically, when looking at the two primary candidates for the 2016 presidential election, one is able to observe the follower base and the number of individuals with which both the Republican and Democratic Party candidates were able to communicate. In 2016, President Trump had an estimated 11.9 million followers on Twitter, while Secretary Hillary Clinton had an estimated 9.3 million followers.[21] With Twitter alone, each candidate can easily reach a large demographic of individuals at the tips of their fingers, with additional views stemming from both retweets and likes on their respective posts by their follower base. According to the Pew Research Center, all candidates, President Trump, Secretary Hillary Clinton, and Senator Bernie Sanders, used Twitter and Facebook almost equally; the candidates would post on Facebook five to seven times day and would post 11 to 12 tweets per day on Twitter.[22] While each candidate posted on average strikingly similar amounts, President Trump had a higher follower interaction in comparison to both Secretary Hillary Clinton and Senator Bernie Sanders, perhaps attributed to his higher number of followers.[23]

When looking at the campaign styles of both President Trump and Secretary Hillary Clinton as it relates to social media and their presence on Twitter, each took a diverging route in the way they were both portrayed and perceived. According to Enli, when evaluating "user engagement" in the 2016 presidential election, there was a divide between what would be

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[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] "2016 U.S. Election: Twitter Followers of Candidates in September 2016," Statista, September 30, 2016, https://www.statista.com/statistics/509579/twitter-followers-of-2016-us-presidential-candidates/.
[22] "2. Candidates Differ in Their Social Media Use."
[23] Ibid.

considered either professional or amateur.[24] In this regard, "[the] 2016 Clinton campaign's social media activity confirms theories regarding the professionalism of election campaigns in Western liberal democracies, while the 2016 Trump campaign has a more amateurish yet authentic style in social media."[25] Between both the Democratic and Republican campaigns, there is a historical air of professionalism and traditionalism in both the current and prior Democratic campaigns of both President Barack Obama and candidate Secretary Hillary Clinton: "The 2016 Clinton campaign represented a continuation of the [professionalized] social media campaigns established in previous presidential campaigns by the Democratic Party."[26] Secretary Hillary Clinton's continuation of professionalism likely stems from the precedence of President Obama's professional campaign while President Trump began without a political foundation.[27] Notably, President Trump had a solid foundation provided by his celebrity and business status, which ultimately spurred and promoted his amateur rather than professional campaign for the 2016 presidential election:

> Its amateurism did not derive from any lack of strategy or competence about basic media logics, however, because Trump knew how to get media coverage, validating those studies that have demonstrated that celebrity politicians are several times more likely than unknown politicians to be quoted in the mainstream news on the basis of their social media posts (Chadwick, 2014; Wallsten, 2013). His celebrity status therefore fueled the Trump campaign and enabled a strategy based on a controversial and unexpected use of social media, and in particular, Twitter. His image as a candidate was largely formed by his widely circulated tweets, which were often quoted and debated in the mainstream media.[28]

This idea of professionalism (traditional) versus amateurism (non-traditional) is further enforced by the styling of tweets of both President Trump and Secretary Clinton. When comparing the tweet styles side by side, 38.3 percent of President Trump's tweets were categorized as traditional, 54.5 percent as non-traditional, and 7.2 percent within a neutral range.[29] For Secretary Clinton, 81.7 percent of her tweets were viewed as traditional, 12.9 percent as non-

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[24] Gunn Enli, "Twitter as Arena for the Authentic Outsider: Exploring the Social Media Campaigns of Trump and Clinton in the 2016 US Presidential Election," *European Journal of Communication* 32, no. 1 (2017): 54, doi: 10.1177/0267323116682802.
[25] Ibid.
[26] Ibid, 55.
[27] Ibid.
[28] Ibid, 55-56.
[29] Ibid, 56.

traditional, and 5.4 percent as neutral.[30] In the 2016 presidential election, there was an increase in the use of social media as news pushing outlets, as well as the rise of the Republican perception through President Trump's use of Twitter as a means to promote his campaign platform.

2020 PRESIDENTIAL ELECTION

The 2020 presidential election posed new and uncertain challenges for the presidential candidates for a couple of reasons. First, President Trump was running for re-election, no easy feat when opposing former Vice President Joe Biden who was widely known by the United States after serving with President Obama from 2012 until 2020. Second, while campaigns were amping up for each political party, so were the worries and preoccupations surrounding the COVID-19 pandemic across the United States. Despite concerns, President Trump proceeded with in-person campaigning methods, specifically with rallies in which thousands of American citizens would gather in masses.

An interesting comparison between the two candidates, President Trump and Vice-President Biden, was the type of rallies held by each actor, especially when considering how COVID-19 forced both candidates to devise safer ways to contact voters. As previously mentioned, President Trump continued with his traditional, in-person rallies, including both campaign rallies as well as airport rallies.[31] It is noted that the Trump Administration continued with its first rally following the arrival and announcement of COVID-19 in Tulsa, Oklahoma in June of 2020.[32] The Tulsa, Oklahoma rally took place in the BOK Center, with a capacity of over 19,000 individuals, fostering concern among members of the community who anticipated a surge in the COVID-19 crisis.[33] While there would be precautions taken, including taking attendee's temperatures and the distribution of masks and hand sanitizers, the BOK Center allowed for both

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[30] Ibid, 56.

[31] Bill Ruthhart and Jonathon Berlin, "Campgain Trail Tracker: Where Trump, Biden and Their Running Mates Have Traveled in Presidential Race's Final Weeks," *Chicago Tribune*, November 5, 2020, https://www.chicagotribune.com/politics/ct-viz-presidential-campaign-trail-tracker-20200917-edspdit2incbfnopchjaelp3uu-htmlstory.html

[32] Ben Gittleson, "Trump Pushes Ahead with Tulsa Rally, while Pence Misleads and Coronavirus Cases Rise," *ABC News*, American Broadcast Company, June 16, 2020, https://abcnews.go.com/Politics/trump-pushes-ahead-tulsa-rally-pence-misleads-coronavirus/story?id=71275621.

[33] Ibid.

residents of Tulsa, Oklahoma and visitors from other locations the opportunity to come together with little to no social distancing to hear President Trump's message.[34]

What was especially intriguing regarding the Tulsa rally held by President Trump was the way social media affected attendance to this event. On Twitter, Korean pop (K-pop) music fans posted tweets following the viewing of a message from @TeamTrump regarding the rally, asking fans to register but not go to the event.[35] Tweets were deleted after approximately 24 to 48 hours to prevent their plan from becoming known.[36] In addition to Twitter, the widely popular social media application Tik Tok, a platform that allows users to both post and watch videos from individuals around the world, also took the role as saboteur when looking at the number of attendees of the rally.[37] Users from Tik Tok took it upon themselves to register for the event, as well as implore others to register for the event, with no intentions of going to the rally, leaving only 6,200 tickets that were scanned for entrance to the event.[38] While presidential candidates can use social media to their advantage, President Trump's rally in Tulsa demonstrates the grim reality of constituents and the general public using social media as a means to ultimately affect the intent behind political campaigning. Without social media connecting citizens from across the nation, this type of coordination would have been highly unlikely, if not impossible.

When analyzing the rallies put on by the Democratic Party candidates, Vice-President Biden and Senator Harris implemented a strategic maneuver that allowed for both gathering and the safety of voters: drive-in rallies.[39] At the drive-in rallies, attendees would do as the name suggests–they would arrive in their vehicles, park, and stay within the vicinity of their cars to watch Vice-President Biden's speech, typically viewable from a projector.[40] According to a factchecking article produced by Reuters, Vice-President Biden's drive-in rally, specifically the

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[34] Ibid.; Ella Torres and Catherine Thorbecke, "Tulsa Officials Announce Precautions Ahead of Trump's 'Unprecedented' Rally," *ABC News*, American Broadcast Company, June 19, 2020, https://abcnews.go.com/US/tulsa-officials-announce-precautions-ahead-trumps-unprecedented-rally/story?id=71342463.

[35] Taylor Lorenz, Kellen Browning, and Sheera Frenkel, "TikTok Teens and K-Pop Stans Say They Sank Trump Rally," *New York Times*, June 21, 2020, https://www.nytimes.com/2020/06/21/style/tiktok-trump-rally-tulsa.html.

[36] Ibid.

[37] Ibid.; Georgia Wells and Shan Li, "How TikTok Users Targeted Trump Rally," *Wall Street Journal*, June 21, 2020, https://www.wsj.com/articles/how-tiktok-users-targeted-trump-rally-11592795368.

[38] Lorenz, Browning, and Frenkel, "TikTok Teens and K-Pop Stans Say They Sank Trump Rally"; Wells and Li, "How TikTok Users Targeted Trump Rally."

[39] "Joe Biden Hosts Drive-In Campaign Rallies Amid Coronavirus Pandemic ahead of US Election," Australian Broadcast Corporation, October 19, 2020, https://www.abc.net.au/news/2020-10-19/joe-biden-rally-drive-in-us-election-votes-donald-trump/12781206.

[40] Ibid.

rally in Toledo, Ohio on October 12, 2020, was held in a manner that promoted social distancing and upheld the CDC guidelines amidst the pandemic.[41] In an attempt to criticize his opponent despite Vice-President Biden's shift in campaign strategies to allow for the safety of attendees, President Trump tweeted on June 19, 2020, "Joe Biden's rally. ZERO enthusiasm!" in reference to Vice-President Biden's in-person, social distanced campaign event that took place in Philadelphia.[42] In this specific situation, Vice-President Biden's rally that called for social distancing and adherence to CDC guidelines was insinuated to be lack-luster in comparison to President Trump's in-person rallies. In addition to drive-in rallies, Vice-President Biden also held virtual events rather than traditional in-person rallies. This was done with concerns surrounding COVID-19, falling in line with his dedication to upholding the guidelines and recommendations provided by the CDC and other prominent health officials.[43] Vice-President Biden's first virtual event, a town hall, was centered in Illinois on March 14, 2020, and it was full of technical difficulties.[44]

Despite President Trump continuing with in-person campaigning methods and his criticism towards Vice-President Biden's drive-in rallies, President Trump transitioned to holding tele-rallies in July of 2020.[45] A tele-rally is essentially the same thing as his usual in-person rally but a "pared down [version]" that consists of a roughly 25-minute phone call.[46] This was a large jump from his traditional campaigning method, which included both in-person rallies and other events targeted towards certain populations that took place on a virtual platform.[47]

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[41] "Fact Check: Biden Rally in Toledo, Ohio was a Drive-In Distance Event, Not a Regular Rally," Reuters, October 22, 2020, https://www.reuters.com/article/uk-factcheck-biden-rally-toledo-drive-in-idUSKBN2771XU.

[42] Molly Nagle and John Verhovek, "Campaigning Amid COVID Highlights Contrast between Trump, Biden Approach," *ABC News*, American Broadcast Company, June 20, 2020, https://abcnews.go.com/Politics/campaigning-amid-covid-highlights-contrast-trump-biden-approach/story?id=71357921; J. Edward Moreno, "Trump Mocks Biden Event that Practiced Social Distancing," *The Hill*, June 19, 2020, https://thehill.com/homenews/campaign/503647-trump-mocks-biden-event-that-practiced-social-distancing.

[43] Sarah Mucha, "Biden Campaign to Hold Virtual Events Instead of Rallies Amid Coronavirus Crisis," CNN Politics, March 11, 2020, https://www.cnn.com/2020/03/11/politics/joe-biden-virtual-events/index.html.

[44] Holly Bailey, "The End of Campaigning as We Knew it," *Washington Post*, October 31, 2020, https://www.washingtonpost.com/graphics/2020/politics/pandemic-campaign-trump-biden/; Makena Kelly, "Joe Biden's First Virtual Town Hall was an Absolute Technical Nightmare," *The Verge*, March 14, 2020, https://www.theverge.com/2020/3/14/21179466/joe-biden-virtual-town-hall-audio-bernie-sanders-illinois-dick-durbin-nightmare.

[45] Brett Samuels, "Amid Concerns over Coronavirus, Trump Turns to 'Tele-Rallies' to Drive Support," *The Hill*, July 21, 2020, https://thehill.com/homenews/administration/508231-amid-concerns-over-coronavirus-trump-turns-to-tele-rallies-to-drive?rl=1.

[46] Ibid.

[47] Ibid.

Additionally, the tele-rallies were livestreamed to Facebook through a live stream, a platform that allowed for over 1 million viewers for the events that took place in Wisconsin, Arizona, Michigan, and North Carolina.[48]

      This transition to a more virtual format likely served President Trump well, as there were remarks and criticisms made when comparing the actions of President Trump to those of Vice-President Biden. For instance, Vice-President Biden kept his in-person gatherings to a small number and adhered to CDC guidelines in an attempt to prevent the spread of COVID-19; President Trump, on the other hand, required neither masks nor social distancing during his in-person rallies, creating concern from members who were preoccupied regarding the rise in COVID-19 cases in the Tulsa area.[49] An interesting fact to note is attendees of the rally not being required to wear masks was upheld by the Oklahoma Supreme Court.[50]

LONG TERM RAMIFICATIONS OF CHANGES IN MEDIA PLATFORM USAGE–SHOULD IT LAST?

      The changes in the media platform usage between the 2016 and 2020 presidential elections stem from the safety and health concerns that derived from the COVID-19 pandemic. While technology has advanced since 2020 and companies such as Pfizer, Moderna, and Johnson and Johnson have created vaccines that are readily and widely available for the general public, worries remain surrounding the variants of COVID-19 and their transmission abilities to those who are both vaccinated and unvaccinated. The rise of virtual events and tele-rallies for presidential candidates during an election campaign have generated an easily accessible option for those who are unable to attend in-person, whether it be because of personal reasons or COVID-19 concerns.

      Additionally, communications through social media allow for an ease of access when gathering information about a presidential candidate and their platform. However, there are draw

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[48] Ibid.

[49] Nagle and Verhovek, "Campaigning Amid COVID Highlights Contrast between Trump, Biden Approach"; Moreno, "Trump Mocks Biden Event that Practiced Social Distancing"; Gittleson, "Trump Pushes Ahead with Tulsa Rally, while Pence Misleads and Coronavirus Cases Rise."

[50] "Oklahoma Supreme Court Says Trump Rally Attendees Don't Have to Wear Masks," *PBS News Hour*, Public Broadcasting Service, June 19, 2020, https://www.pbs.org/newshour/health/court-says-trump-rally-attendees-dont-have-to-wear-masks; Moreno, "Trump Mocks Biden Event that Practiced Social Distancing."

backs to this access. First, users have the ability to select what information they want to receive, meaning they can collect what agrees to their viewpoints and reject what does not. Second, disinformation plays a role in the accuracy and validity of the information that is shared across social media users. Should disinformation be spread, it can pose serious challenges to the democratic process and the validity and trustworthiness of social media sites. Despite the setbacks that can be associated with social media as it relates to campaigning, strategies employed by both President Trump and Vice-President Biden demonstrate the rewards and advances obtained through the use of the virtual social media platform. Moving forward into a state of unknown containing the variants of COVID-19 and the differing attitudes surrounding the virus across the states, the social media platform should remain and can likely be furthered to advance the goals of an election candidate when the actor utilizes both aspects from the 2016 presidential election and the 2020 presidential election. This will be further addressed under *Recommendations.*

RECOMMENDATIONS

With the growth of social media as a means to acquire news by the general public and to campaign by political actors, the need for guidelines and recommendations on best practices is present. COVID-19 enforces this need because of its damaging effects on the United States as a nation and the unknown citizens and candidates alike face in the future. When taking into consideration the continual growth and development of social media applications, especially as they play either beneficial or detrimental roles in the campaigning efforts of presidential candidates, this form of campaigning is a vital tool for presidential candidates as the United States approaches campaigning for the midterm elections and the 2024 presidential election.

With the evolution in campaign methodology between the 2016 and 2020 presidential elections, the question of whether or not to continue with in-person rallies appears as it relates to the use of social media. With in-person rallies, there is an air of excitement and anticipation that emerges with being in a close quarters facility with others who are also in attendance; however, this close proximity to others poses potential, unknown risks that will only be known as the COVID-19 virus continues to mutate. Holding either virtual rallies or drive-in rallies permits social distancing, whether it be from one's home or vehicle. Additionally, because virtual rallies

have the ability to be live streamed through a provider like Facebook, there is great potential in reaching voters from all over a state that might not live in close proximity to an in-person rally. By holding both an in-person and virtual rally, this promotes the ability to foster both excitement and inclusivity by allowing those who might not be able to come in-person because of the aforementioned distance or even health concerns. While in-person rallies are broadcasted onto television, access is not always reliable–by livestreaming a virtual rally through Facebook or a similar platform, anyone with a smartphone, tablet, laptop, or smart TV can have instantaneous access and feel as though they are being spoken to rather than watching a candidate speak to an audience during an in-person rally.

When it comes to social media usage by presidential candidates directly, there needs to be an internal motivation within presidential candidates to not act in a manner online or post content that would otherwise further the spread of disinformation, incite violence, or question the legitimacy of the democratic process as present in Twitter's determination of President Trump's tweets.[51] The platform should have addressed his content prior to the incident. Moving forward, the accounts of high-profile actors, including presidential election candidates, who hold substantial weight in the eyes of the American public should be further analyzed and monitored due to the esteem they hold in their positions. Candidates should also adopt ethical guidelines when posting to social media platforms. Additionally, voters should adopt and maintain similar ethical guidelines in order to dissuade political candidates from acting in a certain manner.

There is a strong need for regulatory measures by both the candidate and the media platforms themselves to prevent the dissemination of misinformation, as well as maintain a balance between the perceived conduct of professionalism and amateurism. As previously mentioned, the 2016 presidential election saw an evident divide between the campaign methodology, professional versus amateur, for both Secretary Hillary Clinton and President Trump respectively.[52] While each method has been used since the 2016 presidential election, there is the argument that President Trump's Twitter presence has been less than satisfactory–

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[51] "The Twitter Rules," Twitter, accessed February 16, 2022, https://help.twitter.com/en/rules-and-policies/twitter-rules; Twitter, "Permanent Suspension of @realDonaldTrump," *Twitter* (blog), January 8, 2021, https://blog.twitter.com/en_us/topics/company/2020/suspension.
[52] Enli, "Twitter as Arena for the Authentic Outsider."

this is seen through the permanent banning of his Twitter account following the events that transpired on January 6, 2020, due to a violation of Twitter's rule and guidelines.[53]

While this is an extreme example of negatively influential behavior that is demonstrated by the violence that took place in the Capitol of the United States, actions need to be taken proactively rather than retroactively to better foster a positive impact on the American public by direct communication from political candidates in an election. For instance, there were conversations regarding President Trump's media presence long before the events at the Capitol transpired, sparking intrigue as to why Twitter had not taken preventative action.[54] Twitter, rather than acting when previously questionable behavior occurred, waited for what would be considered posts that incited violence to address his behavior. To such an extent, this would be an opportunity for media outlets to amend their policy guidelines, specifically for political candidates. This type of revision would further shape and define the online media presence of political actors, thus keeping in check their behaviors and interactions with both the general public and with one another.

When looking at ways to mitigate the spread of disinformation, as well as maintain a balance between professionalism and amateurism for political candidates, analyzing social media regulation in other nations, specifically Germany, might serve as a foundation for addressing future American political campaigns that utilize social media platforms. Concern for disinformation is especially pressing when considering the effects it has on democracy, including the effect it has on the viewpoints of citizens, the integrity of the democratic process through elections and their results, and the extension of disinformation through automated social media accounts.[55] Germany enacted the Network Enforcement Act, or Netzwerkdurchsetzungsgesetz (NetzDG), in 2017.[56] The act specifically targets platforms that have over two million registered users.[57] What is interesting about NetzDG is the fine that social media platforms face should the application not remove the content in question in an appropriate amount of time:

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[53] Twitter, "Permanent Suspension of @realDonaldTrump."

[54] Dipayan Ghosh, "Are We Entering a New Era of Social Media Regulation?" *Harvard Business Review*, January 14, 2021, https://hbr.org/2021/01/are-we-entering-a-new-era-of-social-media-regulation.

[55] Costica Dumbrava, *Key Social Media Risks to Democracy: Risks from Surveillance, Personalisation, Disinformation, Moderation and Microtargeting* (Brussels: European Parliamentary Research Service, 2021), 3, https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/698845/EPRS_IDA(2021)698845_EN.pdf.

[56] "Germany: Network Enforcement Act Amended to Better Fight Online Hate Speech," Library of Congress, accessed February 16, 2022, https://www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/.

[57] Ibid.

> [NetzDG] obligates the covered social media networks to remove content that is "clearly illegal" within 24 hours after receiving a user complaint. If the illegality of the content is not obvious on its face, the social network has seven days to investigate and delete it. A social media network may be fined up to 50 million euros (about US$59.2 million) for noncompliance.[58]

While this law attempts to curb what would be considered hate speech, it has been heavily under fire by its critics. Many civil rights activists claim that the law limits freedom of expression.[59] Among its critics include the United Nations Human Rights Committee.[60] The concerns of the UN Human Rights Committee stem from what is described as "broad powers" that are derived from NetzDG that permit the limitation of the freedom of online expression.[61] Under NetzDG, there is a lack of judicial oversight because the monitoring and removal of online content is done by the social media platforms, thus limiting any sort of redress.[62]

Whether or not NetzDG is a model to which the United States should look when attempting to adopt methods to dispel disinformation and to moderate the behavior of political candidates is a question that remains. While Germany is attempting to mitigate hate speech, this would prove problematic when looking at rulings of the United States Supreme Court that define and elaborate on what is considered hate speech in the United States. Additionally, such a policy might open the door for what could potentially further censorship from the federal government, whether it be from the government itself or the social media platforms acting under federal legislation. This censorship would threaten freedom of speech, a right protected by the First Amendment. Despite concerns, Germany's legislation can allow American lawmakers to further devise legislation that ultimately attacks disinformation and requires that political actors maintain a balance between professionalism and amateurism.

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[58] Ibid.

[59] Oliver Noyan, "Germany's Online Hate Speech Law Slammed by Opposition, Commission," EURACTIV.de, trans. Daniel Eck, May 10, 2021, https://perma.cc/5BVV-84TA.

[60] Meri Baghdasaryan and Karen Gullo, "UN Human Rights Committee Criticizes Germany's NetzDG for Letting Social Media Platforms Police Online Speech," Electronic Frontier Foundation, November 23, 2021, https://www.eff.org/deeplinks/2021/11/un-human-rights-committee-criticizes-germanys-netzdg-letting-social-media.

[61] UN Human Rights Committee, *Concluding Observations on the 7th Periodic Report of Germany: Human Rights Committee* (Geneva: United Nations, 2021), 10, https://digitallibrary.un.org/record/3949851.

[62] Ibid.

CONCLUSIONS

There was an evident shift in the way candidates campaigned between the 2016 and 2020 presidential elections. While there was an increase in the use of social media following President Obama and his Twitter account being the first account associated with the President of the United States, the four-year transition period between 2016 and 2020 saw an increase in the way candidates utilized social media as a means to contact the American public. This transition was attributed not only to the ease of access and reduced information costs provided by social media but also to the COVID-19 pandemic that limited human interaction in an attempt to stop the spread. In this virtual campaigning style through social media, candidates have been associated with either a style that is considered professional or amateur. This campaign style has also generated concern for the spread of both disinformation and misinformation.

There is a need to adopt ethical guidelines when using social media for both political candidates and voters. The guidelines will act as a means to ensure that composure and behavior is maintained by candidates and voters when posting on an online platform. Additionally, there is a need for a policy where the aim is to target both ill behaviors of candidates and false information that is spread on social media. While there are methods provided by all social media platforms that target false information, their efforts are not enough based on the number of users who utilize the applications. The policy should target the prevention in the spread of disinformation and misinformation, as well as ensure that presidential candidates maintain their behaviors with one another when posting information to social media. However, the challenge of to what extent legislation can control publication on social media sites, whether the policy should be executed by the federal government or the social media applications, and the question of if this type of legislation is a violation of the constitutional right of free speech guaranteed to all Americans remain. Despite these barriers, there is sufficient evidence that this type of policy reformation is needed. The implementation of such a policy is crucial to preserve the democratic principles found in the very essence of the American presidential elections.

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SECURING THE BALLOT BOX:
MODERN ELECTIONS AND THEIR CONSEQUENCES

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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 Military, and the Department of Defense.

Public distrust in the administration of elections in the United States was dangerously high following the 2020 election. It is prudent to analyze how policymakers have addressed modern election reform in the past, what worked, what did not, and how a coalition was formed. The most salient example of sweeping election reform was the mobilization following the 2000 election. Analysis of the 2000 election unveils the key issue with moving on from 2020: elites are not coalescing to find a solution the way they did following Bush's victory. For the time being, federal action remains limited and rival political elites have refused to engage in any kind of bipartisan discussion to fix the issues with American electoral administration.

INTRODUCTION: THE 2020 ELECTION AND ITS IMPLICATIONS

The reaction by elites to the results of the 2020 election encouraged a precipitous drop in the public confidence of elections, particularly on a partisan basis. Directly after the election, the number of Republicans who thought the election was "free and fair" plummeted from 57% to 26%.[1] They cited former President Trump and Fox News as the number one and two reasons, respectively, why they felt this way.[2] Despite this, 65% of all voters believed the election was free and fair.[3] This partisan reaction is not unique. In 2000 and 2004, Democrats polled that they only had 59% and 58% confidence in the election.[4] An analysis of this trend reveals two main predicting factors in voter's confidence in elections: who wins, and how close the election is.[5] Each year, then, the parties are expected to have a significant gap in confidence, and a decisive

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[1] Nick Laughlin and Peyton Shelburne. "How Voters' Trust in Elections Shifted in Response to Biden's Victory." Morning Consultant, 27 January 2021, https://morningconsult.com/form/tracking-voter-trust-in-elections/.
[2] Ibid.
[3] Ibid.
[4] "Voter Confidence." Election Lab. MIT Election Data + Science Lab, 2 April 2021, https://electionlab.mit.edu/research/voter-confidence.
[5] Ibid.

victory is less often the subject partisan scrutiny. The 2020 election brought about the largest gap in partisan confidence in the past 5 election cycles, with Democrat and Republican confidence separated by 32%.[6]

People who voted for President Trump are exceptionally likely to internalize his rhetoric concerning electoral fraud. In fact, 77% of Trump voters believed all voting is prone to fraud, and 78% of Trump voters believed that mail in voting, specifically, is prone to fraud.[7] Additionally, 65% of Trump voters maintain that Trump won the popular vote and the election, despite Joe Biden leading by over five million votes.[8] Even if Trump personally conceded and all of his legal claims failed in the court system, only 60% of Trump voters would have viewed Joe Biden's win as "legitimate."[9] These polls indicated the creation of a unique, unruly coalition that could not be corralled by the familiar assurances of American political institutions.

This non withstanding, these popular feelings prompted quick, partisan election reform on a uniquely large scale. During the 2021 legislative periods, nineteen different states passed thirty-three laws that make it more difficult for Americans to vote.[10] In that same period, 425 bills were introduced with provisions that "restrict voting access" in forty-nine different states.[11] In addition to the strong reaction to protect voting from potential fraud, actors also worked to expand voting access. Twenty-five states have enacted sixty-two different laws that expanded voting access, and the federal government has introduced both the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act.[12] Despite the opposing nature of these legislative movements, they do not cancel each other out. The expansion of voting rights is primarily occurring in states where it is already easier to vote, and the contraction of voting rights is occurring in states where it is already more difficult to vote.[13]

The increase in the legislation of partisan voting bills has no parallel in modern history. In an increasingly polarized environment, bipartisan compromise has been more of an obstacle, rather than an aid, to forward progress. In analyzing both the 2020 and 2000 elections, it

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[6] Ibid.

[7] Gordon Pennycook and D.G. Rand. "Examining false beliefs about voter fraud in the wake of the 2020 Presidential Election." The Harvard Kennedy School Misinformation Review 2, no. 1 (2021). DOI: 10.37016/mr-2020-51.

[8] Ibid.

[9] Ibid.

[10] Michael Waldman. "Voting Laws Roundup: October 2021." Brennan Center. Brennan Center for Justice, 4 October 2021, https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021.

[11] Ibid.

[12] Ibid.

[13] Ibid.

becomes clear that this partisan gridlock was born from the modern breakdown of elite, electoral cohesion, and not just product of the unique, uncertain election in 2020.

GATHERING THE ELITES: ADDRESSING THE 2000 ELECTION

The exceptional irregularities of the election of 2000 challenged the ability of American electoral institutions to respond quickly and adequately to electoral malpractice. The 2000 presidential election came down to Florida, with both Bush and Gore needing the state to accrue the 270 electoral votes necessary to win. However, following the final tabulation, neither candidate would concede due to the razor thin margins. All the counties first conducted a recount of their votes, shrinking Bush's lead from 1,784 to 327.[14] In addition to the clear confusion, the Florida recount faced other technical problems. They had utilized butterfly ballots that confused voters, which led them to accidentally mark Buchanan for President instead of Gore, and in some cases, vote for both Buchanan and Gore.[15] There was 19,000 "overvotes" of both Buchanan and Gore in Florida, which could have enabled a substantial victory for Gore.[16] In addition to the overvotes, the recount was also faced with determining how to address "undervotes," or ballots that had no presidential candidate selected, but often had dimpled or hanging chads for a particular candidate.[17] In the four counties that the Democrats requested be recounted, the Florida Supreme Court consistently ordered the count to continue, and specifically requested that all "undervotes" be recounted in other counties.[18] Generally, Florida's election law has always "sought the intent of the voter" and holds a "general commitment to … the will of the voter" based on previous cases.[19] Unfortunately, these laws were not expansive enough to quickly handle a "dead heat presidential election … [they were built for] state and local elections," so the Supreme Court had to intervene.[20] Clearly, Florida law guided the state supreme court to ensure an accurate, fair count of all the ballots, but the federal government had an election to certify as well.

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[14] Pomper, "The Presidential Election," 127.
[15] Ibid.
[16] Ibid.
[17] Ibid., 129.
[18] Ibid., 130.
[19] Mills, *Reforms in Florida after the 2000 Presidential Election*, 72.
[20] Jon Mills, *Reforms in Florida after the 2000 Presidential Election*, Faulty Scholarship at IF Law Scholarship Repository. J.L. & Pub. Pol'y 69 (2001) http://scholarship.law.ufl.edu/facultypub/582, 71.

The anomalies of the election led to a legal battle that culminated in *George W. Bush and Richard Cheney, Petitioners v. Albert Gore, Jr. and Joseph Lieberman, et al.* a landmark case that ceased the recount effort in Florida and remains a subject of fierce debate.[21] *Bush v. Gore* was technically two interventions into the same case. The first intervention, on December 8, was a reaction to the Florida Supreme Court ordering a statewide recount of ballots.[22] In order for the high court to stay this recount, it had to prove probable success on the merits and display irreparable harm if it is not stopped.[23] The majority's holding that the "counting of votes does … threaten irreparable harm to [the legitimacy of George Bush's election]" is confounding given the objectively higher degree of harm deferred to Al Gore by not granting him a recount.[24] This decision highlighted the "ideological fissures" of the high court and led to diminished public confidence in its ability to make objective decisions.[25]

The Supreme Court convened again to determine if the recount should not just be delayed but discontinued on December 12, 2000. The main conflicts of this segment of *Bush v. Gore* were the separation of powers within Florida and federalism. It was decided that the Florida Supreme Court had the authority to request a recount of the votes, despite the objections of the legislator.[26] However, it did find that the fact that the current tallies were "inconsistent and incomplete," and therefore violated the 14th Amendment.[27] The key point of contention among the justices was not whether there was a constitutional issue, seven of them agreed the 14th Amendment had been violated, but whether or not the issue needed to be remedied by Florida.[28] The majority opinion articulated that the recount would cease immediately, effectively reversing the Florida Supreme Court and ending all recounting from the time that Secretary Harris

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[21] Gerald Pomper. "The Presidential Election." In *The Election of 2000,* edited by Karathine Miller, New York: Chatham House Publishers, 2001, 131.

[22] Jack Balkin. "Bush v. Gore and the Boundary between Law and Politics." *The Yale Law Journal*, vol. 110, no. 8, The Yale Law Journal Company, Inc., 2001, pp. 1407–58, https://doi.org/10.2307/797581, 1411.

[23] Ibid.

[24] Ibid., 1412.

[25] Ibid; Nicholson and Howard (2003) point out that there is an inherent difference between specific support, confidence in officeholders, and diffuse support, institutional legitimacy. They find that a decrease in diffuse support for the Supreme Court was highly dependent on how *Bush v. Gore* was framed. Broad framing about changes in jurisprudence and legal frameworks are not compelling enough to degrade the public's faith in the Supreme Court. However, if the citizen framed the justice's decision in terms of ending the election, a specific result, diffuse support was reduced. Given that the media and various elites framed the decision this way, a severe drop in public confidence occurred.

[26] Pomper, "The Presidential Election," 131.

[27] Pomper, "The Presidential Election," 131.

[28] Balkin, "Bush v. Gore and the Boundary between Law and Politics," 1412.

recertified the vote on November 26.[29] This opinion pointed to the "safe harbor deadline," only two hours away at this point, as to why additional time could not be granted.[30] This case is particularly troubling because for the past decade those five conservative justices had been promoting a "consistent set of ideological positions" like "respect for state autonomy for federal interference and protection of state … processes from federal supervision."[31] *Bush v. Gore* clearly did not further those articulated values, rather the five conservative justices "adopted whatever legal arguments [that] would … [elect] George Bush."[32] This view further decreased the high court's ability to be seen as neutral arbitrators for election disputes. Clearly, *Bush v. Gore* and the electoral missteps that led to its decision sowed significant doubt in the efficacy of American elections and left the country desperate for reform.

With partisan tensions high following the 2000 election, a bipartisan commission made up of former political actors appeared to be the only way to receive a balanced report on what was necessary to secure the future of American elections. In fact, empirical analysis of fifty-five blue ribbon, bipartisan commissions from 1981 to 2009 reveal how they frequently drive the "adoption of organizational reforms" following a crisis.[33] Although these commissions often provide the blueprint for restructuring, they usually have "less influence" on the actual policy.[34] This familiar, elite pathway was taken directly following the 2000 election.

The National Commission on Federal Election Reform was created by former Presidents Jimmy Carter and Gerald Ford in 2001. The commission's report begins with a letter to the American people, acknowledging the extraordinary "test" to the American electoral system, and the "dismay and growing anger" of the onlooking American people.[35] They go on to recommend thirteen principal policy recommendations for the federal government to consider implementing. Following a time of clear, national, electoral crisis, the commission offered up sweeping,

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[29] Pomper, "The Presidential Election," 131.

[30] Gary Leedes (2001) explains that the safe harbor deadline was put in place in 1877 after states offered differing electoral certifications, an outcome unaddressed by the 12th amendment. The deadline specified that a state's electoral votes "shall be conclusive and shall govern in the counting of electoral votes" as long as they are certified by December 12th. States whose outcome is certified and unchallenged in court, at this deadline, cannot be objected by Congress on January 6th; Pomper, "The Presidential Election," 131.

[31] Balkin. "Bush v. Gore and the Boundary between Law and Politics." 1409.

[32] Ibid.

[33] Jordan Tama. "Crises, commissions, and reform: the impact of blue-ribbon panels." *Political Research Quarterly* 67, no. 1 (2014), 159.

[34] Tama, "Crises, commissions, and reform: the impact of blue-ribbon panels," 159.

[35] Gerald Ford, and Jimmy Carter. "To Assure Pride and Confidence in the Electoral Process," The National Commission on Federal Election Reform (August 2001), 1.

substantial reforms. They suggested the adoption of a system of statewide voter registration, making election day a national holiday, the restoration of voting rights for formerly convicted felons, a universal federal standard for election machines, and the creation of a new agency: the election administration commission.[36]

Ford and Carters report, "To Assure Pride and Confidence in the Electoral Process," significantly influenced the legislation of the Help America Vote Act (HAVA).[37] On October 10, speaking in support of his bill, Representative Ney articulated that he would like to "introduce into the record … support … from the … Ford-Carter Commission".[38] He went on to say that their commission "performed a tremendous service and their recommendations had a profound effect."[39] The political elites had presented a solution that was recognized directly by Congress. This report, and general brewing distrust, forced Congress to address the problem and enact HAVA in October of 2002, even if compromise would severely dilute its power for change. Its purported purpose was to make it "easier to vote and harder to cheat."[40] Its major components include grant programs to promote accessibility in the electoral process, the creation of the electoral assistance commission (EAC), the requirement of states to maintain a voter registration list, accessibility for disabled voters and language minorities, and the implementation of voting system guidelines for computer hardware and software.[41] The Republican House and Democratic Senate largely left out the broad, voter promotion reforms outlined in Ford and Carter's report, namely the enfranchisement of former felons, making election day a national holiday, and giving the EAC actual enforcement power.[42] However, the implementation of federal funding, for the first time ever, for statewide voter databases and replacing old voting machines represented a clear reaction to Florida's dated electoral system.[43] Additionally, the creation of a central

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[36] Ford and Carter, "To Assure Pride and Confidence in the Electoral Process," 6-14.
[37] Ibid.
[38] Representative Robert Ney (OH). "Conference Report on H.R. 3295, Help America Vote Act Of 2002." *Congressional Record* 107 (October 10th, 2002) p.H7836. Available from: govinfo.gov; Accessed 08 December 2021.
[39] Ibid.
[40] Jimmy Carter and James Baker. "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform," Center for Democracy and Election Management (September 2005), 2.
[41] Arthur Burris and Eric Ficsher. "The Help America Vote Act and Election Administration: Overview and Selected Issues for the 2016 Election," Congressional Research Service (October 2016), 1-2.
[42] Ford and Carter, "To Assure Pride and Confidence in the Electoral Process," 6-14.
[43] Carter and Baker, "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform," 2.

authority in EAC to regulate information about the use of certain equipment or techniques to count votes was clearly a step in a positive direction.

However, the legacy of HAVA is largely filled with criticism and concern. Following its implementation, former president Carter and former Secretary of State James Baker convened another commission on electoral reform: "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform." They state that they formed another commission because they wished to build on the "historic achievement of HAVA."[44] The timing of this report, and the lack of another following this one, is unusual. The report does mention the merits of HAVA, but it is quick to point out that there is a "compelling need for further election reform".[45] Therefore, the main, articulated motive is that the first commission, and HAVA, did not fix the glaring issues the United States' electoral system faces, but it leaves no explanation as to why in 2005, and not again after.

This report also lacks clear direction for lawmakers, suggesting vague reforms for Congress to consider, instead of offering concrete, deliberate policy recommendations like the 2001 report. It suggests that voter registration should be convenient and accurate, voter identification should enhance "ballot integrity" without being a barrier, measures should be enacted to achieve the greatest participation possible, voting machines should tabulate preferences accurately and transparently, and election administration should be fair and impartial.[46] Although the commission does go into much greater detail within the following sections, the decision by the commission to be intentionally vague in their initial policy recommendations reveals a caution not displayed in 2001. The relative uneventfulness of the 2004 election meant there was no longer a mandate for more electoral reform, and bold, innovative ideas were largely abandoned.

One of the main virtues of the commission, however, was their recognition of the "weak structure" of the EAC, preventing it from being "clear and authoritative on any subject."[47] It has no "rule-making authority," except for limited power under the National Voter Registration Act,

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[44] Ibid.
[45] Ibid., 4.
[46] Carter and Baker, "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform," 6.
[47] Ibid., 4.

and can only "issue voluntary guidelines."[48] A variety of groups opposed the EAC, however, and they insured that its status was in constant jeopardy. Proponents of the rights of states to autonomously determine their election law and the National Association of Secretaries of State (NASS) have constantly called for its dissolution, ensuring it has no real power.[49] Even though both commissions recognized the vital nature of the EAC, other interest groups have enough clout in Congress to stymie their influence.

Many scholars remain critical of HAVA. They argue that HAVA actually made local administration of elections worse by imposing various new requirements in the areas of "voting equipment, provisional voting, registration, and identification," thereby disrupting the "ecology of [local] election systems."[50] The primary cause of this discord, they claim, is the irreconcilable differences between Democrats' desires for expanded voting access and Republicans' desires for tougher antifraud measures.[51] HAVA, then, did not address difficult questions about election reform and instead gave local authorities extremely broad grants and generalized, non-enforceable rules to upgrade their election infrastructure.[52] HAVA, ideally, would have a requirement for states to have a paper trail to be able to retabulate election results. However, its enforcement relies primarily on "influence" rather than "requirement."[53] Historically, relying on states and local authorities to "secure adequate voting procedures" without clear cut, enforceable guidelines has had disastrous consequences.[54]

The Election of 2000 led to a lasting coalition that sought to implement reforms that ensured the increased efficacy and security of American elections, and eventually increase public trust in them. Although HAVA and its implementation left more to be desired, it offered key, concrete policy that was badly needly to standardize elections. It also filled the confidence gap left by the Supreme Court, ensuring that states modernized their methods and had the resources

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[48] Burris and Ficsher. "The Help America Vote Act and Election Administration: Overview and Selected Issues for the 2016 Election," 3.

[49] Ibid.

[50] Daniel Tokaji. "Early Returns on Election Reform: Discretion, Disenfranchisement, and the Help America Vote Act," George Washington Law Review 73, no. Issues 5 and 6 (August 2005), 1207.

[51] Ibid.

[52] R. Bradley Griffin. "Gambling with Democracy: The Help America Vote Act and the Failure of the States to Administer Federal Elections," Washington University Law Quarterly 82, no. 2 (Summer 2004), 510;

[53] Herbert E. Cihak, "The Help America Vote Act: Unmet Expectations," University of Arkansas at Little Rock Law Review 29, no. 4 (Summer 2007), 675.

[54] Griffin, "Gambling with Democracy: The Help America Vote Act and the Failure of the States to Administer Federal Elections," 526.

to ensure an accurate count. The key question remains: can the election of 2020 illicit a similar response and lead to the creation of meaningful legislation?

BACK TO 2020: WHAT CAN BE DONE?

The problems faced in 2000 face clear parallels to the issues presented by the 2020 election. Protracted court battles, diminished public confidence, and the acknowledgement of a winner late into the electoral cycle were both present in these cases. However, 2020 was unique in that the sitting president refused to acknowledge the legitimacy of the election despite clear, federal consensus on the issue. In fact, on November 12, 2020, the Department of Homeland Security's (DHS) cyber division, the Cybersecurity and Infrastructure Security Agency (CISA), stated that the election was the "most secure in American history … [with] no evidence any voting system deleted … lost … or changed votes."[55] Clearly, the 2020 election did not face technical failings, abnormalities, or confusions similar to the 2000 election. Nevertheless, President Trump unyieldingly claimed immense fraud, resulting in sixty-two lawsuits, recounts in Georgia, Wisconsin, and Arizona, the recruitment of most of the Republican Party, and a public misinformation campaign that continues to this day.[56] Calling elections rigged without substantiated evidence is a trend with the former president. He speculated that, in 2012, voting machine were switching from Romney to Obama, said that the 2016 Iowa primary was stolen from him, and called the 2016 election rigged against him multiple times.[57] This may amount to nothing more than a strategy to sow distrust and distract from that fact that he may be unpopular with voters. Despite this, faith in United States' institutions is clearly impacted by his rhetoric, and continued assaults on electoral methods will serve to deepen divisions and restrict the possibility for bipartisan reform.

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[55] "Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees." Cybersecurity and Infrastructure Security Agency CISA. Accessed December 08, 2021. https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election.

[56] William Cummings, Joey Garrison, and Jim Sergent. "By the Numbers: President Donald Trump's Failed Efforts to Overturn the Election." USA Today. January 06, 2021. Accessed December 08, 2021. https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/; Beavers, Olivia, and Nicholas Wu. "One Year Later, GOP Still Chained to Trump's Baseless Election Fraud Claims." POLITICO. November 03, 2021. Accessed December 08, 2021. https://www.politico.com/news/2021/11/03/gop-trump-baseless-election-fraud-claims-518603.

[57] Cummings, Garrison, and Sergent, "By the Numbers: President Donald Trump's Failed Efforts …"

Therefore, it can be ascertained that the election of 2020 was not presented with novel, unreliable voting methods that confused legal scholars in the same way as 2000, it was simply a breakdown of elite consensus on playing by the rules of the United States' institutions. Due to this, a bipartisan commission is not only unlikely but improbable, as former President Trump continues to assert the election was illegitimate, reaffirming on January 20, 2022, that he wanted Vice President Pence to "overturn the results" of the election in a speech to the Save America PAC.[58] Acknowledging state level reforms will never lead to standardized voting procedures, and Congress will remain gridlocked on pursuing meaningful reform, the executive can only turn to the courts. The president may utilize Section 2 of the VRA to challenge discriminatory state laws. Section 2 details that the prohibition of any practice that "results in the denial or abridgement of the right … to vote on account of race," can be used to further electoral reform in the absence of Congressional action.[59] These cases must address both vote denial and vote dilution, and utilize a test that places the initial burden on the voter, and then allows the state to make its case concerning the necessity of the restriction.[60] Section 2 largely allows minority groups to ensure election administration is conducted equitably, and that the VRA is continuously enforced.[61]

Beyond this, however, the challenges of 2020 will likely remain unaddressed and unique. Until elite consensus is achieved on how to achieve parity in voting methods, the federal government will be unable to issue uniform guidelines for state election administration. The first step to achieve this is likely the agreement, by all parties, that Joe Biden is the legitimate, duly elected president of the United States. Until then, the US waits with bated breath as the parties wrestle over control of the ballot box.

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[58] Mychael Schnell. "Trump Says He Wanted Pence to Overturn Election, Eyes Effort to Reform Law". *The Hill.* 31 January 2022, https://thehill.com/homenews/administration/592041-trump-says-he-wanted-pence-to-overturn-election-slams-electoral-count.

[59] Daniel P. Tokaji, "The New Vote Denial: Where Election Reform Meets the Voting Rights Act," South Carolina Law Review 57, no. 4 (Summer 2006): 691.

[60] Tokaji, "The New Vote Denial: Where Election Reform Meets the Voting Rights Act," 692.

[61] Ibid., 732.

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VOTER SUPPRESSION & RESTRICTIVE VOTING LAWS IN THE UNITED STATES: VOTER LITERACY, REDISTRICTING COMMISSIONS, AND IMPROVING MINORITY VOTER TURNOUT

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The Fifteenth Amendment guarantees the right of all citizens to vote, regardless of race. Over the last five years, the United States has seen an increasing level of restrictive voting laws and voter suppression. In 2021 alone, 17 states passed 28 restrictive laws on voting. Voting is a pillar of democracy and equal access to voting is essential to fulfill this democratic value. This paper examines the impact of factors such as race and restrictive voting laws on voter turnout and assesses the potential of national centralized voter ID, voter literacy, and nonpartisan redistricting commissions as a solution to improve minority voter turnout. The paper will offer a qualitative analysis of these factors through interviews, then assess the success of centralized ID systems in other large and small democracies, and build a policy proposal based on the deductions.

INTRODUCTION

American democracy relies on equal access to voting to ensure free and fair elections. Through voting, citizens select their leaders, change policy, and influence democratic processes. In 2021, seventeen Republican-controlled states passed restrictive voting laws in response to voting fraud allegations made by President Donald J. Trump following his presidential loss.[1] The new wave of restrictive voting laws particularly impacts minority populations' access to their right to vote.[2] For the purpose of this study, minority populations are defined as a group numerically inferior to the rest of the population of a State, in a non-dominant position, who possess ethnic, religious, or linguistic characteristics differing from those of the rest of the

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[1] Although voting fraud is a concern which restrictive laws aim to address, in-person fraud when it comes to voting is rare. A recent study found that since 2000, there were only 31 credible allegations of voter impersonation which is the only type of fraud that photo IDs can prevent. Photo-ID laws are one of the main elements of restrictive voting laws which have been passed over the last two years. Additional studies on voter fraud debunking include Columbia University's study, "Politics of Voter Fraud," and the Brennan Center for Justice's analysis on "Noncitizen Voting."

[2] According to the Brennan Center for Justice's 2020 Report titled "Voter Suppression in 2020," 70.9 % of eligible white voters casted ballots in the 2020 elections. In comparison, only 58.4% of non-white voters casted ballots. The Center attributes this gap to discriminatory voting practices including the wave of new restrictive legislation. The study found that states such as Florida, Iowa, Kentucky, and Oklahoma all passed new voter ID restrictions which could have discriminatory effects on minority voters.

population.[3] This includes, but is not limited to, Hispanics, Blacks, Asians, and South Asians in the United States.

This paper posits that central identification systems, voter literacy, and independent redistricting commissions (IRCs) are potential solutions to overcoming voter suppression, particularly for minorities. First, this paper provides an overview of the legislative history of voting laws in the United States. Second, it evaluates voting laws in place today. Third, this paper uses qualitative interviews to assess and analyze possible solutions to the impact of voter suppression on minority populations. Finally, this essay seeks to demonstrate how centralized voter ID, voter literacy, and IRCs can serve to help overcome voter suppression in the United States.

HISTORICAL ANALYSIS: VOTING LEGISLATION

Voting Rights Act and the Civil Rights Act

The Civil Rights Act of 1964 aimed to end racial segregation and the second-class status of Black people in the United States. However, the Civil Rights Act failed to change the politics in the South at a time where many Black people were excluded from voting.[4] The Voting Rights Act of 1965 reinforced the aims of the Civil Rights Act and Fifteenth Amendment, which prohibited discrimination in voting based on "race, color, or previous condition of servitude."[5] The goal of the Voting Rights Act was to address the racial discrimination in voting.

In some cases, courts denied findings of unconstitutionality even when states declared that their goal was to prevent Black people from voting.[6] Despite President Lyndon B. Johnson's attempts to overcome voter discrimination and intimidation through the Civil Rights Act in 1964, and later in the Voting Rights Act, there remained many roadblocks to fulfilling the voting rights of minorities in the United States.

The 2006 Shelby v. Holder Case

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[3] "Minorities under International Law." OHCHR, 2010.
https://www.ohchr.org/en/issues/minorities/pages/internationallaw.aspx.
[4] Finkelman, Paul. "The Necessity of the Voting Rights Act of 1965 and the Difficulty of Overcoming Almost a Century of Voting Discrimination." (Louisiana Law Review, 2015), 186.
[5] Ibid., 182.
[6] Ibid.

Section 5 of the Voting Rights Act requires that certain jurisdiction obtain federal preclearance before changing their election laws.[7] Section 4(b) puts forward a formula for determining if a jurisdiction is covered.[8] The Act put special restrictions on jurisdictions in which less than half of the eligible residents were registered to vote, or less than half of those people actually voted in the 1964 residential election.[9] Under Section 5, covered jurisdictions are required to seek approval by the Attorney General or a three-judge D.C. panel to make alterations to voting practices.[10] In 2006, Congress reauthorized the voting Rights Act for another twenty five years.

In 2010, petitioner Shelby County in Alabama asserted that the preclearance formula exceeds the power of Congress to enforce the Fourteenth and Fifteenth Amendments and violates the Tenth Amendment and Article IV.[11] Other jurisdictions argued that the Act infringed on their sovereignty. The case was filed against the Justice Department and then-Attorney General Eric Holder.

The central question in the case was whether Congress's twenty-five-year extension of section 4(b) and 5 of the Voting Rights Act exceeded its authority under the Fifteenth Amendment.[12] In response, Attorney General Holder argued that the extension was within Congress's authority and necessary to counter regression in voting practices in particular states which have a history of restriction on minority voting rights.[13] D.C. courts ruled against Shelby County in 2011 and 2012 on appeal. After the 2012 ruling, the County appealed to the Supreme Court.

At the Supreme Court level, in a 5-4 ruling the lower court's decision was overturned. The court's conservative members argued that the conditions that justified preclearance in 1965, when the Act was created, did not apply in 2013. Chief Justice John Roberts wrote in the

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[7] Amar-Dolan, Jeremy, and Zachary Zemlin. "Shelby County v. Holder." Legal Information Institute. Accessed November 29, 2021. https://www.law.cornell.edu/supct/cert/12-96.
[8] Finkelman, Paul. "The Necessity of the Voting Rights Act of 1965 and the Difficulty of Overcoming Almost a Century of Voting Discrimination." (Louisiana Law Review, 2015), 183.
[9] Amar-Dolan, Jeremy, and Zachary Zemlin. "Shelby County v. Holder." Legal Information Institute. Accessed November 29, 2021. https://www.law.cornell.edu/supct/cert/12-96.
[10] Ibid.
[11] The Fourteenth Amendment grants citizenship to all persons born or naturalized in the United States and guarantees their equal protection under the law. The Tenth Amendment states that any powers not delegated to the United Stated by the Constitution nor prohibited by it are served to the States.
[12] The Fifteenth Amendment grants all citizens the rights to vote regardless of race, color, or previous condition of servitude.
[13] Ibid.

majority opinion that although racial disparities in voter turnout was "compelling evidence justifying the preclearance remedy and the coverage formula, there is no longer such disparity."[14]

On the dissenting opinion, Justice Ruth Bader Ginsburg wrote that "throwing out preclearance when it has worked and is continuing to work [...] is like throwing away your umbrella in a rainstorm because you are not getting wet."[15] The Supreme Court ruling relieved nine states from preclearance obligations under the Voting Rights Act. The ruling did not find Section 5 unconstitutional but instead focused on the coverage formula in Section 4(b). Federal preclearance offers an additional oversight step in the process of enacting voting laws. However, even today, Section 5 which was required to be revised has not been revised to create a new constitutional preclearance requirement, leaving little oversight over voting laws in states.

The For the People Act & the John Lewis Voting Rights Advancement Act

The House Democrats recently launched the For the People Act, passed as H.R.1, in response to the new wave of restrictive laws. The act aims to curb voter suppression and outlaw partisan gerrymandering of congressional districts.[16] In tandem with the John Lewis Voting Rights Advancement Act, the two acts would restore the full protections of the Voting Rights Act. The For the People Act was introduced in 2019 during the 116th Congress but then-Senate Majority leader Mitch McConnell refused to give it a vote in the Senate.[17] Since then, under new leadership, the Act has passed in Congress, but faces restrictions in the Senate. Senate Republicans blocked the Act and framed it as a power grab by Democrats.

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[14] Lockhart, P.R. "How Shelby County v. Holder Upended Voting Rights in America." Vox. June 25, 2019. Accessed November 29, 2021. https://www.vox.com/policy-and-politics/2019/6/25/18701277/shelby-county-v-holder-anniversary-voting-rights-suppression-congress.

[15] Ibid.

[16] Over the last decade, gerrymandering has become increasingly prevalent. In the 2010 midterms, Republicans gained control of 16 to 17 seats in the House as a result of gerrymandering. In 2019, the Supreme Court ruled that partisan gerrymandering is not in violation of the Constitution, The For the People Act sets out a statistical test for redrawing maps. In addition, the For the People Act protects communities of colour as it protects districts where communities of colour have shown a consistent ability to elect its preferred candidates, even if said district is not a majority-minority district under the Voting Rights Act. Another requirement is that when redrawing maps, states should keep towns, neighbourhoods, and other geographic areas where people share identities in the same district. Li, Michael. "Why the for the People Act Is Critical for Fair Voting Maps." Brennan Center for Justice, January 5, 2022. https://www.brennancenter.org/our-work/analysis-opinion/why-people-act-critical-fair-voting-maps.

[17] "For The People Act." Common Cause. September 22, 2021. Accessed November 29, 2021. https://www.commoncause.org/our-work/constitution-courts-and-democracy-issues/for-the-people-act/.

VOTER SUPPRESSION:
VOTER IDENTIFICATION LAWS TODAY

Between January 1 and May 14, 2021, fourteen states enacted twenty-two new restrictive laws on voting.[18] At least fifteen bills moving in ten states imposed new or stricter voter ID requirements.[19] Voter ID laws deprive many voters of their right to vote, reduce participation, and limit Americans' access to participate in democratic processes.[20] Many Americans do not have access to the forms of required identification. These voters are disproportionately low-income, racial, and ethnic minorities.[21] For example, in 2017, Georgia enacted an "exact match" law which required that voters' names on registration records must exactly match their names on forms of identification.[22] Ahead of the 2018 election, 80% of Georgia voters whose registration was blocked by this law were people of colour.[23] A lawsuit in 2019 forced the state to end the policy.

Millions of Americans are unable to vote because of a lack of valid government-Issued photo ID. Below are examples from minority populations in the United States (see Fig. 1 and 2).

Voting-Age Citizens in U.S. Without Current Government-Issued Photo ID

Black 25%
White 8%
0%   50%

Source: Brennan Center

Figure 1. An example of the difference between white and Black Americans in access to government-issued photo ID. (Figure by Theodore R. Johnson, January 16, 2020, The Brennan Center for Justice, https://www.brennancenter.org/our-work/research-reports/new-voter-suppression)

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[18] Berry, Patrick, Gareth Fowler, Michael Waldman, Pastor Danielle Ayers, and Wendy R. Weiser. "Voting Laws Roundup: May 2021." Brennan Center for Justice. May 28, 2021. Accessed November 29, 2021. https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021.

[19] Ibid.

[20] "Oppose Voter ID Legislation - Fact Sheet." American Civil Liberties Union. Accessed November 29, 2021. https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet.

[21] Ibid.

[22] Johnson, Theodore R. "The New Voter Suppression." Brennan Center for Justice, December 28, 2021. 1–29 https://www.brennancenter.org/our-work/research-reports/new-voter-suppression.

[23] Ibid.

North Dakota Voters Without a Qualifying Voter ID

Native Americans	19%
Non-Native Americans	12%

0%   50%
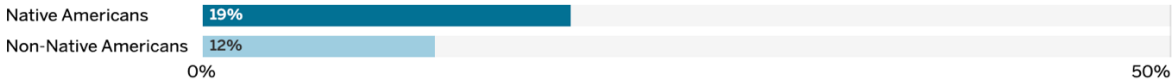
Source: Brakebill v. Jaeger

Figure 2. An example of the difference between Native and Non-Native Americans in relation to qualified photo ID. (Figure by Theodore R. Johnson, January 16, 2020, The Brennan Center for Justice, https://www.brennancenter.org/our-work/research-reports/new-voter-suppression)

A challenge when facing these restrictive voting laws is that it is hard to prove the intent of the law as being racial discrimination. The "Intent Standard" was established in the 1976 Supreme Court decision, *Washington v. Davis*.[24] The decision requires plaintiffs to prove the perpetrator's discriminatory "intent" in relation to an anti-discrimination claim.[25] This becomes an impossible burden for plaintiffs as discrimination can often be masked. In the United States, it is crucial that voters have a plausible course of action when faced with voter suppression.

Firstly, voter ID laws deprive Americans of their right to vote. 11% of U.S. citizens do not have government-issued photo identification. If they want to obtain such ID, it involves costs related to applying, travel expenses to reach ID offices, and waiting time. The combined cost of all of this is estimated to be from $75 to $175, an excessive amount for lower-income Americans.[26] Voter ID laws also reduce voter turnout. A 2014 study by the United States Government Accountability Office (GAO) found that strict photo ID laws reduce voter turnout by 2-3 percentage points, which translates to tens of thousands of lost votes in a single state.[27]

Secondly, voter ID laws are discriminatory. Nationally, up to 25% of African American citizens of voting age lack government-issued photo ID, compared to only 8% of whites.[28] In addition, states exclude forms of ID in a discriminatory manner. For example, North Carolina prohibited public assistance IDs and state employee ID cards, which are disproportionately held

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[24] "Intent Standard." Equal Justice Society, July 17, 2020. https://equaljusticesociety.org/law/intentdoctrine/.
[25] Ibid.
[26] "Oppose Voter ID Legislation - Fact Sheet." American Civil Liberties Union. Accessed November 29, 2021. https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet.
[27] "Issues Related to State Voter Identification Laws." (United States Government Accountability Office, 2014), 48.
[28] "Citizens Without Proof." Brennan Center for Justice. Accessed November 29, 2021. https://www.brennancenter.org/our-work/research-reports/citizens-without-proof.

by Black voters.[29] In Tennessee, the State Legislature put forward a bill which would allow state election official to use fingerprint technology to verify voter's identity at polls. This process incorporates a criminal justice system tool into the voting process, disproportionately impacting Black voters.[30] Voter ID laws are also enforced in a discriminatory manner. A Caltech/MIT study found that minority voters are more often questioned about their ID than white voters.[31] All of these factors compound to reduce voter turnout among minority voters. A 2014 GAO study found that photo ID laws have negative effects on turnout among racial minorities and other vulnerable groups, making the participation gap between voters of colour and whites worse.[32]

The deprivation of Americans' right to vote and the discriminatory nature of restrictive voting laws calls for a solution such as centralized voter ID. The creation of a centralized system would not hinder any of the security issues related to voting. To begin, in-person fraud when it comes to voting is rare. A recent study found that, since 2000, there were only 31 credible allegations of voter impersonation, which is the only type of fraud that photo IDs can prevent.[33] At this time, over 1 billion ballots were cast.[34] Ahead of the 2016 election, President Trump continued to claim voter fraud was a problem in the election. However, identified instances of in-person impersonation are infrequent and generally the result of honest mistakes made by election workers or voters.[35] Finally, de-centralized voting ID requirements are expensive for states. The new requirements for state voting ID include costs of educating the public, training poll workers, and providing IDs to voters. For example, Texas spent nearly $2 million on voter education and outreach following the passage of its Voter ID law.[36]

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[29] "Oppose Voter ID Legislation - Fact Sheet." American Civil Liberties Union. Accessed November 29, 2021. https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet.

[30] "Voting Rights Project." Lawyers' Committee for Civil Rights Under Law. July 28, 2021. Accessed November 29, 2021. https://www.lawyerscommittee.org/project/voting-rights-project/.

[31] Issues Related to State Voter Identification Laws." (United States Government Accountability Office, 2014), 23

[32] Ibid., 48.

[33] Levitt, Justin. "A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast." The Washington Post. November 25, 2021. Accessed November 29, 2021. https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/.

[34] Ibid.

[35] Ibid.

[36] Malewitz, Jim. "Study: Law Discouraged More Than Those Without Voter ID." The Texas Tribune. August 06, 2015. Accessed November 29, 2021. https://www.texastribune.org/2015/08/06/study-law-discouraged-more-those-without-voter-id/.

METHODS

Operationalization of Variables

Minority voter turnout can be measured through numerous different variables, but for the purpose of this research paper, is narrowed to focus on two independent variables. The dependent variable concept of minority voter turnout was operationalized as the measure of ballots casted in various elections and minority voter registration. The independent variables of race and restrictive voting laws were assessed in their relationship with minority voter turnout.

Semi-Structured Interviews

The relationship between race and restrictive voting laws with the minority voter turnout in the United States was investigated through qualitative research in the form of four semi-structured interviews. The interviews were conducted with not-for-profit organizations working in the voting rights sector.

The interviews were held in the form of 30-minute discussions over Zoom. The not-for-profit organizations interviewed included the Lawyers' Committee for Civil Rights Under Law, Spread the Vote, Common Cause, and Chalo Vote. The Lawyers' Committee for Civil Rights Under Law has worked at the forefront of the legal struggle to defend the right to vote. Since its founding in 1963, the organization has litigated on cases on behalf of voters who are traditionally disenfranchised.[37] The interview conducted for the purpose of this research was with Marcia Johnson-Blanco, Co-Director of the Voting Rights Project,

Spread the Vote is a nonpartisan not-for-profit which helps members across the United States empower themselves to get to the polls. They do this through election guides, administrative services to help people obtain voter ID, and in-person seminars. Emma Wisniewski, the Director of Research and Data at Spread the Vote was interviewed for this research. Common Cause is a nonpartisan grassroots organization dedicated to mobilizing and increasing peoples access to voting. Sylvia Albert, the Director of Voting and Election at Common Cause was interviewed to learn more about their projects, particularly with minority

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[37] "Voting Rights Project." Lawyers' Committee for Civil Rights Under Law, July 28, 2021. http://www.lawyerscommittee.org/project/voting-rights-project/.

populations. Finally, Taher Hasanali, Co-Founder of Chalo Vote, a South Asian focused voting rights organization was also interviewed to offer a perspective from a specific minority group.

FINDINGS

Based on the deductions from the interviews and external research, this paper offers voter education and IRCs as a solution to improve voter turnout from minority populations. In addition, Estonia and India will be used as examples of existing centralized identification systems and how similar systems are not plausible solutions for the United States.

Centralized Voter Identification in Estonia

First, Estonia is used as a comparison because it is one of the strongest democracies in northeastern Europe and holds similar values to the United States.[38] Estonia has successfully implemented a digital identification system. Since 2002, 1.2 million of the credit-card sized ID cards have been issued.[39] There are two pin codes supplied with the card. The first allows citizens to authenticate their identity. This is the first step which offers basic infrastructure to provide personalized services and information online such as reviewing the list of political candidates in a voter's district.[40] The second pin code is used to sign documents or approve transactions online and cast votes in elections.

This e-government ecosystem is protected by the Personal Data Protection Act, Public Information Act, and Electronic Communications Act in Estonia.[41] In addition, to address issues of a digital divide in Estonia, the banking sector initiated the Tiger Leap Project which is one of the largest public-private partnership projects in Estonia today.[42] As a result of this project, 100, 000 individuals, i.e., about 10% of Estonian adult population was taught how to use and understand digital ID-cards.[43]

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[38] Vassil, Kristjan. "Estonian e-Government Ecosystem: Foundation, Applications, Outcomes." University of Tartu, 2016.1-30. https://thedocs.worldbank.org/en/doc/165711456838073531-0050022016/original/WDR16BPEstonianeGovecosystemVassil.pdf.
[39] Ibid., 24.
[40] Ibid.
[41] Ibid., 20.
[42] Ibid., 21.
[43] Ibid.

The size of Estonia's voting population is around 1 million. Whereas other countries such as Canada and Switzerland have attempted to implement internet voting, Estonia is the only country in the world thus far which has offered its citizens a statewide opportunity to cast legally binding votes over the internet.[44] Since 2005, Estonia has successfully used eight local and national level elections where people cast their votes online. To vote online, citizens use their ID card and download a voting application. Using their first pin, they identify themselves with the system and browse candidates in their district.[45] They then use their second pin to electronically cast their vote. The identity of the voter is confirmed using a camera on a smart device.[46]

Centralized Voter Identification in India

India is also used as a comparison as it has a population of 1.38 billion, making it the largest democracy in the world with a centralized identification system.

In India, every resident receives an identity number under its *Aadhaar* program. The individualized ID numbers are used for several public purposes including voter identification. This idea of universal electronic ID was proposed by the Indian Department of Information Technology in 2006.[47] Also in 2006, the Unique Identification Authority of India (UIDAI) was established.[48] The program's aim was to provide residents with ID who did not previously have one and to create a more traceable and portable form of ID.[49] This single biometric identification system allows Indian residents access to most public services.

Centralized Voter Identification in the United States

The main topics discussed in the interviews include restrictive voting laws limiting minority access to voting, voter literacy, and the possibility of centralized voting identification.

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[44] Ibid.
[45] Ibid., 25.
[46] Ibid.
[47] Banerjee, Shweta. "Aadhaar: Digital Inclusion and Public Services in India." world development report. Social Protection Team, World Bank Group, 2016. 1-15. https://thedocs.worldbank.org/en/doc/655801461250682317-0050022016/original/WDR16BPAadhaarPaperBanerjee.pdf.
[48] Ibid., 6.
[49] Ibid.

Marcia Johnson-Blanco noted some of the barriers to voting including restrictive laws passed in Florida and Georgia where minority voters made use of the opportunity to vote.[50] In response, the State enacted laws making it illegal to offer water or food for people waiting in line to vote and limited voting equipment in areas where there were majority minority voters.[51] In addition, despite having the opportunity to vote early, Marcia mentioned that some vote by mail ballots which were signed by voters were rejected because the signatures did not match the voter registration ballots.[52] Election officials rejected the authorization of these ballots, most of which were from people of colour.[53]

Another issue outlined by the Co-Director was the lack of voter literacy programs. She highlighted the importance of early voting, funding, and vote by mail regulations. For example, the Lawyers' Committee for Civil Rights Under Law has a national hotline to offer support to voters. However, the success of the hotline is contingent on how many people know of it.[54] Similarly, Spread the Vote has voter guides which offers neutral and clear information on voting. Emma Wisniewski stated in her interview that Spread the Vote uses "field staffers who recruit staffers from local areas to go to homeless shelters and work with county clerks to educate the community."[55] She also mentioned that Spread the Vote is trying to close the gap between voter registration and casting the ballot which includes providing accessible transportation and information about candidates in areas where there are higher populations of minority voters.[56]

Finally, although electronic voting identification has been implemented in other countries, it poses significant challenges in the United States. For example, in 2006, Florida's congressional house elections in district 1 through 25 conducted electronic voting in District 13 of Sarasota County where 18,000 ballots were cast but registered as no votes.[57] The loss of these ballots was significant as the under-vote rate was more than 16% as compared to 2.5% with

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[50] Marcia Johnson-Blanco (Co-Director of the Lawyers' Committee's Voting Rights Project) in discussion with the author, December 2021.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Emma Wisniewski (Director of Research & Data at Spread the Vote) in discussion with the author, January 2022.
[56] Ibid.
[57] "Florida Congressional Elections: November 2006." Electronic voting - case study: The United States. Stanford University, 2007. https://cs.stanford.edu/people/eroberts/cs181/projects/2006-07/electronic-voting/index_files/page0004.html.

paper absentee ballots.[58] As mentioned by Marcia, "Election margins in the United States are very close so if you are able to impact 5% of the vote, it can tilt in favour of one party over another."[59]

Another issue is the threat of hacking. As witnessed ahead of and during the 2016 election, the FBI was alerted to the threat of a cyberattack on the voting infrastructure.[60] The main vulnerability was on aged voting equipment and voting machines which did not have a record of paper votes.[61] The interference included altered vote tallies in registry files which were deleted or modified by Russian government-affiliated cyber actors.[62]

Another barrier is for those without access to the technology, such as smart devices with secure connections to register their voter ID online and vote through this process. For example, nearly 40% of rural Black Americans do not have access to internet at home.[63] A report by the Joint Center for Political and Economic Studies found that African-Americans across rural counties in ten southern states were twice as likely to report not having home internet access as white Americans in the same region.[64] If electronic voter identification is implemented, it would negatively impact minority voter turnout instead of improving it.

ANALYSIS: VOTER LITERACY & NONPARTISAN REDISTRICTING COMMISSIONS TO COMBAT MINORITY VOTER SUPPRESSION

In order to implement a successful voter identification program and combat hacking, the United States would have to follow a similar program as India, with physical cards and identification numbers, over an electronic system for all citizens as used in Estonia. The biggest limitation to the implementation of centralized voter identification at a national level is state autonomy in making laws. In the United States, states have jurisdiction to enact their own laws

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[58] Ibid.

[59] Marcia Johnson-Blanco (Co-Director of the Lawyers' Committee's Voting Rights Project) in discussion with the author, December 2021.

[60] "United States Senate Select Committee on Intelligence on Russian Active Measures Campaigns and Interference in the 2016 Election Infrastructure." Accessed January 12, 2022. https://www.intelligence.senate.gov/sites/default/files/documents/report_volume5.pdf.

[61] Ibid.

[62] Ibid.

[63] Harrison, Dominique. "Affordability & Availability: Expanding Broadband in the Black Rural South" Joint Center for Political and Economic Studies, October 2021. https://jointcenter.org/wp-content/uploads/2021/10/Affordability-Availability-Expanding-Broadband-in-the-Black-Rural-South.pdf.

[64] Ibid.

when it comes to voting. In addition, as noted by Sylvia Albert in her interview, "America is privacy focused. The Federal government does not provide enough services to make national ID justifiable."[65] For example, in the United Kingdom they use NHS numbers which are registered nationally for healthcare and other services, but this is not realistic in the United States.[66]

Combating Voter Suppression: Voter Literacy

To overcome these barriers and address voter suppression, an ideal policy solution is to focus on voter literacy programs to improve the minority voter turnout. For minority voters, despite there being systems in place which work against them, the biggest challenge is being aware of their options and how they can capitalize on them to successfully register to vote and cast their ballots. Voter literacy programming was mentioned across all three interviews as an effective solution to address low minority turnout. As noted by Emma Wisniewski from Spread the Vote, three out of every four people the organization works with have never voted before.[67] This reveals the potential of voter literacy programs to improve access to voting.

The largest minority populations in the United States today are Hispanic, Black, and Asian peoples. An effective policy recommendation which would counteract the obstacle of different state legislations, is to have a centralized and non-partisan voting information hotline which would direct voters to local not-for-profits and election commissions for further assistance and information. As Marcia and Sylvia mentioned, the main challenge is ensuring people are aware of the resources available to them. The national hotline can be promoted by candidates in elections to encourage voters to receive non-partisan information on how to register and cast their ballot. In addition, it should offer services in different languages. As noted by the Co-Founder of Chalo Vote, a lack of culturally sensitive resources can lead to voter apathy and disillusionment.[68]

The aim of the hotline is to redirect voters to accurate information and resources based on their state laws. Common Cause also has a disinformation tip line where voters can report false, misleading, or inaccurate voter information. This can also be integrated into the national hotline and reports can be redirected to specific election commission offices.

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[65] Sylvia Albert (Director of Voting and Elections at Common Cause) in discussion with the author, January 2022.
[66] Ibid.
[67] Emma Wisniewski (Director of Research & Data at Spread the Vote) in discussion with the author, January 2022.
[68] Taher Hasanali (Co-Founder of Chalo Vote) in discussion with the author, February 2022.

Combating Voter Suppression:
State-Level Independent Redistricting Commissions (IRCs)

The anti-gerrymandering movement is gaining momentum in states such as Virginia, Michigan, Colorado, and Ohio. In addition to voter literacy and establishing a national hotline, the creation of nonpartisan redistricting commission who redraw congressional and state legislative maps is helpful in combatting voter suppression of minorities.

In Colorado and Michigan, independent commissions are composed of twelve to thirteen citizens, respectively.[69] The selection of the commission is done through a lottery system. In Ohio, the independent commissions are made up of seven members.[70] It includes four statewide officials and leaders of the majority and minority parties in the legislature. This means the Ohio Redistricting Commission is composed of five Republicans and two Democrats.[71]

The most notable example is in Virginia which has a sixteen-member commission evenly split between Republicans and Democrats and politicians and citizens.[72] Virginia's map drawers considered feedback from testimonies at more than 50 public meetings and 2,000-plus comments on proposals.[73] The final maps included the special masters' memo and an itemized list of changes based on specific comments.[74] The maps in Virginia accurately reflect Virginia's partisan leanings and do not favour one party over the other, are more competitive than the last decade's districts, and provide opportunities for minority voters to select the candidate of their choice by creating more minority-majority districts.[75]

These commissions safeguard against gerrymandered maps by following detailed map criteria, providing more transparency and public input in map drawing processes, and guiding legal challenges through judicial process. Firstly, in Ohio's 2011 redistricting cycle, Republicans held secret meetings to draw the gerrymandered maps to guarantee a GOP majority.[76] Through

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[69] Lamar, Christopher. "Do Independent Redistricting Commissions Really Prevent Gerrymandering? Yes, They Do." Campaign Legal Center, November 1, 2021. https://campaignlegal.org/update/do-independent-redistricting-commissions-really-prevent-gerrymandering-yes-they-do.
[70] Ibid.
[71] Ibid.
[72] White, Deb Wake and Liz. "Deb Wake and Liz White Column: Virginia's Redistricting Process Was Messy, Frustrating and Complicated. It Still Worked." Richmond Times-Dispatch, January 11, 2022. https://richmond.com/opinion/columnists/deb-wake-and-liz-white-column-virginia-s-redistricting-process-was-messy-frustrating-and-complicated/article_cc2e4704-5a5b-5d01-b7e9-cf938d5a06b8.html.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.

the commissions, voting rights advocates have language in their state constitutions which bar partisan gerrymanders.[77] For example, in Michigan, districts cannot provide a disproportionate advantage to a political party based on "accepted measures of partisan fairness."[78]

Second, the commissions offer transparency to the public. For example, Ohio law now requires that the commission hold at least three hearing before introducing a legislative plan.[79] In addition, resources such as PlanScore allow advocates to call out attempted gerrymanders.[80] Third, the commissions guide legal challenges through a streamlined process. In Colorado, the independent redistricting commissions (IRCs) must submit their plans to the Colorado Supreme Court. This allows for faster judicial review processes.

LIMITATIONS

Theoretical Limitations

To avoid complexity in determining minority voter turnout, the research was limited to assessing the impact of race and restrictive voting laws on voting. There are other factors that impact the minority voter turnout such as socioeconomic status, but for the purpose of this research, the scope was limited to race and voter ID.

Qualitative Limitation

Given the qualitative nature of voting and the privacy of the secret ballot, when speaking with organizations about the impact of their programs, there was little information on the measurable success of literacy programs. Most of the success was self-reported based on surveys on who had voted and been in touch with the organization.

Data Limitations

This study acknowledges that data lacks in properly determining the overall impact of voting literacy on different minority populations across the United States. This study did not focus on specific states, but rather took information from various national studies and experts

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[77] Ibid.
[78] Ibid.
[79] Ibid.
[80] Ibid.

from national organizations to reach its conclusions. Given the time constrains and resources available, there was also a limited scope in how many organizations could be contacted.

CONCLUSION

The right to vote and equal access to voting are essential to upholding the values of democracy and ensuring that those in power accurately reflect the population they are representing. Given the limitations on implementing a centralized voter identification system in the United States, the ideal solution to improve minority voter turnout is to focus on what not-for-profit organizations, election commissions, and national policy can do to address the issues. Increasing voter literacy and establishing state-level nonpartisan redistricting commissions are ideal solutions to ensuring minority voters have access to a fair and just voting system in the United States.

APPENDIX 1: INTERVIEW QUESTIONS

Work & Advocacy

1. What areas does "Insert Name of Organization" work in?

2. What is your role on the organization?

Voting Laws and Legislation

3. Can you provide a brief overview of voter identification laws in the United States?

4. What is the role of voter ID laws and race in access to voting?

5. In your opinion, what was the motivation behind the recent wave of restrictive voter identification laws over the past year?

    a. What was the outcome of these laws?

    b. Which states or counties have been most impacted by these laws?

Voter Programs and Literacy

6. What is your definition of a minority group?

7. What barriers do you see minorities facing when it comes to voting in elections in the U.S.?

    a. What is the role of voter ID in access to voting for minorities?

8. What forms of voter education or literacy programs exist in the U.S. today?

    a. Are there any programs that stand out?

9. What are some programs your organization runs improve voter turnout?

    i. What has worked?

    ii. What hasn't worked?

    iii. How do you measure the success of the program?

Voter Identification Systems & Solutions

10. How are voter identification laws implemented through law at the federal vs. state level?

11. How do voter identification systems vary across and within states?

    a. Can you think of any state where a successful system has been implemented to improve access to voting for minorities?

12. What are the limitations of establishing a centralized voter identification system?

    a. Electronic systems

    b. Other systems at the federal level

    c. At the state level

13. What is the role of the federal government when it comes to improving the minority voter turnout?

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Part 4

Domestic Policy

CSPC

CURRENT GOALS OF CYBERSECURITY MANDATORY REPORTING AND IMPLICATIONS FOR MUNICIPALITIES

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There is rising interest in the United States about possibly implementing a federal policy requiring public and private entities to report to a central authority when they experience a cyberattack--a mandatory reporting policy. Various versions of proposed mandatory reporting policies have been suggested. Through my review of reports on this topic, and conversations with policymakers, I seek to understand the current thinking of policy makers interested in the idea of mandatory reporting, along with to understand the potential effects of mandatory reporting on municipalities. The current focus seems to be on improving national situational awareness and better identifying / publishing current cybersecurity best practices. From my standpoint, proposed legislation along these lines will fail to promote continuous cybersecurity improvement at the municipal level. Slightly different versions of mandatory reporting could promote continuous improvement. I suggest further research exploring alternative ways of designing and implementing mandatory reporting.

INTRODUCTION

Cyberattacks are a threat throughout the United States, endangering citizens both economically and physically. There is significant interest in fighting back against these attacks, building better cybersecurity, and clarifying the ways in which federal, state and local governments ought to respond. Municipal governments in particular struggle to prepare for and address cyberattacks, with even large cities like Atlanta, Baltimore, and New Orleans suffering dangerous and costly cyberattacks.[1]

As of today, when a public or private entity suffers a cyberattack, most have no responsibility to report that an attack occurred. A federal mandatory reporting law would change that, requiring cyberattacks to be reported to a central authority. Federal policy makers display a rising interest in mandatory reporting, with five mandatory reporting laws proposed in Congress in 2021.

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[1] Ellen Cranley, "8 Cities That Have Been Crippled by Cyberattacks - and What They Did to Fight Them," Business Insider (Business Insider, January 27, 2020), https://www.businessinsider.com/cyberattacks-on-american-cities-responses-2020-1.

In this paper I seek to understand the thinking behind mandatory reporting laws and their potential impacts on municipalities. By examining a range of proposed policies, it should be possible to assess the primary goals of each piece of legislation. It should also be possible to identify potential goals that are not currently being addressed. In particular, I look at whether mandatory reporting laws currently seek to incentivize continuous improvement of cybersecurity practices at the municipal level.

UNIQUE NATURE OF MUNICIPAL CYBERATTACKS

Cyberattacks are a growing issue across many sectors, but in this paper I focus on the public sector, specifically municipalities.[2] A paper published in 2020, "Municipal Cybersecurity: More Work Needs to be Done" discusses how sparse academic research in the area of municipal cybersecurity has been, especially compared to research on the private sector.[3] It is essential going forward to consider how national cybersecurity policies, such as mandatory reporting, might help prevent the negative impacts of cyberattacks on local governments.

Cyberattacks on municipalities can impact services whose lapse results in significant financial loss along with loss of life. A whitepaper published in 2021, The Economic Impact of Cyber Attacks on Municipalities, describes some of the unique services that can be shut down via attacks on local government systems that significantly impact citizens' lives, including public safety (firefighters, hospitals), public utilities (electricity, sanitation), and information services (real estate transactions, marriage licenses).[4] Other research notes that "a disruption in the public sector can also cause cascading effects in the private sector, whereas the reverse is typically not true."[5] The 2019 cyberattack on Atlanta is an example of this; municipal systems being down prevented new businesses from opening (they could not receive their permits) and real estate sales from being processed. A successful cyberattack can also result in long-term erosion of

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[2] "Cyberattacks Increased 17% in Q1 of 2020, with 77% Being Targeted Attacks," Security Magazine RSS (Security Magazine, July 16, 2021), https://www.securitymagazine.com/articles/95668-cyberattacks-increased-17-in-q1-of-2020-with-77-being-targeted-attacks.

[3] Benjamin Preis and Lawrence Susskind, "Municipal Cybersecurity: More Work Needs to Be Done," Urban Affairs Review 58, no. 2 (2020): pp. 614-629, https://doi.org/10.1177/1078087420973760.

[4] KnowBe4, "The Economic Impact of Cyber Attacks on Municipalities," 2020, https://www.knowbe4.com/hubfs/Cyber-Attacks-on-Municipalities-White-Paper.pdf.

[5] Preis, Susskind, "Municipal Cybersecurity: More Work Needs to Be Done," 614-629

public trust in government. This erosion is likely to harm the municipal government's ability to function in a variety of areas, even after the direct effects of an attack have been resolved.

A paper from 2020, "Cybersecurity and local government: Imperative, challenges and priorities" spells out some of these challenges in more detail. The lack of support from top officials, funding, clear cybersecurity policies and practices, and cyber culture are all challenges faced by municipalities that make implementing an effective mandatory reporting policy complex.[6] The lack of policies and cyberculture make it difficult to ensure municipalities will be able to report cyberattacks, and further challenging to ensure what they report will be accurate and complete. Even after reporting an attack, the lack of funding and support from top officials makes it such that they might not have the resources or support to actually address their underlying vulnerabilities. Top officials are accountable to the public, a stark difference from leaders in the private sector. The public might not yet be interested in cybersecurity being prioritized, making shifting already limited funding away from more public-facing services difficult.[7]

Given the current lack of academic research on municipal cybersecurity, the risks posed by municipal cyberattacks, and the unique challenges associated with improving municipal cybersecurity, it is crucial to consider how mandatory reporting policies would impact municipalities.

EXISTING AND PROPOSED MANDATORY REPORTING POLICIES

The idea of mandatory reporting at the federal level has recently gained in popularity, with multiple bills proposed in 2021. By examining these bills, along with existing regulations and executive orders, it is possible to sketch the current landscape of mandatory reporting policies. In particular, the policies proposed to date provide insight into the current thinking behind the idea of mandatory reporting, along with gaps that are not being addressed.

I will examine six recent proposals introduced at the federal level. The overall premise of all these policies is similar; when a covered entity is attacked, they must quickly report the attack

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[6] Mmalerato Masombuka, & Marthie Grobler, & Petrus Duvenage, "Cybersecurity and Local Government: Imperative, Challenges and Priorities," June 2021.

[7] Avital Baral, "Continuous Measured Improvement: A New Approach to Meeting the Municipal Cybersecurity Challenge" (MEng thesis, MIT, 2022)

and all relevant information. The details, however, vary from proposal to proposal. See Table 1 for a summary.

There are three main categories of entities that are targeted for mandatory reporting by these policies: critical infrastructure, ransomware, and contractors. The exact definition of critical infrastructure varies, but generally entities are considered critical if they play an important part in national security, public health, or the economy. For example, water treatment facilities and power plants are on most lists. Multiple policies require focus just on critical infrastructure, requiring them to report all cyberattacks. The second category is ransomware attacks; all ransomware attacks would have to be reported, regardless of the type of organizational entity involved. Ransomware encrypts the victims' files, making them unusable. Then, the attackers demand a ransom in exchange for a decryption key.[8] The final category is federal contractors–they would all have to report attacks on their systems. This is a somewhat limited category, but one that would be easier for the federal government to enact and enforce.

There are also logistical similarities across all the policy proposals. All would designate an agency tasked with processing reports received about attacks. In addition to immediate processing, this entity is often charged with developing a summary report that outlines common vulnerabilities, attack strategies, and defenses. The laws also identify a reporting timeline (i.e., the time between an entity being attacked and a report being submitted). Most are short, not more than 72 hours.

Table 1: Summary of Policies

	Introduction Date	Current Status	Sponsor	Covered entities	Reporting Timeline	Enforcement
Executive Order on Improving the Nation's Cybersecurity[9]	5/12/21	Enacted	Biden-D	Contractors for all federal agencies except DoD & Intelligence	To be determined during rule-writing by Homeland Security	Written into contracts
Cyber Incident Notification	7/21/21	Referred to Committee on	Warner-D	1. Critical Infrastructure Operators	Within 24 hours after discovery	1. Civil fine up to .5% of gross

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[8] "Ransomware 101," CISA, accessed February 25, 2022, https://www.cisa.gov/stopransomware/ransomware-101.
[9] Exec. Order. No. 14028 (May 12, 2021)

Act of 2021[10]		Homeland Security and Governmental Affairs (HSGAC)		2. Federal Contractors	Within 72 hours of discovering new information	revenue 2. Federal contractors may have additional penalties
Cyber Incident Reporting Act of 2021[11]	09/28/21	Ordered to be reported favorably, by HSGAC	Peters-D, Portman-R	1. Ransomware payments: Non-small businesses 2. Critical infrastructure operators	1. Within 24 hours of ransom payment 2. Within 72 hours of other incident	1. Request information directly 2. Issue a subpoena to the entity
Ransom Disclosure Act (House Version, Senate Version)[12]	House: 10/05/21 Senate: 10/06/21	House: Referred to the House Committee on Energy and Commerce Senate: Referred to HSGAC	House: Ross-D Senate: Warren-D	1. Entities receiving federal funds or engaged in interstate commerce who pay a ransom 2. Local govt's who pay a ransom	48 hours after a ransom is paid	To be determined during rule-writing by Homeland Security
Cyber Incident Reporting for Critical Infrastructure Act of 2021[13]	9/30/21	Referred to the House Committee on Homeland Security	Clarke-D Katko-R	Critical Infrastructure	To be determined during rule-writing by Homeland Security	1. Request information directly 2. Issue a subpoena to the entity
DFARS Clause 252.204-7012[14]	8/26/15	Implemented, Amended 12/31/19	DoD	DoD contractors	Within 72 hours	Written into contracts

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[10] Cyber Incident Notification Act of 2021, S.2407, 117th Cong. (2021)

[11] Cyber Incident Reporting Act of 2021, S.2875, 117th Cong. (2021)

[12] Ransom Disclosure Act, S.2943, 117th Cong. (2021)

[13] Cyber Incident Reporting for Critical Infrastructure Act of 2021, H.R. 5440, 117th Cong. (2021)

[14] Safeguarding Covered Defense Information and Cyber Incident Reporting, 48 CFR § 252.204-7012 (2019)

ANALYSIS OF CURRENT GOALS AND APPROACH

I identified two common goals that policymakers seem to be focusing on: national security situational awareness and sharing best practices via producing published summary reports. These findings came from examining the text of proposed mandatory reporting policies and were reinforced by conversations with staffers who helped draft these policies.

NATIONAL SECURITY AWARENESS

National situational awareness can be defined as an awareness of the existence and severity of national security threats, including incidents that might be addressed as they are occurring as well as longer term patterns. Most of the proposals in Table 1 make clear reference to this goal, using different language to describe the same idea.

The Cyber Incident Notification Act of 2021 would adopt the goals of "Federal Government awareness of cyber intrusions that pose a threat to national security" and "enable the development of a common operating picture of national-level cyber threats." The Cyber Incident Reporting for Critical Infrastructure Act of 2021 and the Cyber Incident Reporting Act of 2021 states the office receiving the reports must "aggregate, analyze, and secure [reports] to assess the effectiveness of security controls and identify tactics, techniques, and procedures adversaries use to overcome those controls." The latter takes this a step further also stating that the office must "receive, aggregate, analyze, and secure reports related to ransom payments to identify tactics, techniques, and procedures," seeking to better understand how ransomware is being utilized.[15] The Ransom Disclosure Act is yet another bill that focuses on improving the federal understanding of how ransomware is being used, commissioning a study analyzing commonalities in the reported ransom attacks.[16]

In addition to analyzing the text of these reports, I had an opportunity to speak with the congressional staffers who wrote the Cyber Incident Reporting Act of 2021 and the Ransom Disclosure Act. These conversations strongly reinforce the idea that the primary goal of these laws is to improve national security situational awareness. For the Cyber Incident Reporting Act of 2021, the staffers stressed that there is currently a patchwork of laws that require reporting in

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[15] Cyber Incident Reporting Act of 2021, S.2875, 117th Cong. (2021)
[16] Ransom Disclosure Act, S.2943, 117th Cong. (2021)

different sectors, but that these reports fail to create a clear view of all threats.[17] Their proposals would ensure a baseline of information is collected from all critical infrastructure entities across the nation. Similarly, they hope that requiring the reporting of all ransomware attacks will allow for a full understanding of the scope of the problem. The Ransom Disclosure Act pushes in the same direction, hoping to improve our understanding of the current scope of ransomware attacks. The staffers hope that by collecting a lot of data on ransomware attacks, law enforcement and researchers will be able to better understand the situation and come up with potential solutions.[18]

My conversation with the staffers who worked on the Cyber Incident Reporting Act of 2021 provided insight into why improving national security awareness of cyberattacks is such an important goal. They discussed how having reports of which critical infrastructure is being attacked would allow for better rapid response on the national scale. An analogy was made that mandatory reporting is like "weather radar" but for cyberattacks.[19] It allows for proactively addressing cascading effects across the nation. For example, if a major water system is being attacked, they can warn other similar water systems to begin planning for a higher load. Another example is if energy operators are being attacked, understanding the situation can inform national efforts to quickly move large mobile generators to support the impacted regions. Their focus is on understanding the current landscape of attacks, so that quick and effective responses are possible.

Another resource that can inform our understanding of how mandatory reporting is being approached is reports prepared by federal commissions. There are two major reports published recently that consider mandatory reporting, by the Cyberspace Solarium Commission and by the Institute for Security and Technology (IST) Ransomware Taskforce. These reports give clear reasoning for their recommendations, allowing us to see how researchers view the intended impacts of mandatory reporting, which is not discussed in legislation.

The Cyberspace Solarium Commission is a federal, bipartisan commission that published a report in March 2020 making a variety of recommendations targeted at improving the nation's cybersecurity.[20] One such recommendation is "Pass a National Cyber Incident Reporting Law." In the reasoning for why, the report outlines the need for a constant flow of data to inform

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[17] Conversation with staffers who worked on Cyber Incident Reporting Act of 2021, October 28th, 2021
[18] Conversation with staffer who worked on the Ransom Disclosure Act, November 16th, 2021
[19] Conversation with staffers who worked on Cyber Incident Reporting Act of 2021, October 28th, 2021
[20] "About," Cyberspace Solarium Commission, accessed February 25, 2022, https://www.solarium.gov/about.

situational awareness. It argues that "The government's cyber incident situational awareness, its ability to detect coordinated cyber campaigns, and its risk identification and assessment efforts require comprehensive data that the government currently lacks." It states that the government currently "lacks a mandate to systematically collect cyber incident information reliably and at the scale necessary to inform situational awareness."[21] This report explicitly states mandatory reporting is a way to ensure the availability of the data necessary to inform national level situational awareness.

As opposed to looking at cybersecurity generally, the IST Ransomware Task Force focuses specifically on combating ransomware (following the same distinction as the policies in Table 1). Like the Cyberspace Solarium Commission report, it provides a variety of recommendations pursuant to this goal. One such recommendation is "Require organizations and incident response entities to share ransomware payment information with a national government prior to payment."[22] This recommendation has a similar structure the Ransom Disclosure Act and Cyber Incident Reporting Act of 2021, targeting the reporting of ransom payments. The report lists three justifications for why they are making this recommendation. The first is that requiring disclosure of payments would "increase the understanding of the scope and scale of the crime." Essentially, it would improve national situational awareness within the ransomware landscape. Secondly, it says that the reports would enable the national government to intervene immediately if needed. This goal is in line with what the staffers who worked on the Cyber Incident Reporting Act of 2021 discussed, that reporting creates an awareness that enables rapid response. The final justification is that publishing summaries of the information reported will help organizations take preparative measures.[23] We will discuss this justification further in the next section.

SHARING BEST PRACTICES VIA PUBLISHING SUMMARY REPORTS

The secondary goal of these policies is the desire to improve the resources on best practices available to those seeking to improve their cybersecurity, via publishing regular

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[21] "Report" Cyberspace Solarium Commission, accessed February 25, 2022, https://www.solarium.gov/report.
[22] IST, "Combating Ransomware," 2021, https://securityandtechnology.org/wp-content/uploads/2021/09/IST-Ransomware-Task-Force-Report.pdf.
[23] IST, "Combating Ransomware."

summary reports that are made available to the public. These reports would outline the tactics being used by attackers, along with the recommended strategies for addressing these tactics.

Publishing summary reports that are useful to improving cybersecurity is an objective shared by many of the proposals I have discussed, with many policies laying out explicit requirements for regular reports. For example, the Cyber Incident Reporting Act of 2021 requires a monthly report that outlines the total number of reports received and trends that are identified, including "infrastructure, tactics, and technology" that attackers use.[24] The Cyber Incident Reporting for Critical Infrastructure Act of 2021 similarly requires quarterly reports that describe "observations, findings, and recommendations" based on the cyberattack reports received. The Cyber Incident Notification Act of 2021 lays out less explicitly what should be included, but states that a monthly report should be produced that "characterizes the current cyber threat picture."[25] On the ransomware side of things, the Ransom Disclosure Act requires a single summary report to be developed, containing commonalities identified in the received reports, a description of the extent to which cryptocurrency facilitated attacks, and recommendations for protecting systems going forward.[26] While the exact frequency and contents of the public reports vary across policies, the requirement of summarizing and publishing information based on collected reports is consistent.

The goal of producing summary reports that describe common attack vectors and defense strategies is also part of the IST Ransomware Taskforce report. As mentioned previously, the report explicitly states as the third mandatory reporting justification that published summaries will "help organizations understand how preparative measures need to adapt as attacks evolve."[27] However, the Cyberspace Solarium Commission report does not mention publishing summary reports, indicating that unlike situational awareness, summary reports are a secondary goal.

A GAP IN THE UNDERLYING FRAMEWORK AND GOALS

It is clear through my research that there is a common framework being used today when talking about mandatory reporting laws. It is also clear, in my view, that this framework falls

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[24] Cyber Incident Reporting Act of 2021, S.2875, 117th Cong. (2021)
[25] Cyber Incident Notification Act of 2021, S.2407, 117th Cong. (2021)
[26] Ransom Disclosure Act, S.2943, 117th Cong. (2021)
[27] IST, "Combating Ransomware."

short of what is needed. It does not attempt to connect mandatory reporting policies to promoting continuous improvement. In particular, it fails to promote continuous improvement of entities with very poor cybersecurity practices and few resources to devote to improvements, which is exactly the situation that many small municipalities are in.

Reporting of attacks may improve the current national security awareness, but does not ensure or incentivize that subsequent (organizational and technological) improvements are made in entities that have been attacked. Additionally, there is a hope that detailed descriptions of attacks that have happened will make clear what preventive measures ought to be taken by others and that organizations will take those measures. However, creating effective recommendations of preventative measures is challenging given the current cybersecurity theory and the method of identifying recommendations is not specified in the laws or reports. Even if effective recommendations were produced, they would only help entities who are already proactive in trying to improve their cybersecurity.

Continuous improvement requires entities to not just do the things that might have stopped the type of cyberattacks that have already occurred or to reach some minimum cybersecurity threshold, but to regularly improve the standards of their cybersecurity technology, culture, and procedures. Continuous improvement for all entities, including and especially those with currently very low standards of cybersecurity, is necessary to develop robust cybersecurity across the nation. The current goal of using mandatory reporting to improve national situational awareness is certainly laudable, but it does not go far enough. Given the rising interest in mandatory reporting, there is a critical need for the research community to explore the role that mandatory reporting can play in improving national cybersecurity, beyond the current focus on situational awareness.

The publication of summary reports is the current framework's key idea for promoting continuous improvement. However, these reports only help entities who are proactively working on their cybersecurity. Those will largely be entities that already have robust cyber defenses and are choosing to seek out these reports so that they can stay on the cutting edge of cybersecurity. For many small entities like municipalities, the cutting edge of cybersecurity is currently unreachable; they have not yet even attained the bare minimum. Research is needed to find how mandatory reporting and alternative approaches could go further to have the impacts required to build local cybersecurity capacity for the long term.

My research also revealed open questions about if mandatory reporting policies could ensure municipalities actually report attacks, which further research is needed to address. Municipal officials have deep privacy concerns that would make them hesitant to report. If the details of an attack (and the vulnerabilities that enabled it) became public, officials would appear poorly to their constituents. Additionally, officials may struggle to even identify what should count as a "cyberattack" or have concerns that reporting will make them a target of future attacks. Further, some policies would require reporting *during* an attack, for example before paying a ransom, which is a challenging requirement for a municipality, many of whom do not even have attack response plans.

FURTHER MANDATORY REPORTING RESEARCH

It is essential that researchers explore how to expand the utility of mandatory reporting beyond improving situational awareness and publishing summary reports. One direction of research should be understanding the successes and failures of existing EU laws that require reporting of cyberattacks, mainly the NIS Directive and its successor. Another direction is exploring how the unique strengths of mandatory reporting could be used in new ways to promote continuous improvement.

In 2016, the EU enacted the NIS Directive, the first EU-wide cybersecurity legislation.[28] Within the NIS Directive is a requirement that "operators of essential services" and "digital service providers" notify a central authority when they experience a cyberattack.[29] It states that the goal of notification requirements is to "promote a culture of risk management and ensure that the most serious incidents are reported." In 2020, an update to the NIS Directive was proposed (NIS 2.0), continuing to include a notification requirement but with some updates. The updates include changes in who is required to report, the required reporting timeline, and the penalties for not reporting.[30] The NIS Directive and its successor reflect the US bills in some ways; they have aspects that seek to improve situational awareness, such as requiring member states to inform

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[28] Think tank: European parliament, "The NIS2 Directive: A High Common Level of Cybersecurity in the EU ," December 2021, https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)689333.

[29] Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union

[30] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148

other member states of some attacks, and to improve public knowledge of best practices, such as through summary reports and a vulnerability registry.

However, unlike the US bills, the NIS Directive is an existing, implemented mandatory reporting policy, making it a valuable resource for further research. In this paper, I focus on understanding the way US policy makers are approaching mandatory reporting, but the NIS Directive was developed in a different political context. It is essential that research be done on the impacts that mandatory reporting has had in the EU, the original goals of the Directive, and the reasoning behind the changes in NIS 2.0. Through the research in this paper, we understand the theoretical goals of US policymakers and where they fall short; through research on the NIS Directive, we could understand the practical impacts of these policies and find where theory fails to match reality.

Beyond further research on the NIS Directive, research is needed on how the strengths of mandatory reporting could be further utilized. One strength is that reporting is an opportunity for authorities to establish a line of communication with every entity that has been attacked. In the past, these entities would probably have never spoken about their cybersecurity. This new direct line of communication could be utilized in a variety of ways. For example, the proposed policies all require reporting directly to a central entity, but the MIT Cybersecurity Clinic recommends to municipalities to "Establish a relationship with your regional or local office of a federal agency (FBI, DHS, Secret Service)," on the assumption that having pre-established contacts will "facilitate quicker and clearer communication during an attack." The clinic works directly with local municipalities to improve their cybersecurity and has a checklist of minimum steps they recommend municipalities need to take, whether they have been attacked or not. Mandatory reporting could be utilized to help establish these connections at a local level, not just in places that have already been attacked. This is just one example of many that researchers should explore, to fully understand the ways in which the federal government could go beyond the current assumptions about mandatory reporting.

A second strength of mandatory reporting is that reporting an attack is an opportunity for entities to reflect, both on the details of the attack and their cybersecurity as a whole. Many of the proposed policies require reporting information such as a description of the incident including what systems, network, or devices were affected, along with identifying vulnerabilities and tactics utilized in the attack; information that is helpful in preparing vulnerability

assessments, which are recommended to be prepared yearly.[31] Given the right approach, mandatory reporting could result in entities not just reporting an attack and moving on. Rather, reporting could result in them reflecting on the current state of their cybersecurity, identifying ways in which they can improve, and beginning the process of continuous improvement.

POTENTIAL FUTURE DIRECTIONS

There are many potential approaches to utilizing mandatory reporting as a starting point to promote continuous improvement in municipalities that further research could explore. In this section, I will provide some examples. They all stand as both a proof of concept that there are directions to investigate and as a jumping off point for future research.

One way to enable exploring how mandatory reporting can be used to promote continuous improvement in local governments is explicitly writing into the mandatory reporting law that a study should be conducted to show how this is possible. The law could require a report to be published on potential ways that the process of reporting and the collected data could be used to promote continuous improvement. This is analogous to a section in some of the proposed bills that requires a report to be written proactively identifying "opportunities to use cybersecurity incident data to inform and enable cybersecurity research."[32]

Another direction to explore is requiring entities who report being attacked to also report the results of a basic audit of their cybersecurity vulnerabilities. This report could be submitted at a later date, to avoid adding work to the already stressful situation of following up after an attack. Collecting these cybersecurity audits could be paired with requiring the central authority to write a report analyzing the results of these audits to identify commonly missing basic security measures. Today, it is challenging to know what an effective law requiring basic cybersecurity might include. Identifying which control failures are likely to cause the greatest losses is an area of active research; in 2020 an entire platform was developed focused on identifying cyber risk, with one of its goals being identifying high risk control failures.[33] A law that includes the requirement of reporting this additional audit information and a study being conducted based on

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[31] ISACA, "Performing a Security Risk Assessment," January 2010, https://www.isaca.org/resources/isaca-journal/past-issues/2010/performing-a-security-risk-assessment.

[32] Cyber Incident Reporting for Critical Infrastructure Act of 2021, H.R.5440, 117th Cong. (2021)

[33] Leo de Castro et al., "Scram: A Platform for Securely Measuring Cyber Risk," Harvard Data Science Review, 2020, https://doi.org/10.1162/99608f92.b4bb506a.

these audits could significantly contribute to identifying the cybersecurity areas in which entities require the biggest investments.

There is also space to study whether continuous improvement can be achieved via incentives rather than requirements, and the role mandatory reporting can play in that. A recent proposal with the goal of promoting continuous cybersecurity improvement for municipalities proposes a mechanism for state-sponsored cyber insurance for municipalities, in exchange for commitments to and proof of yearly cybersecurity improvement.[34] The proposal plans to use a cyber risk aggregating tool, SCRAM, to measure cybersecurity improvement over time; in order to be eligible for state organized insurance, a municipality must show measured improvement. This proposed system and SCRAM itself hold significant potential. They also reveal a space that more research can be done on how mandatory reporting could be used; how can mandatory reporting be used to understand the current state of cybersecurity measures (not just cyberattack outcomes) and the state of continuous improvement (or lack thereof). For example, what municipalities were required to answer the SCRAM questionnaire as part of reporting and report their SCRAM score?

Research is also needed on how a federal mandatory reporting law could work in coordination with state governments. It would be difficult for the federal government to follow up on all reports since there are thousands of attacks a day, but they may be able to partner with state governments to follow up with their municipalities.[35] The federal government could provide information and financial grants to states, under the condition that states reach out to their municipalities. Giving states the leeway to decide how exactly funding and support should be distributed would allow the states to figure out the best way to promote continuous improvement in their communities, without negatively impacting the original goal of improving national situational awareness.

Each of these ideas is simply a potential direction future research could explore and by no means constitute an exhaustive list. However, it is clear that there are ways for mandatory

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[34] Baral, "Continuous Measured Improvement: A New Approach to Meeting the Municipal Cybersecurity Challenge"

[35] Clare Stouffer, "115 Cybersecurity Statistics and Trends You Need to Know in 2021," Norton, accessed February 26, 2022, https://us.norton.com/internetsecurity-emerging-threats-cyberthreat-trends-cybersecurity-threat-review.html.

reporting to be used to promote cybersecurity improvements directly, to have an impact beyond situational awareness and relying on summary reports to trigger local improvements.

CONCLUSION

Current federal thinking on mandatory reporting focuses on ways of improving national situational awareness and using published summary reports to promote local improvements. Such a framework fails to promote continuous improvement for entities who are not currently prioritizing cybersecurity, particularly municipalities (especially those that have not yet been successfully attacked). There are a variety of directions that further research can pursue to address these shortcomings, but it is critical that this research proceed quickly. Moving forward, the United States cannot rely on mandatory reporting in only a reactive way.

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MAPPING THE IMPLICATIONS OF URBAN RESIDENTIAL SEGREGATION ON THE POLICING OF BLACK COMMUNITIES

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This research examines the intersections of housing and policing to inform an analysis of racial injustice against urban Black communities in the United States. Despite legal protections, the legacies of segregation and other discriminatory policies prevail in less overt ways. I argue that the over-policing of Black communities is a consequence of these historical practices and policy approaches that have failed to address their implications. Segregation contributes to increased racial bias and threat perception between groups, constructing the need for over-policing. To assess how housing policy and residential patterns perpetuate inequity, I first examine current sociological, legal, and geographic literature on the relationships between race, bias, residential segregation, and over-policing. Then, I use geographic information systems (GIS) to conduct a case study on Chicago, Illinois using census and police stop data. Finally, I discuss this work's significance for current housing and policing approaches, including the Affirmatively Furthering Fair Housing Provision of the 1968 Fair Housing Act and ongoing police reform efforts.

INTRODUCTION

In 1968, the Fair Housing Act officially prohibited the use of housing practices that discriminated based on race, religion, national origin, sex, familial status, or (dis)ability in the United States.[1] However, residential inequities have persisted, as Black Americans and other racial minorities suffer from the legacies of segregation and discriminatory housing practices. While the body of work analyzing these continued impacts has grown significantly in recent years, the intersection between housing patterns and law enforcement practices merits further investigation. Segregation contributes to increased racial bias and threat perception between groups, constructing the need for over-policing.[2] Additionally, the recent increase in media focus on U.S. policing calls for more critical and empirical examinations of how federal and local policies contributes to the continued stigmatization and oppression of Black communities.

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[1] "Fair Housing Act," U.S Department of Justice, accessed February 20, 2022, https://www.justice.gov/crt/fair-housing-act-2.

[2] Defined as the process of policing excessively, through large police forces or responding disproportionately aggressively to minor offenses and everyday encounters.

This paper contributes to the body of literature on fair housing policy and policing in the United States by demonstrating how policies that fail to combat residential segregation contribute to the ease with which racial disparities are sustained. First, I provide an overview of racial bias, residential segregation, and policing, focusing on how these elements interact in the U.S. urban context. Second, I conduct a case study by analyzing geospatial data on vehicular and pedestrian police stops and residential patterns in Chicago, Illinois. Last, I discuss the significance of my findings in relation to the current state of federal policy. I identify critical areas that require more substantive attention from legislators to reduce barriers to equity and justice, with particular attention to the Affirmatively Furthering Fair Housing Provision and police reform efforts.

LITERATURE REVIEW

In this section, I examine existing research and discourse on policing, racial bias, and housing in the United States. First, I explain how residential segregation is defined in geographic theory and how it has functioned historically, and its general implications. Second, I highlight sociological theories to illustrate how space relates to racial bias and disproportionate over-policing of Black communities. Finally, I incorporate literature on governance, law, and housing policy to illustrate their role in unjust law enforcement practices.

Residential segregation in the United States is rooted in discriminatory housing and lending practices and perpetuates injustice for racial minorities. The dynamics of this segregation can be understood through the lens of four critical processes, as outlined by Monica Bell:

> Segregation entails uneven geographic distribution of ethnic groups across a coherent geographic area (separation), and the movement of marginalized ethnic groups into identifiable and stigmatized enclaves (concentration), in order to establish and reproduce hegemonic racial hierarchy (subordination), to control and economically exploit disadvantaged groups, and hoard social and political opportunity for advantaged groups (domination).[3]

Significantly, Bell challenges the justification that the "persistent statistical separation [of racial groups after the introduction of fair housing law] is evidence of free choice and 'self-segregation'" by arguing that segregation (also referred to by Bell as forced separation) is still

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[3] Monica Bell, "Anti-Segregation Policing," *NYU Law Review* 95, no. 3 (June 2020): 659.

enforced through "seemingly neutral practices and difficult-to-detect strategies that reinforce racialized power dynamics."[4] Further, current approaches that center housing affordability, while important, cannot tackle widespread racial injustice because of the interconnectivity of racial segregation and "unjust policing across space."[5] Thus, the agenda for policing reform must prioritize tackling racial residential segregation.

In the historical context of racial discrimination in the United States, the physical separation of white and racial minority communities has exacerbated the concentration of poverty and urban decline in primarily Black communities.[6] Other policies, such as redlining, have historically worked in conjunction with segregation to entrench spatial inequalities along racial divides.[7] Geographic analyses have found that historic discrimination against Black communities is still built into urban landscapes as "the urban ghetto replaced earlier systems of racial domination (slavery and Jim Crow) designed to suppress and control Black populations."[8] The "byproducts of racial oppression—crime, violence, drugs, poverty, and despair" disproportionately impact Black urban neighborhoods and have become socially and politically associated with Blackness in the United States.[9] Bell and Akwasi Owusu-Bempah both assert that these associations construct perceived threats and play a significant role in justifying over-policing and surveillance of these Black neighborhoods.[10] These theories highlight the interconnectivity of racial bias, institutional practices, and oppression. The criminalization and surveillance of Black people both stem from and reinforce dominant anti-Black perceptions, which "exacerbat[es] preexisting disadvantage, thereby locking low-income people of color into already disadvantaged neighborhoods."[11]

Based on these findings, it is clear that residential segregation sustains racial bias and creates cyclical patterns of oppression. In the context of policing, racial bias causes threat perception failure, which is defined as "the systematic misjudgment of threat from people who

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[4] Monica Bell, "Anti-Segregation Policing," 659-60.

[5] Ibid., 658.

[6] Akwasi Owusu-Bempah, "Race and Policing in Historical Context: Dehumanization and the Policing of Black People in the 21st Century," *Theoretical Criminology* 21, no. 1 (November 2016): 27, https://doi.org/10.1177/1362480616677493.

[7] Defined as a discriminatory spatial practice in which housing and lending services are refused to or minimized for customers from specific neighborhoods, often in alignment with the racial and ethnic makeup of such areas.

[8] Owusu-Bempah, "Race and Policing," 26.

[9] Ibid., 27.

[10] Bell, "Anti-Segregation," 650-765; Owusu-Bempah; "Race and Policing," 23-34.

[11] Bell, "Anti-Segregation," 690.

are Black," leading to the disproportionate use of excessive force on Black people.[12] Threat perception failure is significant to policing in individual and institutional contexts. This is elucidated by the closely related minority threat hypothesis, which asserts that on the individual level, higher levels of force will be deployed by individual law enforcement officers in neighborhoods associated with minorities, and, on the institutional level, leaders will "systematically over-deploy police in these areas."[13] For example, Michael Siegel et al. found that "even when controlling for the overall Black population in a census tract, neighborhoods with a higher percentage of Black residents were significantly more likely to experience a fatal shooting of a Black person" in comparison to non-Black individuals.[14] Additionally, numerous studies have found that Black drivers and pedestrians in the United States are more likely than non-Black people to be stopped and searched, particularly by white police officers.[15]

Black's theory of law helps explain these policing patterns by asserting that social positionality impacts how officers decide to invoke the law.[16] Social indicators of political, social, and economic status, including race and ethnicity, change how the law is applied to different cases of similar natures.[17] This theory lends itself to out-of-place policing and minority threat theory since the social indicators of race and ethnicity can increase officers' suspicion of a Black person, making them more likely to stop, search, detain, or arrest.[18] Residential segregation and policing, therefore, intersect to create circumstances that shift power dynamics and make it easier to target particular racial groups. A city's level of integration impacts individual actions by altering the social constructions of minorities and influencing how police

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[12] Michael Siegel et al., "The Interaction of Race and Place: Predictors of Fatal Police Shootings of Black Victims at the Incident, Census Tract, City, and State Levels, 2013–2018," *Race and Social Problems* 13, no. 3, (January 2021): 246. https://doi.org/10.1007/s12552-020-09307-y

[13] Siegel et al., "The Interaction of Race and Place," 247.

[14] Ibid., 261.

[15] Leah Christiani, "Intersectional Stereotyping in Policing: An Analysis of Traffic Stop Outcomes," *Politics, Groups & Identities* 9, no. 5 (April 2020): 893. https://doi.org/10.1080/21565503.2020.1748064; Emma Pierson et al., "A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States," *Nature Human Behaviour* 4 (March 2020): 737, https://doi.org/10.1038/s41562-020-0858-1; Jeff Rojek et al.,"Policing Race: The Racial Stratification of Searches in Police Traffic Stops," *Criminology* 50, no. 4 (August 2012): 993, https://doi.org/10.1111/j.1745-9125.2012.00285.x

[16] Rojek et al., "Policing Race," 994.

[17] Ibid., 994.

[18] Defined as a policing practice deeply tied to racial biases that associates suspicion with subjects who look different from the dominant group of residents in an area; Rojek et al., "Policing Race," 994.

departments function.[19] Stephanie Kent and Jason Carmichael found that "racial residential segregation has a significant non-linear effect on police force size."[20] This means that more racially integrated landscapes tend to have a smaller law enforcement footprints. The researchers attribute this to the contact hypothesis, because "majority group members appear to be less inclined to demand greater crime control measures such as increased police protection," which is a result of integration and interaction decreasing threat perception.[21]

It is imperative to consider the role of housing policy in establishing and perpetuating the conditions that facilitate the cyclical structures of over-policing in primarily Black neighborhoods. We can look to the Federal Housing Administration (FHA) to understand how governance plays a significant role in upholding or eliminating these unjust structures. Bell identifies racial steering in policing as evidence that the FHA has failed to address underlying issues that fall within its realm of management.[22] While this term is often applied to housing only, racial steering can also refer to a series of practices and strategies that disproportionately police members of a particular racial group.[23] While actors in the private sector, such as real estate, are prohibited by federal law from racial steering, law enforcement officers—who fall within the management of governmental and legal structures—are more loosely bound to these constraints.[24] In policing, steering can occur through institutional practices of concentrated policing or individual choices to utilize different or more aggressive strategies in areas with high concentrations of racial minorities.[25] In both cases, the FHA's failures to address racial residential segregation and discrimination through housing policy effectively legitimize these practices.

While some researchers, including Bell and Roberto Concepción Jr , have asserted that the FHA can and should be held responsible for the persistence of over-policing of racial minority communities, legal and institutional structures have not upheld this responsibility

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[19] Stephanie L. Kent and Jason T. Carmichael, "Racial Residential Segregation and Social Control: A Panel Study of the Variation in Police Strength Across U.S Cities, 1980–2010," *American Journal of Criminal Justice* 39, no. 2 (April 2013): 228, https://doi.org/10.1007/s12103-013-9212-8.

[20] Kent and Carmichael, "Racial Residential Segregation," 228.

[21] The contact hypothesis posits that sustained intergroup interactions will yield a decrease in prejudice and hostility over time; Kent and Carmichael, "Racial Residential Segregation," 228.

[22] When real estate bodies direct potential homebuyers towards certain neighborhoods based on the customers' race; Bell, "Anti-Segregation," 712.

[23] Ibid., 737.

[24] Ibid., 737.

[25] Ibid., 738.

consistently.[26] The Fair Housing Act has, in some cases, been used to attach legal responsibility to the FHA.[27] For example, "some courts have held that the FHA covers post-acquisition conduct—discrimination that occurs after an individual acquires housing."[28] This connects the anti-discrimination articles of the Fair Housing Act to experiences of racial discrimination in buying and renting property, and as members of their new community.[29] Through this lens, the relationships between racial residential segregation and disproportionate over-policing fall within the responsibility of the FHA.[30] However, there are contradictory legal precedents that undermine the identification of racial profiling and over-policing as discriminatory. The Fourth Amendment, for example, has been used as constitutional support by the Supreme Court to permit stop-and-frisk policing, where subjects are stopped and searched for weapons or illegal items.[31] This relies on an officer's "reasonable suspicion supported by articulable facts that criminal activity 'may be afoot'," justifying police hunches that often stem from prejudice, stereotyping, and racial bias.[32] These contradictions indicate an opportunity to attach responsibility to housing authorities through more robust accountability legislation.

CASE STUDY

The conclusions from my literature review merit more specific study into how racial bias, policing, and housing interact in urban landscape. I selected Chicago, Illinois for this case study for several reasons, including feasibility, demographic and historical context, and availability of police stop data. While no city can be representative of the diversity of all U.S. urban landscapes, Chicago serves as a valuable example because of its racial diversity and history of redlining and other discriminatory practices. These contextual factors make Chicago a useful example that highlights the lasting implications of housing policy.

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[26] Bell, "Anti-Segregation," 735; Roberto Concepción Jr., "The Untapped Potential of the Fair Housing Act in Addressing Aggressive Enforcement of 'Walking While Black or Brown,'" *University of Pennsylvania Journal of Law and Social Change* 17, no. 4 (2014): 395.
[27] Concepción, "The Untapped Potential," 395.
[28] Ibid., 395.
[29] Ibid., 395.
[30] Bell, "Anti-Segregation," 694; Concepción, "The Untapped Potential," 395.
[31] Concepción, "The Untapped Potential," 386.
[32] Ibid., 386.

The following analysis focuses on traffic and pedestrian stops rather than other types of resident-police interactions. Traffic and pedestrian stop data offer valuable insight into police interactions with communities because of the high frequency of these encounters in everyday life compared to less common police encounters. These everyday interactions are often overlooked in discourse on the over-policing of Black communities. However, these incidents reflect the larger structures of institutional violence that disproportionately affect Black communities, "undermine community trust" in police departments, and reduce overall public safety.[33]

METHODS

Currently, there is no national-level data repository on public interactions with police, such as traffic and pedestrian stops. Additionally, there is no national standard that requires the public release of this information. In the absence of a national repository, The Stanford Open Policing Project (SOPP) out of Stanford University aims to make data on police interactions in the United States accessible.[34] In the following section, I present a geographic analysis with a subset of data compiled by the SOPP on pedestrian and vehicle traffic stops in conjunction with U.S. Census Bureau data on residential distribution by race within the City of Chicago.

I conducted my analysis at the census tract level, with demographic data acquired from the 2009-2019 American Community Survey 5-Year Estimates Database.[35] I also used Chicago standardized police stop data compiled in 2016 from the SOPP database, accounting for 9,035 recorded police stop instances for which the subject's race and the spatial coordinates of the stop were recorded.[36] Data points without location information or the subject's race were deemed unusable for this research and were excluded. Using ArcGIS, a web-based geographic information systems (GIS) platform, I conducted advanced spatial analyses with both datasets.

First, I displayed the data sets by creating layers using demographic data on predominant race by census tract, population density, and police stops within the City of Chicago. Second, I

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[33] United States Department of Justice Civil Rights Division, "Investigation of the Ferguson Police Department," 2015, accessed February 20, 2022, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

[34] Pierson et al., "A Large-Scale Analysis," 737.

[35] "American Community Survey 5-year Data (2009-2019)," United States Census Bureau, last modified December 10, 2020, https://www.census.gov/programs-surveys/cps.html.

[36] Emma Pierson et al., *Stanford Open Policing Project- Chicago* [Chicago, Illinois]: December 2011-2016, https://openpolicing.stanford.edu/data/.

visualized police stops by the subject's race. I then summarized the number of stops within each census tract in Chicago, adding a new attribute to the census data, both normalized by tract population and raw. Finally, I used the ArcGIS "Find Hot Spots" analysis function to display police stop hot spots by census tract using both the raw and the normalized attributes. [37] This feature calculates spatial clusters of high values (hot spots) of police stops at the census tract level and low values (cold spots), which I then compared to racial residential distributions across Chicago.[38]

FINDINGS

My analysis reveals concentrations of Black residents, particularly in the South Side of the city as well as a pocket of the East Side along Interstate 290 (Figure 1). White (non-Hispanic non-Latino populations, as categorized by the U.S. Census Bureau) are largely concentrated in the North Side and select areas at the edge of the city boundary and into the suburbs (excluded, as this analysis focuses solely on census tracts within the city) (Figure 1). Additionally, the analysis illustrates that the most high-density areas are in the outer edges of the city and the near-North Side, many of which are primarily white.[39]

The analysis of SOPP data in conjunction with this census data on race and population also reveals concentrations of police stops in particular neighborhoods. The census tracts with the highest concentration of stops, on the East Side of the city, overlap with the Black neighborhoods along Interstate 290 (Figure 2). It is significant to note that several of the high police stop concentration areas also have high population densities.[40] However, some of the highest density, largely white neighborhoods located in the near North Side and Western downtown core of the city, do not see a stop concentration that is proportionate to their

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[37] See Appendix for maps displaying population density, police stops by race, and hot spot analysis of raw data.
[38] This geospatial analysis tool calculates the Getis-Ord Gi* statistic for each tract and its associated count of police stops. The z-scores and p-values derived from this calculation reveal high and low value clusters across space within the context or neighboring features. Importantly, a high-value (high number of police stops) tract may not be a statistically significant hot spot. In order to be considered as such, that high-value tract must be surrounded by other high-value tracts; Esri, "How Hot Spot Analysis (Getis-Ord Gi*) Works," accessed February 10, 2022, https://pro.arcgis.com/en/pro-app/latest/tool-reference/spatial-statistics/h-how-hot-spot-analysis-getis-ord-gi-spatial-stati.htm
[39] See Appendix, "Figure 4. *Population Density by Census Tract."*
[40] See Appendix, "Figure 4. *Population Density by Census Tract."*

populations. This suggests that, even when accounting for population density, primarily white neighborhoods are significantly less heavily policed than predominantly Black neighborhoods.
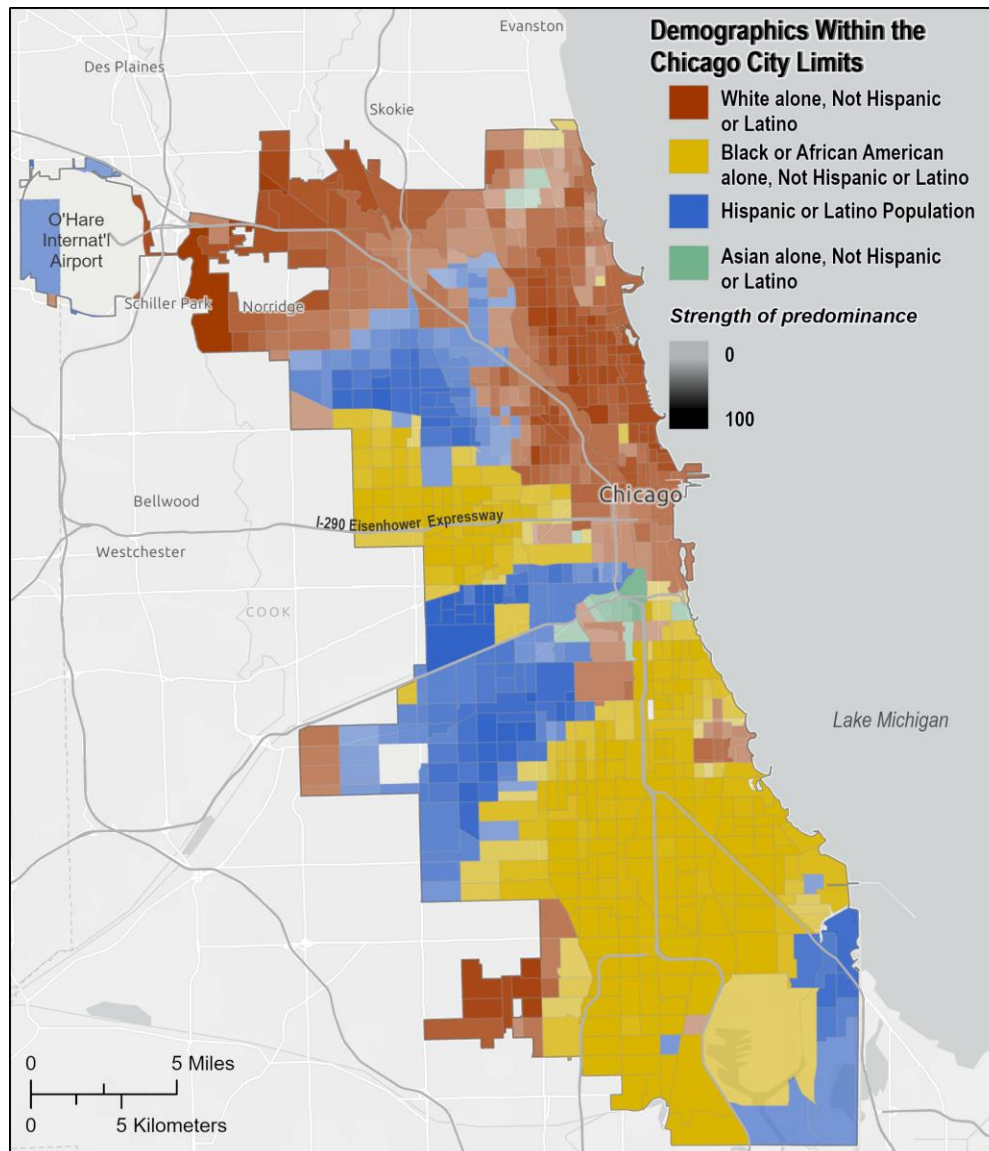

Figure 1. *Demographics by Census Tract within the Chicago City Limits, 2019* [map]. U.S. Census Bureau Databases. February 2022. 1:350,000. Generated by the author using ArcGIS [GIS software].
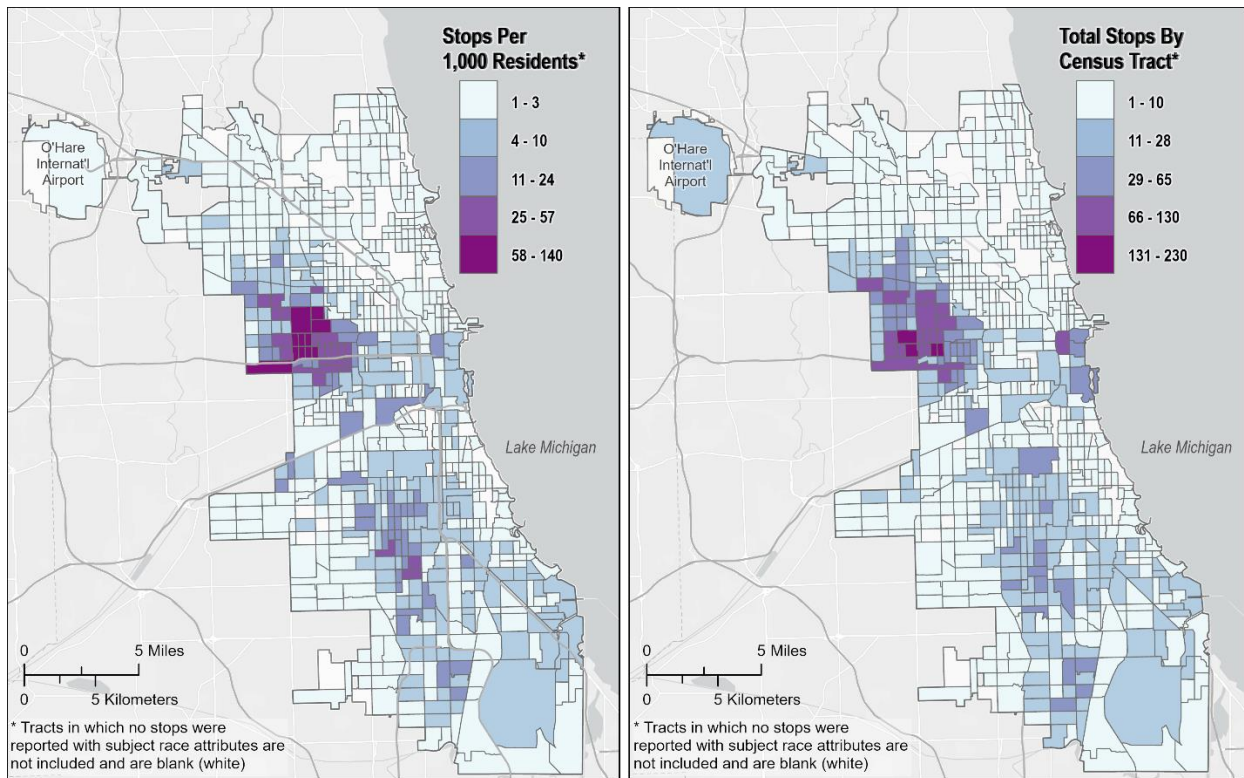
Figure 2. *Police Stop Distribution by Census Tract, Normalized per 1,000 Residents (Right) and Raw Data (Left)* [map]. U.S. Census Bureau Databases and Stanford Open Policing Project (Pierson et al.). February 2022. 1:350,000. Generated by the author using ArcGIS [GIS software].

Further analysis of the SOPP and census data provides deeper insight into the patterns and distributions of police stops in Chicago. Figure 3 displays a hot spot of police stop data, one capturing a section of the majority Black East Side area along Interstate 290. Additionally, there is a cold spot—a spatial cluster of low values—displayed in the Northeast Side of the city (Figure 3). As shown in Figure 1, this cold spot is in an area that is majority white; significantly, it also is in an area of high population density, with several tracts featuring populations of 10,500 to 21,500.[41] The raw data analysis found additional hot and cold spots following the same trend regarding majority racial composition of the area.[42] It is therefore reasonable to attribute the cold spot to factors other than low population density, such as the concentration of white residents.

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[41] U.S. Census Bureau, A*CS Population by Race and Hispanic Origin Boundaries, Table B03002* [Cook County, Illinois]: 2020,
https://services.arcgis.com/P3ePLMYs2RVChkJx/arcgis/rest/services/ACS_Population_by_Race_and_Hispanic_Origin_Boundaries/FeatureServer.
[42] See Appendix, "Figure 6. *Hot Spot Analysis of Police Stops using Raw Data*."
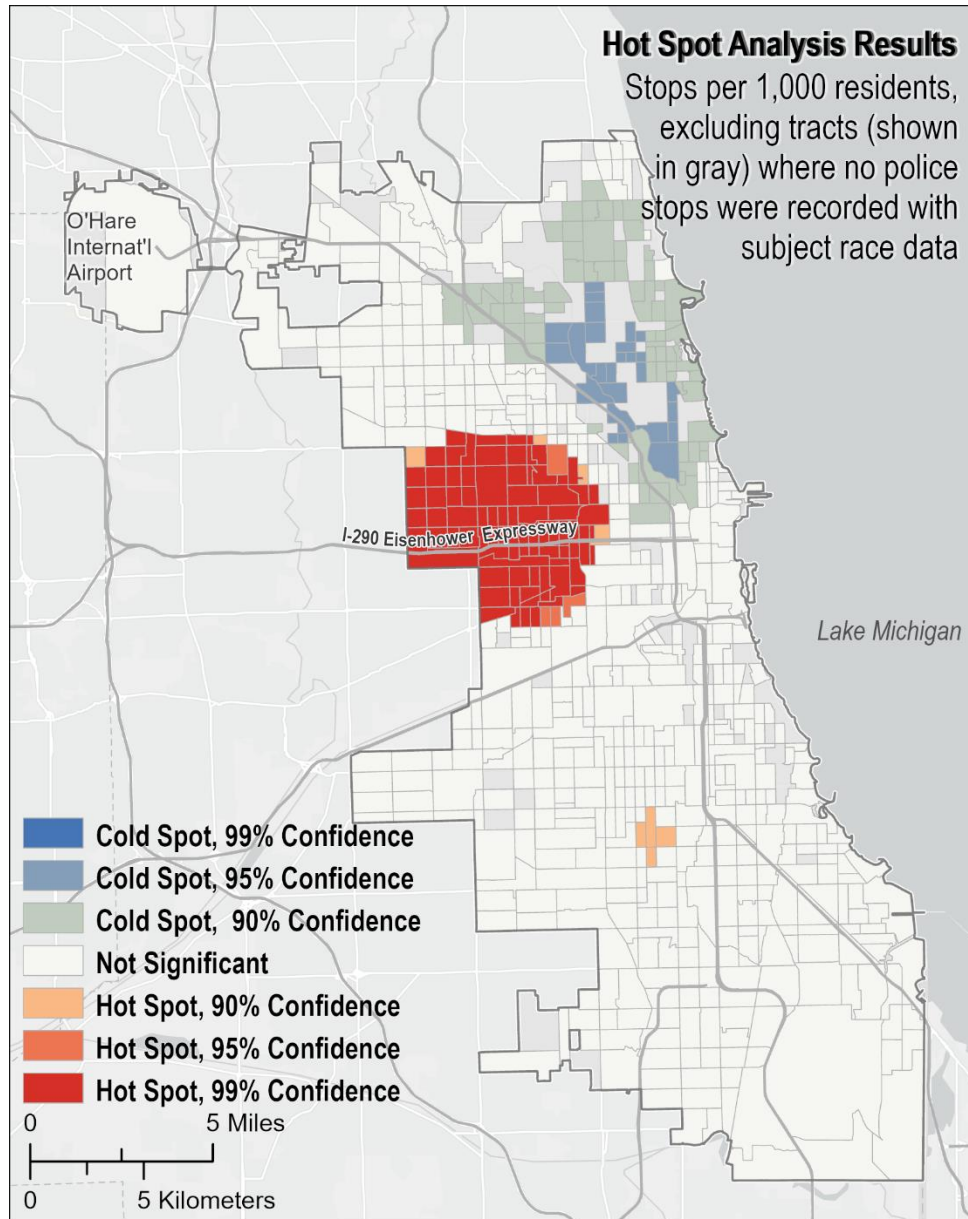
Figure 3. *Hot Spot Analysis of Police Stops per 1,000 residents* [map]. U.S. Census Bureau Databases. February 2022. 1:350,000. Generated by the author using ArcGIS [GIS software].

DISCUSSION AND IMPLICATIONS

Analysis of data from the U.S. Census Bureau and SOPP appears to support multiple researchers' findings from the literature review.[43] Areas with mostly Black residents have a higher number of police stops and, therefore, have a larger general police presence. Additionally,

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[43]Christiani, "Intersectional Stereotyping,"; Kent and Carmichael, "Racial Residential Segregation,"; Owusu-Bempah, "Race and Policing,"; Rojek et al., "Policing Race."

this analysis appears to support the theories described by Siegel et al., Bell, and Concepción that describe how racial bias and threat perceptions implicate tendencies to invoke the law disproportionately for cases involving Black people and other racial minorities compared to white people. The case study on Chicago in conjunction with the work presented in the literature review have illustrated that individual interactions contribute to a wider pattern that reflects social, economic, and political racial biases, all of which contribute to further marginalization.[44]

My research highlights how utilizing a spatial lens is key to uncover hidden implications of policy and how power dynamics contribute to the distribution of government resources. The over-policing of Black communities is an example of how law enforcement resources are unequally distributed. Over-policing concentrates policing practices in Black neighborhoods to Black residents' disadvantage, while simultaneously raising police department revenue for institutional gain.[45] This systemic injustice has been highlighted by the U.S. Department of Justice recently through its high-profile investigation of the Ferguson, Missouri Police Department. To rectify the issues associated with over-policing of minorities in urban areas, we can look toward "policies aimed at reducing racial and ethnic isolation in urban cities," since more integrated U.S. cities have statistically lower police presences.[46] The issues of residential segregation and policing are intertwined because high integration reduces the general perception of threat and the stigmatization of minority communities. Segregation also makes it easier to channel policing resources to areas that target people of color.

Therefore, more drastic legislative efforts towards increasing integration, particularly in the urban context, would have positive effects for equality, justice, and social cohesion in the United States. There are a variety of initiatives to approach integration around the world that can be used or partially adopted as a model. For example, Singapore takes a more radical approach to combat residential segregation in its 1989 Ethnic Integration Policy, which limits the percentage of any ethnic group that can live in a neighborhood.[47] This model can serve as inspiration to generate more attention to integration in national housing and development policy.

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[44] Siegel et al., "The Interaction of Race and Place," 260.
[45] U.S. Department of Justice, "Investigation of the Ferguson Police Department," 10.
[46] Kent and Carmichael, "Racial Residential Segregation," 246.
[47] "HDB's Ethnic Integration Policy: Why it Still Matters," Government of Singapore, last modified April 13, 2021, https://www.gov.sg/article/hdbs-ethnic-integration-policy-why-it-still-matters.

Regarding U.S. housing policy, this research is particularly relevant to the Affirmatively Furthering Fair Housing (AFFH) Provision of the 1968 *Fair Housing Act* that "requires recipients of [Department of Housing and Urban Development (HUD)] funds to take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."[48] This provision has proven contentious in recent years as it was pulled under the Trump administration in 2020 and reinstated in 2021 by the Biden administration.[49] In connection to policing, not only can a stronger AFFH reduce segregation and therefore limit uneven distribution of surveillance, but it can also work as a standard that guides police leaders towards more just priorities and a deeper understanding of their potential impact on urban life.[50]

The findings of this case study connect to Bell's scholarship on racial steering and policing. While the analysis on Chicago examines individual police interactions, the outcomes of the analysis demonstrate that the issue of racial bias in policing is a wider issue that must be tackled at larger scales, such as the community and institutional levels. Further, we can look towards socio-economic inequalities and the concentration of wealth as areas of attention for combatting injustice in policing.[51] Siegel et al. found that "higher levels of economic disadvantage [...] in a Census tract are significant predictors of the likelihood of any fatal police shooting occurring in that tract," alongside higher state-level education rates between Black and white people.[52] These findings overlap with the overrepresentation of Black police violence victims and highlight the interconnectivity of these social and political issues.[53] The examination of such implications indicates several areas for increased legislative and academic focus.

POLICY AND RESEARCH RECOMMENDATIONS

Based on the observations discussed in this paper, I recommend the following policy and research actions to address spatial inequities and racial injustices. First, the U.S. Congress and the Biden administration can improve upon the AFFH provision. AFFH sets the precedent for

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[48] "Affirmatively Furthering Fair Housing (AFFH)," U.S. Department of Housing and Urban Development, accessed February 20, 2022, https://www.hud.gov/AFFH.
[49] U.S. Department of Housing and Urban Development, "AFFH."
[50] Bell, "Anti-Segregation," 737.
[51] Siegel et al., "The Interaction of Race and Place," 247.
[52] Ibid., 260.
[53] Ibid., 260.

action on racial residential segregation, but it falls short in establishing implementation guidelines, binding accountability measures.[54] There is also uncertainty over what constitutes meaningful actions.[55] While a certain degree of flexibility is needed to accommodate for unique local characteristics and challenges, some municipalities and their residents will be more supportive of AFFH implementation than others, which challenges how this provision can be effectively implemented at the national scale.[56]

Second, legislators must work beyond what Bell calls "segregation-tolerant police reform," an approach that aims to address and investigate over-policing and police brutality while leaving segregation untouched.[57] From a sociological standpoint, segregation fuels and reinforces institutional distrust for marginalized groups and "erodes the degree to which communities feel that they can come together to collectively act" on injustice in policing.[58]

Further, the introduction of more robust legislation to eradicate racial steering in law enforcement institutions could be a more effective solution to racial discrimination and police brutality, given that it seeks to change institutional structures and cultures rather than targeting individual practices or operations. According to Bell, "eliminating racial steering [...] is an explicitly external and community-focused policy goal, one that supports community vitality" and takes a proactive approach to law enforcement.[59] This proactive approach to crime is different from the practices of proactive policing, which operate as a form of systematic profiling and surveillance.[60]

While not the focus of this paper, I must emphasize the value of redirecting policing expenditures towards equitable urban planning and urban renewal initiatives. Given the interconnectivity of urban problems highlighted by this research and evidenced by the Chicago case study, policymakers should consider reallocating resources to build upon existing long-term

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[54] Justin Steil and Nicholas Kelly, "The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance," *Housing Policy Debate* 29, no. 1 (December 2018): 88, https://doi.org/10.1080/10511482.2018.1469527.
[55] Steil and Kelly, "The Fairest of Them All," 89.
[56] Ibid., 101.
[57] Bell, "Anti-Segregation," 729.
[58] Ibid., 734.
[59] Ibid., 734.
[60] Siegel et al., "The Interaction of Race and Place," 262.

methods of combating spatial inequities, such as neighborhood revitalization.[61] Approaches to these urban renewal and development practices should also consider participatory action frameworks to increase community empowerment and engagement. This reallocation of resources can increase integration and social cohesion.

Finally, while this research paper is limited to a single city and a subset of data, it is imperative to expand such studies of policing and racial residential segregation nationwide. The expansion of this research will help local policymakers more effectively implement the AFFH provision and aid national policymakers in addressing these issues through informed legislation.

CONCLUSION

While the role of policing in perpetuating injustice in the United States is widely recognized, how housing upholds the conditions that sustain these wrongs is overlooked. In this paper, I have developed the literature on policing and residential segregation to explore the structural violence and racial bias situated at the intersections of these interlocking issues. My research affirms that injustice in policing practices is a part of a larger set of structures that perpetuate the lasting marginalization of Black Americans. Further, this work underscores how GIS allows policy researchers to explore spatial patterns and conduct multivariate analyses.

The entrenchment of racial bias at the institutional level has created a tangled system of oppression that infiltrates daily life for Black Americans. To tackle racial injustice in policing and housing, policymakers must take an equity approach that centers investment into Black communities and facilitates urban racial integration. The AFFH provision represents a step towards this goal; however, this plan must be strengthened through the introduction of more robust accountability and implementation measures in order to see significant changes in integration levels. Additionally, supplemental approaches that challenge institutional violence, such as policies against racial steering in policing, are imperative. We must look beyond segregation-tolerant police reform and adopt a more holistic framework for combatting racial injustice that values historical, institutional, and community context.

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[61] "The State of National Urban Policy in the United States," Organisation for Economic Co-operation and Development, accessed February 20, 2022, https://www.oecd.org/regional/regional-policy/national-urban-policy-United-States.pdf.

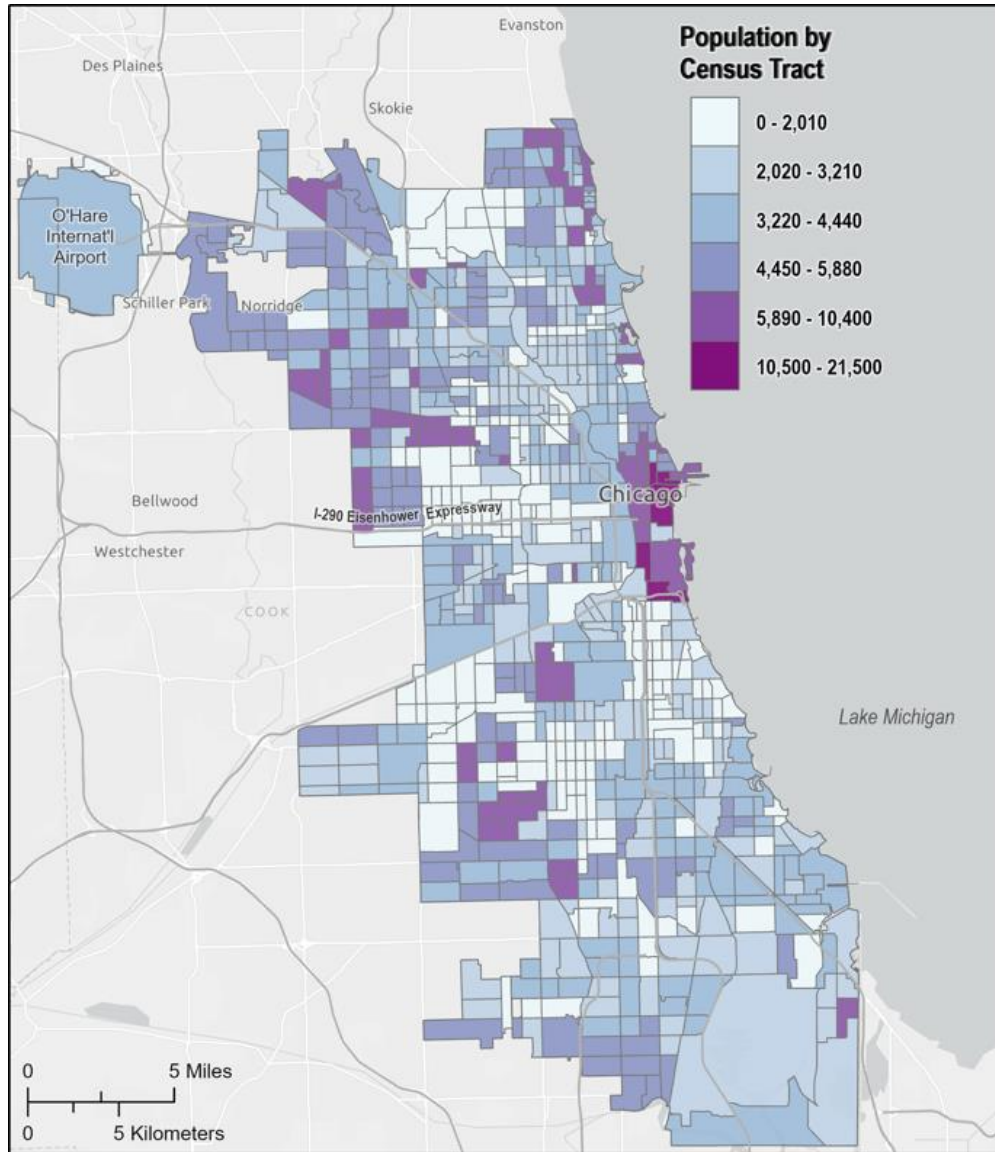## APPENDIX- SUPPLEMENTAL FIGURES

Figure 4. *Population Density by Census Tract within the Chicago City Limits, 2019* [map]. U.S. Census Bureau Databases. February 2022. 1:350,000. Generated by the author using ArcGIS [GIS software].
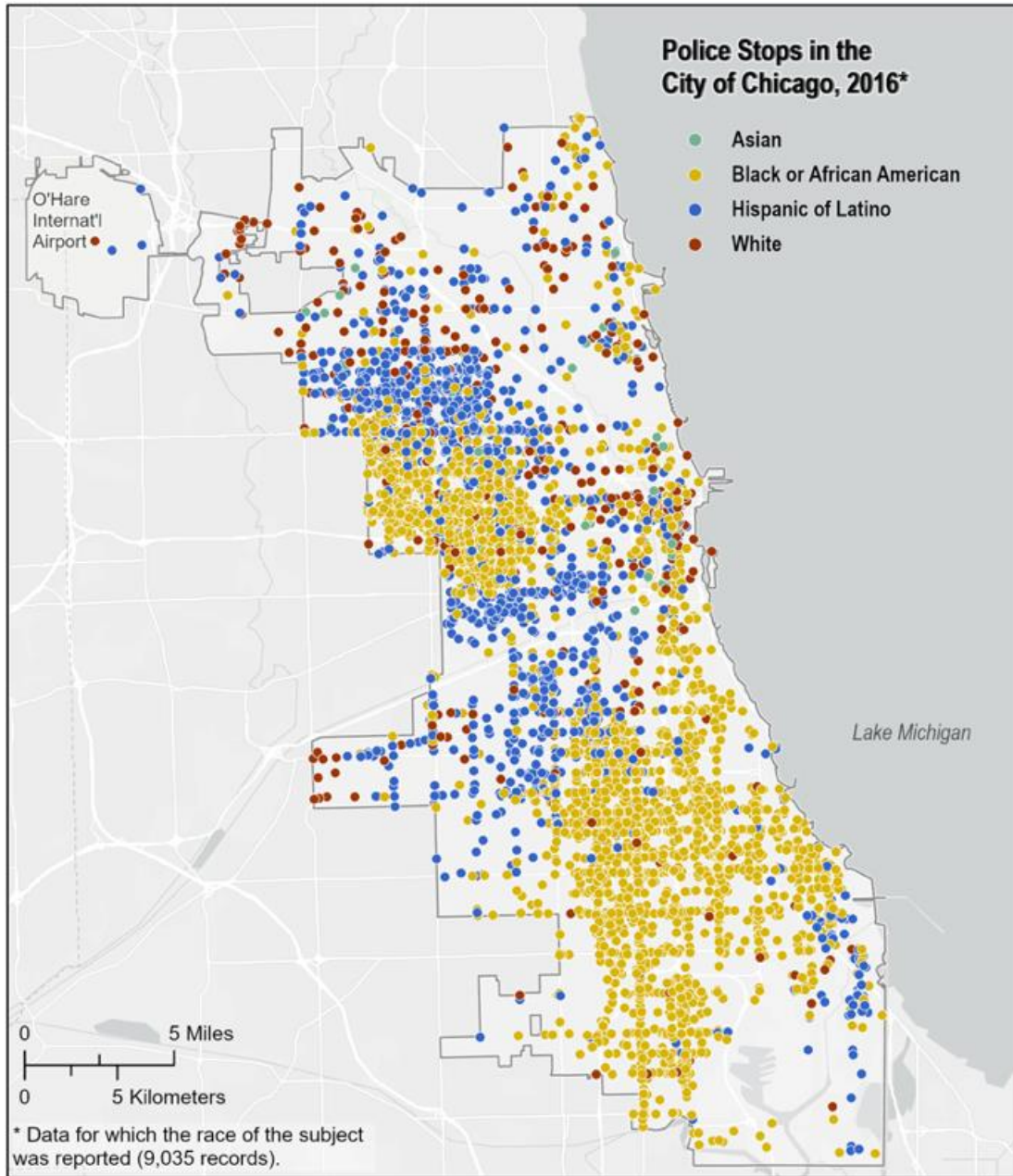
Figure 5. *Police Stops in the City of Chicago, 2016* [map]. U.S. Census Bureau Databases. February 2022. 1:350,000. Generated by the author using ArcGIS [GIS software].
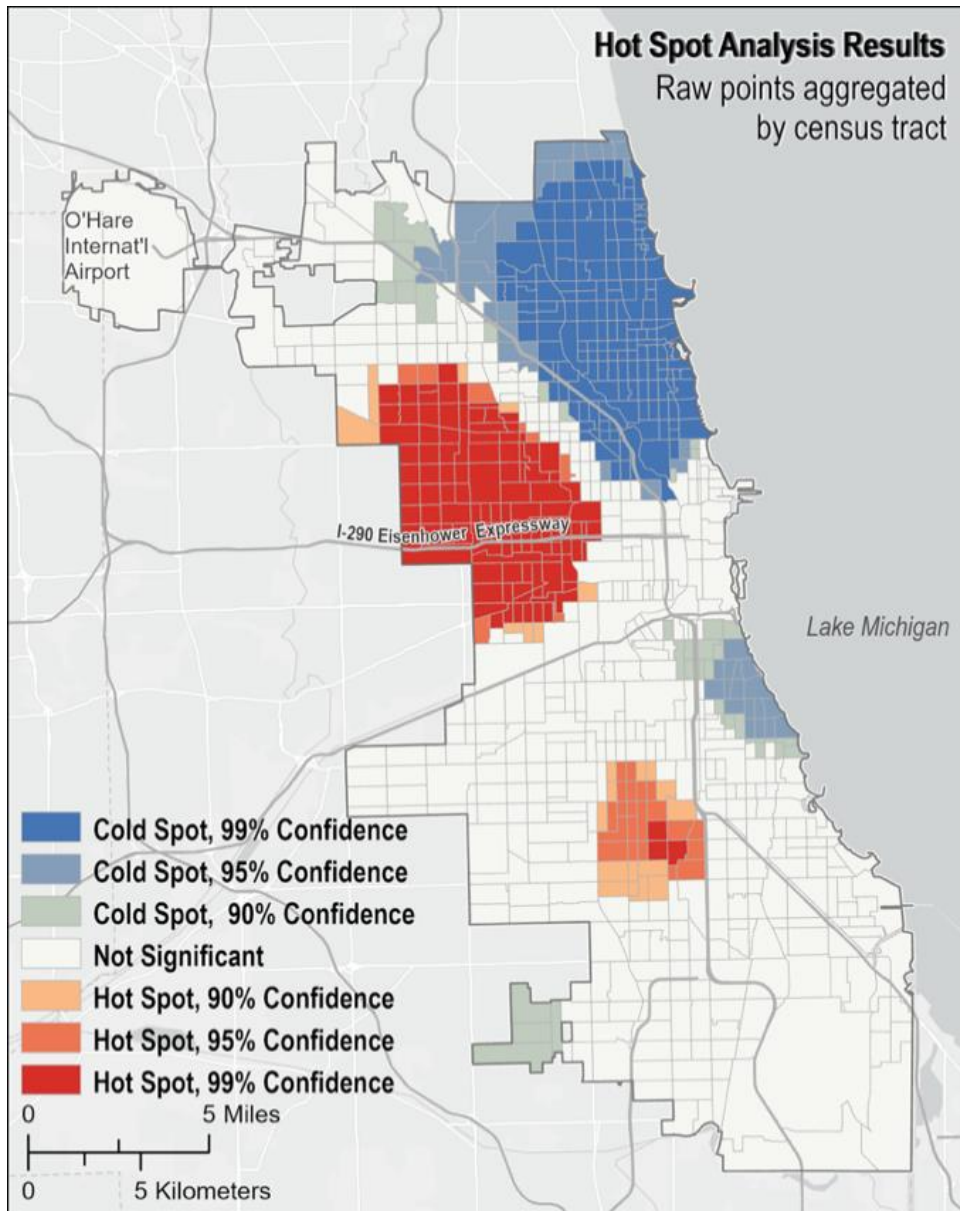
Figure 6. *Hot Spot Analysis of Police Stops using Raw Data* [map]. U.S. Census Bureau Databases. February 2022. 1:350,000. Generated by the author using ArcGIS [GIS software].

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POLICING THE PERIPHERY: THE FAILURE OF MASS INCARCERATION AND THE AMERICAN CRIMINALIZATION OF SEXUAL MINORITIES

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Since 1972, the prison population in the United States has seen a dramatic 700% growth in size, engendered by the advent of militarized policing and the legacy of President Richard Nixon's "war on drugs." Further exacerbated by the 1994 Crime Bill, which gave states the financial resources to perpetuate policies that expanded mass incarceration, the United States has emerged as the global leader in imprisonment, holding almost 2.3 million people in 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails. However, growing recognition of the scale and urgency of mass incarceration has notably excluded data that finds LGBTQ+ people overrepresented at every stage of the criminal justice system, from juvenile justice to parole. Using existing data on LGBTQ involvement and experiences with the criminal justice system, as well as University of California, Irvine criminologists Jason A. Brown and Valerie Jenness's notions of LGBT integration and segregation, I will examine the contemporary history of federal punishment and its implications for current LGBTQ citizens.

INTRODUCTION

The disproportionate involvement of LGBTQ people in the American criminal justice system is a phenomenon that spans back to the early 20th century, during an era in which homosexuality was criminalized through the actions of liquor regulation boards, police, prosecutors, and the courts in enforcing civil codes or criminal laws that targeted queer communities.[1] Between 1972 and 2009, in conjunction with the mass incarceration boom in the United States under the Nixon, Reagan, and Clinton administrations, queer citizens were further targeted by militarized policing, with gay, lesbian, and bisexual individuals 2.25 times more likely to be arrested than straight people. This disparity is largely driven by queer women, as evidenced through criminological research published by the Prison Policy Initiative, which

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[1] Reclaimed from its earlier negative use, the term is valued by some for its defiance, by some because it can be inclusive of the entire community, and by others who find it to be an appropriate term to describe their more fluid identities. Throughout this paper, "queer" is used synonymously with LGBTQ; Margot Canaday. *The Straight State: Sexuality and Citizenship in Twentieth-Century America*. Princeton: Princeton University Press, 2009.

analyzes data on carceral paradigms by assigned gender.[2] The impact of mass incarceration on LGBTQ communities over time is particularly relevant in this current moment of national reckoning, as the president and Congress consider policies that might remedy the systemic harms of imprisonment and policing on racial, ethnic, and sexual minorities in the United States. Yet as a nation, even as we see a modest reduction in the U.S. prison population, we have consistently failed to recognize the violence that is experienced by queer people on the inside.

Researchers analyzing the most recent National Inmate Survey found that LGB people are incarcerated at a rate over three times that of the total adult population: 1,882 per 100,000 lesbian, gay, and bisexual people are incarcerated, compared with 612 per 100,000 U.S. residents aged eighteen and older.[3] Furthermore, system-impacted sexual minorities across the United States face violence pertaining to their own identities throughout the entire duration of their sentences, amplifying the probable development of both psychological stress and acute mental health conditions, such as depression, and disproportionately high rates of recidivism. To redress these disparities and their absence from socio-historical literature on the criminal justice system, especially with respect to the period since 1994, this paper will offer a contemporary history on the carceral violence faced by queer people that can, in part, help identify patterns of criminal disenfranchisement directed against the LBGTQ community since the mid-20th century. In focusing on the history of queer involvement in the criminal justice system since the election of President Richard Nixon, I plan to examine the federal policy enacted to rectify, at least in theory, the harms of mass incarceration. Given the length limits of this paper, I will focus on three main areas of inquiry surrounding LGBTQ criminalization: How many laws and statutes were passed to disproportionately disenfranchise and incarcerate LGBTQ Americans? What role did the 1994 Crime Bill have on the rise of mass incarceration in queer communities? And, what violence do LGBTQ people currently face while incarcerated in American carceral facilities?

Utilizing frameworks of LGBT integration and segregation developed by University of California, Irvine criminologists Jason A. Brown and Valerie Jenness, as well as first-person testimonials shared by current or formerly-incarcerated queer people, I will demonstrate how federal criminal justice policy has resulted in "indirect discrimination" against queer prisoners—

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[2] Alexi Jones. "Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System." *Prison Policy Initiative*, March 2, 2021. https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/.

[3] "National Inmate Survey (NIS)." Bureau of Justice Statistics. Accessed January 14, 2022. https://bjs.ojp.gov/data-collection/national-inmate-survey-nis#publications-0.

the phenomenon of policy being drafted that applies in the same way for everybody but disadvantages a group of people who share a protected characteristic, in spite of equitable solutions.[4] As economic and social conditions have modernized over the last four decades, the effects of criminal justice policy have proven particularly detrimental for vulnerable populations intended to receive protection under such policy, including those belonging to the LGBTQ community. Moreover, this policy has failed to consider alternatives that could alleviate the harms that carceral modernity has inflicted upon queer prisoners, with the conclusion of this paper identifying potential policy reforms that might remedy the harms of mass incarceration and discrimination against queer identities.

THE CRIMINALIZATION OF SEXUAL MINORITIES DURING THE TWENTIETH CENTURY

In June 2009, a newly opened gay bar in Fort Worth, Texas, served as the site of a spectacular showing of violence against LGBTQ people by criminal legal actors. The Rainbow Lounge, a popular venue frequented by queer men seeking community in a politically conservative locale, saw the police stage a raid that resulted in the verbal harassment of myriad patrons. Those in attendance report being called a series of homophobic slurs as their faces met the cement of the establishment floor, while others experienced similar vitriol as they were arrested against their will. Yet, in the face of explicitly unwarranted abuses, the infrastructure of punishment remained impenetrable. Law enforcement regimes across Forth Worth resumed their typical performance the following morning, even as one patron underwent surgery for brain injuries and seven more endured the scrupulous and unfounded interrogations that often exist at the crux of localized precincts.[5]

The raid at the Rainbow Lounge, as with the earlier—and now infamous—riot at the Stonewall Inn in Greenwich Village, Manhattan, was not so much an anomaly as it was another recognition of the brutal force and surveillance experienced by queer and trans populations

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[4] "Indirect Discrimination." The Australian Human Rights Commission. Accessed January 14, 2022. https://humanrights.gov.au/quick-guide/12049.

[5] Eric A. Stanley. *Captive Genders: Trans Embodiment and the Prison Industrial Complex*. New York, USA: Duke University Press, 2016. https://doi.org/10.1515/9781478021520

across the United States.[6] This violence has certainly shapeshifted over the last several decades, although the traumatic consequences of such events remain inexorable from presentations of queer identity in the present moment. Even with that said, however, there has not yet been an attempt by policymakers to understand violence against LGBTQ citizens in the broader context of the systematic violence that queer and trans people face under the relentless specter of policing and mass incarceration. This historical elision, of course, is by no means an accident. Instead, it provides demonstrative context surrounding organized punishment's aversion to so-called 'deviant' sexual and gender identities. While the Stonewall Riots are often deemed the "birth of the modern gay rights movement," the events of June 1969 do not represent the commencement nor the conclusion of violence against queer populations by the criminal justice system. Instead, historical and political ideologies have both endorsed and neutralized the criminalization of queer and trans populations over the course of the last century. The criminalized opposition to queer liberation during the twentieth century can be analyzed through the lens of three historical developments: vice patrol policing and obscenity laws before 1969; the dishonorable discharge of military personnel convicted of sodomy and Cold War-era laws that addressed "sexual perversions"; and the revision of federal policy that disproportionately disenfranchised LGBTQ Americans, due to the emergence of sexual activism during the 1970s.[7]

Vice Patrols and Obscenity Laws

To analyze the historical oppression of queer communities throughout the twentieth century United States, it is perhaps best to examine the various federal, state, and local laws that criminalized sexual behavior after the Civil War. The Comstock Act, enacted by the U.S. Congress in 1873, is one of the earliest examples of this phenomenon.[8] Named for Anthony Comstock, the then-leader of the New York Society for the Suppression of Vice, the statute prohibited the mailing of obscenities and would serve as the inspiration for a series of anti-LGBTQ laws introduced over the next century.[9] These developments would each illustrate the

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[6] Benjamin Shepard and Ronald Hayduk. *From ACT UP to the WTO: Urban Protest and Community Building in the Era of Globalization*. New York: Verso, 2002.

[7] Ibid.

[8] "LGBTQ America: A Theme Study of Lesbian, Gay ... - Nps.gov." Accessed January 14, 2022. https://www.nps.gov/subjects/lgbtqheritage/upload/lgbtqtheme-law.pdf.

[9] Charles Kaiser. *The Gay Metropolis: The Landmark History of Gay Life in America*. New York: Houghton Mifflin, 1997.

inexorable relationship between indirect discrimination and obscenity laws of the early 1900s, with queer populations implicitly criminalized under the guise of moral preservation across an increasingly urbanized America. Beyond the Comstock Act, obscenity laws began to have a disproportionate impact upon sexual minorities, culminating in the 1920 decision by Congress to deem sodomy itself a crime.[10] While avoiding an unequivocal assault on queer freedoms, it was evident that the Congress of the early twentieth century was keen on limiting those lifestyles that deviated from social norms of the time. To this point, state and local governments also passed new laws that targeted LGBTQ acts, identities, and communities. The best estimates are that, by the early-twentieth century, thousands and perhaps tens of thousands of queer individuals were arrested each year for violating these laws, often resulting in the loss of housing, employment opportunities, or potential incarceration.[11] Obscenity laws would become so extreme in their suppression of LGBTQ individuals that, by 1911, some states had authorized the sterilization of convicted "degenerates" and at least one state (New Jersey) had made the decision to provide immunity for those convicted of murdering an individual engaged in an act of sodomy.[12]

To criminalize, profile, and suppress gay life as it flourished in American cities, various police units were established to monitor so-called 'illicit' activities. These vice squads, which reached prominence in the 1930s, ran a three-pronged campaign to criminalize sexual minorities across the United States. State and local liquor laws, introduced following the repeal of Prohibition in 1933, began to regulate both the sale of liquor and the "good moral character" of establishments that served alcoholic beverages. As a result, liquor laws were used to target hundreds of commercial establishments frequented by queer Americans.[13] Police also targeted sexual 'deviants' through the use of plainclothes decoys, in which an ununiformed vice officer would attempt to solicit sexual favors from a queer individual engaged in cruising—the act of looking for an anonymous sexual partner in a semi-public indoor or outdoor location.[14] The

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[10] Raymond Arthur Smith. "Intersection of LGBT Persons and Criminal Justice." Academic Commons, January 1, 1970. https://academiccommons.columbia.edu/doi/10.7916/D8GX4J8D.

[11] Neil Miller. *In Search of Gay America: Women and Men in a Time of Change*. New York: Harper & Row, 1989.

[12] Andrea Friedman. "Censorship, Obscenity, and Pornography Law and Policy," in *Encyclopedia of Lesbian, Gay, Bisexual, and Transgender History in America (ELGBT)*, ed. Marc Stein, 3 vols, New York: Scribners, 1: 202-205, 2003.

[13] Vern L. Bullough. *Before Stonewall: Activists for Gay and Lesbian Rights in Historical Context*. New York: Harrington Park Press, 2002.

[14] Margot Canaday. *The Straight State: Sexuality and Citizenship in Twentieth-Century America*. Princeton: Princeton University Press, 2009.

officer would then reveal his legitimate intentions, often resulting in the humiliation and arrest of the targeted person. The use of vice policing also tasked various law enforcement personnel with the surveillance of public restrooms, where covert 'peepholes' were used to potentially expose any homosexual behaviors occurring behind closed doors.[15] Ultimately, the legal system was designed to specifically criminalize same-sex intimacy, providing a legal and political framework for the oppression of queer identities that would reach new extremes by the latter half of the century.

Queer Identity in the Military and Cold War Homophobia

As the twentieth century became embroiled in a series of international conflicts that would come to define the character of an entire generation of American citizens, the criminalization of sexual and gender minorities found a new site: the battleground. Through a series of anti-LGBTQ policies that implicitly targeted queer people enlisted in the United States Armed Forces, the role of indirect discrimination in the interdiction of queer Americans again revealed its prevalence in recent national history. Prior to American involvement in World War II in 1941, the U.S. military adopted new policies that rejected the enlistment of homosexuals in armed combat. One year later, new federal statutes stipulated that those who "habitually or occasionally" engaged in homosexual acts were unfit for military service, as were those men exhibiting more "feminine" characteristics.[16] By 1945, United States officials had reaffirmed their opposition to sexual minorities, with the Veterans Administration announcing that individuals discharged from the service because of sodomy were ineligible for veterans' benefits. Congress expanded upon such intolerance in 1950, when a five-year prison term and a dishonorable discharge were guaranteed for service members convicted of sodomy. Ten years later, transgender Americans were formally deemed ineligible for enlistment in the U.S. Army. By the end of the 1960s, more than fifty thousand individuals had been removed from the military based on allegations of homosexuality.[17]

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[15] John D'Emilio. *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970*. Chicago: University of Chicago Press, 1983.

[16] Allan Bérubé. *Coming Out Under Fire: The History of Gay Men and Women in World War Two*. New York: Free Press, 1990.

[17] "LGBTQ America: A Theme Study of Lesbian, Gay ... - Nps.gov." Accessed January 14, 2022. https://www.nps.gov/subjects/lgbtqheritage/upload/lgbtqtheme-law.pdf.

In the early years of the Cold War, another wave of anti-LGBTQ policy was introduced by the federal government, often resulting in the incarceration of those convicted of homosexual conduct. Under President Harry Truman, a loyalty security program for federal civil servants was introduced in 1947; among those targeted for removal from their government positions were queer employees.[18] By 1951, the opposition had found its champion in Federal Bureau of Investigation Director J. Edgar Hoover, who initiated a project meant to rid the federal government of members of the Communist Party and "sex deviates."[19] President Dwight D. Eisenhower followed suit in 1953 with the issuance of an executive order dismissing those found guilty of "sexual perversion" from federal government jobs.[20] Essentially, the government became embroiled in a Lavender Scare, in which panic surrounding homosexuality saw queer people engaged in a mass dismissal from government service.[21]

Following the Lavender Scare of the 1950s, a renewed tendency toward sexual exploration and gender fluidity began to captivate various American citizens. In many locations, there were signs of increased support for sex and gender legal reform, with the vast majority of these efforts championed by the nascent LGBTQ movement, which consisted of groups such as the Mattachine Society, the Daughters of Bilitis, and the Society for Individual Rights.[22] As queer activists began to advocate for reform through educational, lobbying, and litigation campaigns, the federal government maintained some degree of its historical opposition to homosexual identity. In essence, the 1960s saw the revival of sexual experimentation and queer liberation in myriad American cities, even as the federal government and state legislatures attempted to maintain policy rooted in social norms and indirect discrimination. However, by the turn of the next decade, a new president would resuscitate the specter of law and order, fundamentally tethering sexual minorities to the advent of mass incarceration.

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[18] Dudley Clendinen and Adam Nagourney. *Out for Good: The Struggle to Build a Gay Rights Movement in America*. New York: Simon & Schuster, 1999.

[19] Athan Theoharis. *J. Edgar Hoover, Sex, and Crime: An Historical Antidote*. Chicago: Ivan R. Dee, 1995.

[20] David K. Johnson. *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government*. Chicago: University of Chicago Press, 2004.

[21] Ibid.

[22] Simon Hall. *American Patriotism, American Protest: Social Movements Since the Sixties*. Philadelphia: University of Pennsylvania Press, 2010.

THE RISE OF MASS INCARCERATION AND THE 1994 CRIME BILL

In 2016, the Brennan Center for Justice, a nonprofit public policy institute, examined convictions and sentences for the 1.46 million people behind bars nationally and found that 39%, or 576,000 individuals, were incarcerated without any justification pertaining to national safety.[23] Furthermore, the Brennan Center suggested that this same population could have been punished in a less expensive and rehabilitative manner, such as engagement in substance use treatment or community service opportunities. However, this reality has only emerged in recent historical memory; namely, with the election of Richard M. Nixon in 1968 and the ensuing boom in mass incarceration that accompanied his presidency. The national prison population began to grow in the 1970s, when politicians from both parties used fear and implicit racial and homophobic rhetoric to advance increasingly punitive policies.

President Nixon started this carceral trend, declaring a "war on drugs" and justifying this campaign tactic with a plethora of speeches about being "tough on crime." As with the earlier policies that had served to subjugate queer individuals during the early twentieth century, the "war on drugs" had an indirect and profoundly violent impact upon an LGBTQ community already mired in false convictions and illegal activities, often taken up as means of survival. The formal War on Drugs began in June 1971, when the Nixon administration declared illegal drug use to be "public enemy number one" and increased federal funding for various drug-control agencies and anachronistic treatment efforts.[24] In 1973, the Drug Enforcement Administration was created out of a merger between the Office for Drug Abuse Law Enforcement, the Bureau of Narcotics and Dangerous Drugs, and the Office of Narcotics Intelligence to consolidate federal efforts to curb drug abuse—immediately, the campaign was rooted in the principles of illegality and criminalization, with the welfare of vulnerable populations significantly compromised by the increased role of surveillance in the government's efforts.[25] With that said, the War on Drugs was originally conceived as a small component of federal law enforcement's overall efforts. It

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[23] Alia Nahra, Alison Siegler, and David Alan Sklansky. "The History of Mass Incarceration." *Brennan Center for Justice*, December 20, 2021. https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration.
[24] Editors of Encyclopaedia Britannica. "War on Drugs." *Encyclopedia Britannica*, July 23, 2020. https://www.britannica.com/topic/war-on-drugs.
[25] Editors of Encyclopaedia Britannica. "Drug Enforcement Administration." *Encyclopedia Britannica,* July 17, 2015. https://www.britannica.com/topic/Drug-Enforcement-Administration.

was the presidency of Ronald Reagan, which began in 1981, that would fundamentally define the relationship between policing, incarceration, and the LGBTQ community.

Upon adopting the War on Drugs platform from the outgoing Nixon administration, President Reagan immediately expanded the reach of the effort, opting for criminal punishment and militarized policing instead of treatment. As a result, a massive increase in incarcerations for nonviolent drug offenses would come to fruition during the 1980s, with over 400,000 individuals—many from historically underserved sexual and racial backgrounds—incarcerated by the turn of the twenty-first century.[26] LGBTQ Americans, in particular, were suddenly subjected to levels of surveillance and prison time that far exceeded those endured throughout the previous century, as a historically heterosexual, cisgendered punishment mechanism became a mainstay of daily life. Beginning with the Reagan Presidency, drugs or suspected drug use were often used as false pretenses to surveil LGBTQ lives and spaces, both public and private. LGBTQ individuals, often without stable housing or a sufficient means of income, disproportionately turned to sex work and drug dealing as a means of survival during this time, causing them to present as especially vulnerable to the policing of drug use and sales. Queer individuals also experience significantly higher levels of problematic substance abuse, according to a study by the National Institute on Drug Abuse.[27] In turn, beginning with the War on Drugs, LBGTQ people were subjected to disproportionately high levels of incarceration in the last decades of the twentieth century, with the National Survey on Drug Use and Health (NSDUH) finding that gay, lesbian, and bisexual individuals were 2.25 times as likely to be arrested as their heterosexual counterparts.[28] Notably, even as the queer community saw legal advancements across a variety of federal sectors by 1990, sodomy remained a punishable offense across U.S. prisons and jails.

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[26] Eric A. Stanley. *Atmospheres of Violence: Structuring Antagonism and the Trans/Queer Ungovernable*. New York, USA: Duke University Press, 2021. https://doi.org/10.1515/9781478021520

[27] National Center for Transgender Equality. "LGBTQ People behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights: SASRC: Safe Alternatives to Segregation Initiative." *SASRC | Safe Alternatives to Segregation Initiative.* Accessed January 14, 2022. http://safealternativestosegregation.vera.org/resource/lgbtq-people-behind-bars-a-guide-to-understanding-the-issues-facing-transgender-prisoners-and-their-legal-rights/.

[28] Ibid.

LGBT Integration and Segregation

To understand the rapid growth in LGBTQ incarcerations by the twenty-first century, it is useful to incorporate University of California, Irvine criminologist Jason A. Brown and Valerie Jenness's theory of *LGBT integration and segregation.* In their own research, "LGBT People in Prison: Management Strategies, Human Rights Violations, and Political Mobilization," Brown and Jenness suggest that whether LGBT prisoners are segregated, integrated, or isolated from heterosexual prisoners during their own incarcerations greatly contributes to their experiences in prison and their vulnerability to violence.[29] Their findings attempt to reconcile the historical tendency for prisons to assign individuals to carceral facilities based on the sex they were assigned at birth with the contemporary understanding of gender and sexual fluidity. They suggest that U.S. prisons popularized the concept that LGBTQ individuals are coerced into subordinate positions in integrated prison hierarchies, leading to their experiencing disproportionate levels of surveillance, sexual assault, and abuse by other prisoners and law-enforcement officials.[30] In contrast, LGBTQ prisoners who were segregated from the rest of the carceral population in protective units—either on the basis of their own identity or due to the employment of solitary confinement—often face significant abuse and psychological stresses on account of their treatment by actors in the criminal justice system.[31] In such facilities, prison officials determine whether prisoners are LGBTQ for the purposes of segregation in a variety of ways, including the prisoner's self-identification, which psychologist Maxine E. Petersen deems a potential for prisoner abuse and increased harm against LGBTQ people in prison.[32]

The theory of LGBT integration and segregation in prisons can be further expanded as a valuable analytical explanation for the involvement of queer people in the criminal justice system at large. As queer people are subjected to legalized discrimination and government means of oppression, they ultimately are made to be segregated from the broader normative society. As

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[29] Jason A. Brown and Valerie Jenness. "LGBT People in Prison: Management Strategies, Human Rights Violations, and Political Mobilization." *Oxford Research Encyclopedia of Criminology,* June 30, 2020. https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-647#acrefore-9780190264079-e-647-div1-5.

[30] Sharon Dolovich. "Strategic segregation in the modern prison." *American Criminal Law Review*, *48*(1), 1–110, 2011.

[31] Stephen Donaldson. "A million jockers, punks, and queens." In T. A. Don Sabo & W. Kupers (Eds.), *Prison masculinities* (pp. 118–126). Philadelphia, PA: Temple University Press, 2001.

[32] Maxine Petersen. "Transsexuals within the prison system: An international survey of correctional services policies." *Behavioral Sciences and the Law*, *14*, 219–229, 1996.

a result, they endure disproportionate levels of abuse, often resulting in their turning to illegal means for survival and, ultimately, their arrest and incarceration.[33]

The 1994 Crime Bill

The framework of LGBT integration and segregation is one of two potential explanations for the role of mass incarceration in the experiences of contemporary LGBTQ populations. The other is the passage of the Violent Crime Control and Law Enforcement Act of 1994, the largest piece of crime-related legislation in the history of the United States.[34] The bill provided for 100,000 new police officers, $9.7 billion in funding for new federal prison facilities, and $6.1 billion in funding for prevention programs, and expanded federal law in the aftermath of the 1993 Waco Siege.[35] Signed into law by President Bill Clinton and sponsored in the Senate by then-Senator Joseph R. Biden, the Act further provided for the expansion of the federal death penalty, enforced mandatory sentencing of 85% of a convicted individual's sentence, and introduced fifty new federal offenses punishable by incarceration, among other novel provisions.[36] Perhaps most notably, the 1994 Crime Bill resulted in the prosecution of young people—many of them belonging to the LGBTQ community—as adults. By the end of the Clinton Presidency, approximately 300,000 LGBTQ youth were being arrested and convicted of various offenses on an annual basis. Additionally, although gay and transgender youth make up just 6-7% of the nation's overall youth population, they compose over 15% of those currently involved in the juvenile justice system.[37] Similarly, despite the disproportionately high rates of LGBTQ youth entering the juvenile justice system, the United States' schools, law enforcement officers, district attorneys, judges, and juvenile defenders have proven ill-equipped to manage the unique vulnerabilities that these young people possess. As a consequence, the criminal justice system that developed from the 1994 Crime Bill often does more harm by unfairly criminalizing queer young people—imposing harsh school sanctions or convicting them of minor offenses and

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[33] Jonathan Bell. *Beyond the Politics of the Closet: Gay Rights and the American State Since the 1970s*. Philadelphia: University of Pennsylvania Press, 2020. https://doi.org/10.9783/9780812296723

[34] H.R. 3355 — 103rd Congress: Violent Crime Control and Law Enforcement Act of 1994. January 14, 2022. https://www.govtrack.us/congress/bills/103/hr3355.

[35] Marylou Morano Kjelle. *The Waco Siege*. Philadelphia: Chelsea House Publishers, 2002.

[36] H.R. 3355 — 103rd Congress: Violent Crime Control and Law Enforcement Act of 1994.

[37] Julia Cusick, Tricia Woodcome, Lola Oduyeru, et al. "The Unfair Criminalization of Gay and Transgender Youth." *Center for American Progress*, November 16, 2020. https://www.americanprogress.org/article/the-unfair-criminalization-of-gay-and-transgender-youth/.

imposing unwarranted punishment.[38] Furthermore, the paradigm of mass incarceration serves to subject LGBTQ youth to discriminatory treatment that indirectly deprives them of their basic civil rights, thus expanding upon the precedent set by obscenity laws drafted in the post-Civil War era.

Beyond its toll on queer youth, the 1994 Crime Bill's introduction of various novel criminal offenses placed a significant burden upon the sexual expression of queer individuals. Given the vast scope of the sentencing and arrest mechanisms across federal law enforcement agencies, many queer and trans people were denied their basic civil rights and wrongly categorized as sexual perverts simply due to their sexual orientation and gender identity—with some court systems going so far as to convict LGBTQ people of sex offenses, merely on the basis of their own "deviant" character.[39] LGBTQ youth are "more likely to be prosecuted for age-appropriate consensual sexual activity" than their heterosexual peers—an inconsistency of legal system that harkens back to the tactics of vice patrols that often saw consenting queer individuals arrested for sexual acts.[40] Many queer youth charged with nonsexual offenses are also treated as sex offenders and ordered by federal courts and government personnel to biased treatment programs or risk assessments simply because of their sexual orientation or gender identity.[41] This particular treatment within the criminal justice system ultimately serves to exacerbate and justify broader societal stigma that demonizes the identities of sexual minorities, essentially relying upon the legacy of federal policy to isolate LGBTQ people from conditions of sociocultural acceptance. As articulated by a transgender individual incarcerated in Louisiana who had recently been diagnosed with HIV, "Life looks so gloomy for a person like me. What did I do to make it this way?"[42]

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[38] Ibid.

[39] Alexi Jones. "Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System." *Prison Policy Initiative*, March 2, 2021. https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/.

[40] Julia Cusick, Tricia Woodcome, Lola Oduyeru, et al. "The Unfair Criminalization of Gay and Transgender Youth." *Center for American Progress*, November 16, 2020. https://www.americanprogress.org/article/the-unfair-criminalization-of-gay-and-transgender-youth/.

[41] Allen Beck. *Sexual victimization in prisons and jails reported by inmates 2011–12: Supplemental tables: Prevalence of sexual victimization among transgender adult inmates*. Washington, DC: Office of Justice Programs, Bureau of Justice Statistics, 2014.

[42] Jason A. Brown and Valerie Jenness. "LGBT People in Prison: Management Strategies, Human Rights Violations, and Political Mobilization." *Oxford Research Encyclopedia of Criminology,* June 30, 2020. https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-647#acrefore-9780190264079-e-647-div1-5.

QUEER PRISONERS AND THE POTENTIAL FOR POLICY REFORM

The present moment presents a provocative juncture at which to examine the shortcomings of research pertaining to LGBTQ incarceration, as well as the potential for reforms that might remedy the historical harms of federal punitive paradigms. In the early-2000s, a groundbreaking report by the international NGO Human Rights Watch exposed the inhumane conditions imposed upon queer prisoners, while further examining the disproportionately high rates of sexual assault that LGBTQ individuals experience during their sentences.[43] The report is said to have contributed to the passage of the U.S. Prison Rape Elimination Act of 2003 (PREA), which called for strategies to prevent abuse in American prisons and jails.[44] Impacted by the revelations of this report, and others of a similar nature, various federal prisons across the United States have begun to implement a series of prison reforms, thus attempting to promote carceral respect for non-normative sexual orientations and gender identities. In the last decade, prison populations have decreased by a significant 10%, with lawmakers from both the Democratic and Republican parties citing the drastic expenses of mass incarceration as their rationale for reform advocacy.[45] Beyond the repeal of laws that criminalize LGBTQ people and advocacy for reform that only addresses those prison conditions that most explicitly abuse queer prisoners, there is also a robust national movement that calls for prison abolition. In a forward for Eric Stanley's *Captive Genders,* CeCe McDonald, a Black transgender activist who was previously incarcerated writes:

> Like slavery, there is no other way around the violence of the PIC, so we have to destroy it. We can't hold onto these powerful institutions that oppress people and expect that they will go away just because we reform them. Of course, change is good, but in instances of systematic oppression like prisons, there is no way for it to be reformed.[46]

Even amidst such calls for a drastic reimagining of the national prison system, there remains significant opposition to this prescription for change at the federal level—potentially

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[43] Joanne Mariner. *No Escape. Male Rape in U.S. Prisons*. New York: Human Rights Watch, 2001.

[44] Marc Stein. *Rethinking the Gay and Lesbian Movement*. New York: Routledge, 2012.

[45] Alia Nahra, Alison Siegler, and David Alan Sklansky. "The History of Mass Incarceration." *Brennan Center for Justice*, December 20, 2021. https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration.

[46] Eric A. Stanley. *Captive Genders: Trans Embodiment and the Prison Industrial Complex*. New York, USA: Duke University Press, 2016. https://doi.org/10.1515/9781478021520

limiting both contemporary research on the subject and the ability to determine the degree to which government actors support carceral reform. President Joe Biden maintains fervent support for the federal abolition of the death penalty and the closure of private prisons, but has been a staunch opponent of mainstream abolitionist aims, including the widely-publicized "Defund the Police" campaign.[47] Naomi Murakawa, author of *The First Civil Right: How Liberals Built Prison America,* has suggested that this might be attributed to Biden's own criminal justice record and his support for the 1994 Crime Bill during his time in the U.S. Senate, suggesting: "...he's actually done really deeply disturbing, dangerous reforms that have made the criminal justice system more lethal and just bigger."[48]In a similar way, the U.S. Congress remains averse to the passage of the George Floyd Justice in Policing Act of 2021, a piece of legislation introduced by Democrats that aims to combat abusive conduct, excessive force, and bias in modern policing.[49] The legislation, which was introduced following the murder of George Floyd by a police officer in Minneapolis, Minnesota in May 2020—setting off an international call for criminal justice reform—collapsed in the U.S. Senate in September 2021.

As debates surrounding potential policy reform that might mitigate the harms of mass incarceration persist, LGBTQ individuals continue to endure horrifying rates of abuse by carceral actors and other prisoners. According to a study by the National Center for Transgender Equality, LGBTQ prisoners are physically abused at a rate three times that of heterosexual prisoners, while transgender individuals face harms at a rate ten times that of their so-called normative counterparts.[50] The same survey has found that LGBTQ prisoners are housed in a manner that jeopardizes their safety and wellbeing—including extensive use of solitary confinement or, in the case of gender non-conforming prisoners, placement in facilities that do not match their gender. Prisons also fail to provide adequate health care for LGBTQ prisoners, including a lack of access to care for those with gender dysphoria—a reality that potentially

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[47] Cynthia Lum, Christopher S. Koper, and Xiaoyun Wu. "Can We Really Defund the Police? A Nine-Agency Study of Police Response to Calls for Service." *Police Quarterly*, July 2021. https://doi.org/10.1177/10986111211035002.

[48] German Lopez. "Joe Biden's Criminal Justice Reform Plan, Explained." Vox. *Vox*, July 23, 2019. https://www.vox.com/policy-and-politics/2019/7/23/20706987/joe-biden-criminal-justice

[49] H.R.1280 — 117th Congress: George Floyd Justice in Policing Act of 2021, (2021-2022).

[50] National Center for Transgender Equality. "LGBTQ People behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights: SASRC: Safe Alternatives to Segregation Initiative." *SASRC | Safe Alternatives to Segregation Initiative.* Accessed January 14, 2022. http://safealternativestosegregation.vera.org/resource/lgbtq-people-behind-bars-a-guide-to-understanding-the-issues-facing-transgender-prisoners-and-their-legal-rights/.

violates the cruel and unusual punishment clause of the Eighth Amendment of the U.S. Constitution.[51] In an equally sobering statistic, American criminologists have found that LGBTQ prisoners are often excluded from prison employment, may be restricted from visitation by same-sex partners, and typically are banned from receiving media with LGBTQ themes.[52] As a queer prisoner has suggested, "So I know I can't win against them. But that's okay. One day I will be free and able to pursue my dreams. Meanwhile, the staff will still be consumed with this hateful place, working jobs that they don't like. This is their world, not mine."[53]

CONCLUSION

The bias that has long colored societal stigmatization of queer identities and served to define the contemporary conditions of mass incarceration remains at the heart of the mistreatment impressed upon LGBTQ prisoners. As federal funding for public prisons and court systems begins to wither against political opposition, it has become more difficult for elected officials at each level of government to justify the historical abuse of those involved in the criminal justice system. Yet, an understanding of the relationship between incarceration and queerness remains both underreported and undertheorized in the twenty-first century. To adequately understand the violence that conditions of imprisonment impress upon LGBTQ prisoners, contemporary politicians and scholars can focus on the ways in which the historical surveillance and criminalization of sexual minorities presaged the post-Nixon incarceration of these same communities. The violence of present-day punitive mechanisms is not, then, a means of controlling crime, as alleged through the U.S. Congress's support of the 1994 Crime Bill; instead, is the result of both explicit and indirectly discriminatory policy that relies upon the false pretense of norm preservation to systematically arrest and incarcerate those that deviate from the status-quo. In many ways, the phenomenon of mass incarceration is inherently embedded in both national inequality and the LGBTQ experience throughout American history.

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[51] T. R. Jones and T.C. Pratt. "The prevalence of sexual violence in prison: The state of the knowledge base and implications for evidence-based correctional policy making." *International Journal of Offender Therapy and Comparative Criminology*, *52*, 280–295, 2008.

[52] Cyrus Grace Dunham and Michael M. Weinstein. "The Forgotten Ones: Queer and Trans Lives in the Prison System." *The New Yorker*, February 8, 2016. https://www.newyorker.com/books/page-turner/the-forgotten-ones-queer-and-trans-lives-in-the-prison-system.

[53] Corbett J. Yost. "What It's like to Be Gay in Prison." The Marshall Project. *The Marshall Project,* February 26, 2016. https://www.themarshallproject.org/2016/02/25/what-it-s-like-to-be-gay-in-prison.

While beyond the scope of this paper, it is important to note that the homophobic policy that undermines the liberty of queer prisoners is just one facet of a convoluted system that prioritizes the well-being of cisgender white men. The historical realities of mass incarceration and vice policing, in addition to the federal government's own opposition to queer advancement, appear to highlight the failure of the U.S. government and law enforcement apparatus to adequately protect *all* American citizens.

The theory of LGBT integration and segregation in prisons, as outlined by Brown and Jenness, must then be applied to the broader condition of homophobic policy that has historically undermined the rights of queer populations. From this perspective, criminal justice policy has failed to protect the privacy and welfare of LGBTQ citizens, with police regimes and elected officials instead motivated by systemic biases against sexual and gender minorities. It can therefore be concluded that the modification of federal criminal policy has failed to reaffirm the equal protection of queer civilians under federal law, undermining their lived experiences and identities at every level of the federal punishment paradigm and ultimately segregating LGBTQ individuals from the rest of society through the phenomenon of indirect discrimination. Even with the advent of contemporary LGBTQ movements for carceral reforms and prison abolition, there is not yet a criminal justice system that fairly distributes justice to minority citizens, a reality that plagues systems beyond the American prison. There exists significant need for a national reckoning around the realities of mass incarceration, as well as a prioritization of sexual orientation and gender identity scholarship that might better inform federal policies pertaining to policing and imprisonment. While this will require the integration of LGBTQ perspectives from both inside and outside of federal prisons, it is a necessary strategy in alleviating stratification across carceral spaces and ushering in novel criminal justice policies that consider the inherent dignity of queer citizens.

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THE RISE OF THE ANTI-COVID-19 VACCINATION MOVEMENT: ANTI-VACCINATION IDENTITY AND POLICIES

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The United States has suffered millions of cases of COVID-19 and hundreds of thousands of Americans have been killed by the virus since the beginning of the pandemic. Despite these staggering numbers and against international and state health policy recommendations, there exists a large anti-COVID-19 vaccination movement fueled by health freedom advocates. Through an evaluation of the health freedom movement origins in the United States and statistical inquiries into unvaccinated demographics and vaccination policies, this research seeks to provide insight to the current anti-COVID-19 vaccination movement. Finally, this statistical and background research is put into conversation with other recent COVID-19 vaccination research to holistically contextualize the anti-COVID-19 vaccination movement today that may inform future policy recommendations to increase vaccination rates and protect American public health against communicable diseases.

INTRODUCTION

By March 25, 2020, three months after the United States experienced its first case of COVID-19, all U.S. public schools were closed to protect children and their families from the virus.[1] Within a month, anti-lockdown protests began. Soon, these protests, accompanied with anti-mask protests were frequent across many U.S. states. The United States recently witnessed another rise in COVID-19 cases while experiencing a stagnant rate of COVID-19 vaccinations and increases in anti-vaccination movements.

The rise of health freedom initiatives in the United States is clearly depicted through the anti-vaccination response to COVID-19. This anti-science movement proves a dangerous threat to the public health of the United States. COVID-19 has opened international communities' eyes to the human and economic loss pandemics havoc and like the rest of the world, the United States must find a way to prevent further loss and protect its population. In doing so, the United

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[1] Anne Schuchat and CDC COVID-19 Response Team, "Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24-April 21, 2020," *Morbidity and Mortality Weekly Report* 69, no. 18 (May 2020): 553, http://dx.doi.org/10.15585/mmwr.mm6918e2.

States must grapple with its growing anti-vaccination movement. U.S. policymakers must answer the following questions in their mission to protect of public health: Who is refusing the COVID-19 vaccine? What policies have encouraged and discouraged vaccination against COVID-19? Answers to these questions will prove vital in informing and establishing policy and leadership recommendations to combat the anti-vaccination movement and protect U.S. public health

This paper will first provide a historical background on health freedom movements and the rise of anti-vaccination movements in the United States, through which the current anti-COVID-19 vaccination movement and the COVID-19 vaccination effort can be better understood and contextualized. Second, this paper will introduce the methods and data used to provide answers to the two key questions about the anti-COVID-19 vaccination movement. Third, it will explicate the results of the research conducted and put this research into conversation with other COVID-19 vaccination research on sentiment analysis and vaccine misinformation. This paper will conclude by discussing the implications and limitations of the results. Ultimately, this paper will seek to contextualize the anti-COVID-19 vaccination movement today and inform future policy and leadership recommendations.

BACKGROUND

The United States has a long legacy of anti-science movements pertaining to government health policies typically iterated as health or medical freedoms against public health interference. Dr. Peter Hotez traces the origins of health freedom in the United States back to the early American colonies.[2] Samuel Thompson (1769-1843) and Dr. Benjamin Rush (1745-1813) were critical advocates of medical freedom; Thompson frequently mocked the existing medical establishment and was successful in repealing medical licensing laws in favor of botanical treatments that required no medical licensing or training to administer.[3]

The concept of medical freedom became largely popular in the 1830s-1850s, however, following the Civil War, the United States. introduced new medical measures. At the turn of the 20th century as smallpox outbreaks occurred throughout the United States, vigorous vaccine

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[2] Peter J. Hotez, "America's deadly flirtation with antiscience and the medical freedom movement," *The Journal of Clinical Investigation* 131, no. 7 (February 2021): 1, https://doi.org/10.1172/JCI149072.
[3] Ibid.

campaigns began and resulted in intensive vaccine opposition.[4] It was at this time that the National League for Medical Freedom was born to undermine medical governmental regulations.[5] This league paved the way for future medical freedom and anti-vaccination movements and organizations. Further, in 1902, the smallpox epidemic and conflict between vaccination efforts and anti-vaccination movements led to the federal legal case *Jacobson v. Massachusetts* in which the court ruled that states could pass laws to require vaccination to safeguard citizens from communicable diseases, setting precedents for vaccine mandates today.[6]

Throughout the 1930s-1940s there existed a renewed sense of trust in American government and scientific institutions and the medical freedom operation lost momentum. This trend did not last, and by the 1950s the National Health Federation was created.[7] This Federation gave way to the far-right conservative John Birch Society which promoted unverified and non-traditional cures for cancer.[8] Dr. Hotez notes that the Birch Society embodies the modern American medical freedom movement in that the Society maintains a libertarian agenda with strong opposition to traditional health practices.[9]

While medical freedom organizations rose in the second half of the 20th century, so too did vaccine initiatives. New vaccines against polio, measles, mumps, rubella, and more were created and public enthusiasm for vaccinations was high with record numbers of infants and children being vaccinated.[10] This vaccine enthusiasm in the United States lasted until the early 2000s, when a paper was published by Andrew Wakefield and his colleagues that alleged that the MMR (measles, mumps and rubella) vaccine caused autism in children, spurring distrust among the American public in the medical establishment.[11] The Center for Disease Control (CDC) disregarded this upset as nominal, however, this distrust grew with the rise of social media in the 2010s.[12] Since then, the growing anti-vaccine movement has co-opted the larger medical

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[4] Eve Dubé, Maryline Vivion, and Noni E MacDonald, "Vaccine hesitancy, vaccine refusal and the anti-vaccine movement; influence, impact, and implications," *Expert Review of Vaccines* 14 no.1 (November 2014): 100, https://www.tandfonline.com/doi/full/10.1586/14760584.2015.964212.

[5] Hotez, "America's deadly flirtation," 1.

[6] Dubé, Vivion, and MacDonald, "Vaccine hesitancy," 100-101.

[7] Hotez, "America's deadly flirtation," 1.

[8] Ibid.

[9] Ibid, 2.

[10] Ibid.

[11] Ibid.

[12] Ibid.

freedom movement leading to vaccine exemptions reaching a critical mass resulting in several vaccine-preventable measles outbreaks between 2014-2019.[13]

The reinvigorated rise of the anti-vaccination movement with far-ranging support from the larger health freedom movement has come at a deadly time for Americans during the COVID-19 pandemic. Following the outbreak of COVID-19 in the United States, health freedom groups protested COVID-19 prevention measures such as mask mandates and social distancing. According to Dr. Hotez, these groups began blending with far-right political extremist groups and conspiracy groups by mid-2020.[14] The current anti-vaccine movement toward the COVID-19 vaccine has effected massive change in public sentiment toward the efficacy of vaccines as evidenced by vaccination rates. In 2015, 90.8% of children were vaccinated by 2 years of age against MMR, 92.6% against Polio, 90.2% against Chickenpox, and 90.6% against Hepatitis B.[15] Alternatively, vaccination rates are only sluggishly increasing for COVID-19 today. As of January 30, 2022, only 63.8% of Americans are fully vaccinated and 75.9% have received at least one dose.[16] Further, as of January 14, 2022, only 18% of children aged 5-11 years old are fully vaccinated and 27% have received their first dose.[17]

As the anti-vaccine movement, health freedom movements, far-right conservative movements, and conspiracy theorists have coalesced in response to government regulations surrounding COVID-19 today, a reinvigorated public health threat has been born. Research is needed into this field to determine (a) the demographic identity of the unvaccinated against COVID-19 and (b) the varying policies associated with COVID-19 vaccination rates.

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[13] Ibid.

[14] Ibid, 3.

[15] "Health Care and Insurance: Immunization," National Center for Health Statistics, Centers for Disease Control and Prevention, last modified 2019, https://www.cdc.gov/nchs/fastats/immunize.htm#:~:text=Data%20are%20for%20the%20U.S.,(3%2B%20doses)%3A%2092.6%25.

[16] Fully vaccinated delineates that an individual has had one dose of the Janssen/Johnson & Johnson vaccine or two or more doses of the Pfizer-BioNTech or Moderna vaccine. Having received one COVID-19 vaccination dose refers to only having received the first dose of Pfizer-BioNTech or Moderna vaccine; "U.S. COVID-19 Vaccine Tracker," Vaccine Guide, Mayo Clinic, last modified March 1, 2022, https://www.mayoclinic.org/coronavirus-covid-19/vaccine-tracker.

[17] "Vaccination Delivery and Coverage: Demographic Trends of People Receiving COVID-19 Vaccinations in the United States," COVID Data Tracker, Centers for Disease Control and Protection, last modified March 1, 2022, https://covid.cdc.gov/covid-data-tracker/#vaccination-demographics-trends.

RESEARCH OVERVIEW AND METHODOLOGY

A. *The Demographic Identity of the Unvaccinated against COVID-19*

To better understand the anti-COVID-19 vaccination movement today, patterns of vaccination must be found within the American public. Data on COVID-19 vaccination rates by state was collected from the Mayo Foundation for Medical Education and Research (MFMER) and represents vaccination status as of January 28, 2022. Data was collected for both Americans who are fully vaccinated, meaning that they "have had one dose of the Janssen/Johnson & Johnson vaccine or two or more doses of the Pfizer-BioNTech vaccine or Moderna vaccine," and for Americans who have had at least one dose, meaning that they "have had at least one dose of any COVID-19 vaccine."[18]

This vaccination data by state was tested for correlation with demographic factors using state data collected from the U.S. Census Bureau through Data USA including 2019 median household income, 2019 median age, and the 2020 diversity index. The Census Bureau uses the Diversity Index to indicate the likelihood that two people chosen from a state at random will be from different racial and ethnic groups.[19] Further, the vaccination data by state was also tested for correlation with voting demographic factors using state data collected from National Broadcasting Co. (NBC) News, including the percentage of votes cast for President Trump in 2020, and for correlation with state data collected from NBC News on the percentage of votes cast for President Biden in 2020. NBC uses the National Election Pool as its source for election data, checks this data for accuracy, and independently analyzes it to ensure correct results.[20] Models 1-5 (see Appendix) represent each states' vaccination rates in comparison to each factor in order to determine potential correlation.

B. *The Policies associated with COVID-19 Vaccination Rates*

After establishing which demographic factors correlated with state COVID-19 vaccination rates, the policies of vaccine exemption and COVID-19 vaccine mandates were evaluated on a state level in comparison with state COVID-19 vaccination levels. Data on state vaccine

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[18] Mayo Clinic, "U.S. COVID-19 Vaccine Tracker."; Ibid.

[19] "2020 Census: Racial and Ethnic Diversity Index by State," United States Census Bureau, last modified August 12, 2021, https://www.census.gov/library/visualizations/2021/dec/racial-and-ethnic-diversity-index.html.

[20] "How election data is collected," Decision 2020, NBC News, accessed February 27, 2022, https://www.nbcnews.com/politics/2020-elections/how-election-data-is-collected.

exemptions was collected from the Immunization Action Coalition. In a few states, vaccine exemptions apply or do not apply to specific vaccines or to specific circumstances. For the purpose of this paper, if a religious or personal vaccine exemption exists within a state for any vaccine or situation, the state qualifies within that categorization. All U.S. states permit medical exemptions for state immunization requirements, six only offer medical exemptions, forty-two additionally offer religious exemptions, and eighteen offer personal belief exemptions, with overlap between states offering religious and personal belief exemptions.[21]

The average rate of COVID-19 vaccination was found for states belonging to each of these three categories, (1) only medical exceptions, (2) religious exemptions, and (3) personal belief exemptions, to determine which exemption policies are associated with higher and lower rates of COVID-19 vaccination rates. This can be seen in Model 6 (see Appendix).

Data on state COVID-19 vaccine mandate policies was collected from Leading Age. COVID-19 vaccine mandates are banned in thirteen states, are not banned in thirty-seven states, and COVID-19 vaccine mandates are enforced in some capacity for health care workers in eleven states, with overlap between states where vaccine mandates are not banned and where vaccine mandates are currently enforced.[22]

The average rate of COVID-19 vaccination was determined for states belonging to each of these three groups, (1) vaccine mandates banned, (2) vaccine mandates not banned, and (3) vaccine mandates for health workers enforced in at least some settings, to find which mandate policies are associated with higher and lower rates of COVID-19 vaccination rates. In the third category, states have a range of different health settings and scenarios in which COVID-19 vaccines are mandated. However, for the purpose of this paper, all states mandating vaccines for health care employees in any setting are included in the third category. This data can be seen in Model 7 (see Appendix). Microsoft Excel software was used to construct the models and perform all calculations.

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[21] "State Information: Exemptions Permitted for State Immunization Requirements," Immunization Action Coalition, last modified May 4, 2021, https://www.immunize.org/laws/exemptions.asp.

[22] "Vaccine Mandates by State: Who is, Who isn't, and How?" Leading Age, last modified February 9, 2022, https://leadingage.org/workforce/vaccine-mandates-state-who-who-isnt-and-how.

RESULTS

Model 1 (see Appendix) represents the relationship between the percentage of state population vaccinated against COVID-19 and 2019 median household income in the state for both full vaccination and at least one dose of vaccination (Models 3-6 also compare fully vaccinated populations and populations with at least one dose). Model 1 shows a moderate and positive correlation between these factors. The correlation coefficient between the factors for the population with at least one dose of a COVID-19 vaccination was 0.6359 and the correlation coefficient between the factors for the fully vaccinated population was 0.6958. The positive correlation between 2019 median household income and percentage of population vaccinated against COVID-19 was therefore higher for the fully vaccinated U.S. population than for the U.S. population with one or more COVID-19 vaccination doses.

Model 2 (see Appendix) depicts the association between the percentage of state population vaccinated against COVID-19 and 2019 median age in the state. Model 3 (see Appendix) demonstrates the correlation between the percentage of state population vaccinated against COVID-19 and the 2020 Diversity Index assigned to the state. Both Model 2 and Model 3 illustrate weak positive correlations, suggesting insignificant relationships between factors of median age and diversity index to state vaccination rates.

The first significant correlation from this research is evidenced in Model 4 (see Appendix) between the percentage of state population vaccinated against COVID-19 and the percentage of votes cast for President Biden by state in 2020. As seen in Model 4, there exists a significant positive correlation for both the fully vaccinated population and the population with at least one COVID-19 vaccination dose. The correlation coefficient for the population with one or more doses of the COVID-19 vaccination is 0.7974 and is stronger yet for the fully vaccinated population at 0.8528. These coefficients illustrate a strong positive correlation between these factors.

Model 5 (see Appendix) represents another strong correlation between the percentage of state population vaccinated against COVID-19 and the percentage of votes cast for President Trump by state in 2020. As is seen in Model 5, however, the strong correlation found is negative for both the fully vaccinated population and the population with one or more doses of the COVID-19 vaccine. The correlation coefficient for the population with one or more doses is

-0.8646, a stronger correlation than the correlation for the fully vaccinated population with the correlation coefficient of -0.8020. These coefficients again demonstrate a strong negative relationship between these factors.

Model 6 (see Appendix) analyzes the policies of vaccine exemptions and their association with COVID-19 vaccination rates. As seen in Model 6, on average, states that provide for only medical vaccine exemptions tend to have higher rates of COVID-19 vaccinated populations, both fully vaccinated (76.3% on average) and partially vaccinated (67.08% on average). States that provide religious exemptions from vaccines tend to have slightly lower COVID-19 vaccine rates than states that only provide medical exemptions on average, with an average of 61.61% of populations in these states with full vaccination and an average of 72.93% of populations in these states having had one or more doses of a COVID-19 vaccine. Finally, states that maintain personal belief exemptions from vaccines tend to have the lowest COVID-19 vaccination rates on average. The average rate of COVID-19 vaccination for fully vaccinated persons in states with personal belief exemptions is 60.28% and the average rate for the population vaccinated with one or more COVID-19 doses is 69.82%.

Vaccine mandate policies and their relation to COVID-19 vaccination rates are examined in Model 7 (see Appendix). As can be seen in this model, states that enforce vaccine mandates for health care workers have, on average, higher COVID-19 vaccination rates than for states that do not enforce vaccine mandates and states that ban vaccine mandates. On average, for states that enforce COVID-19 vaccine mandates for health care workers the rate of COVID-19 vaccination is 72.50% for the fully vaccinated population and is 85.45% for the population who has received at least one dose of a COVID-19 vaccination. States that do not enforce nor ban vaccine mandates maintain an average of 63.91% rate of COVID-19 full vaccination and 75.05% for at least one COVID-19 vaccination dose administered. Lastly, states that ban vaccine mandates have, on average, the lowest rate of COVID-19 vaccinations. The average rate of COVID-19 vaccination for fully vaccinated persons in these states is 57.22% and the average rate for persons who have received at least 1 dose of a COVID-19 vaccine is 68.35%.

DISCUSSION

That the correlations found in Model 4 and Model 5 (see Appendix) are statistically significant implies a parallel relationship between percentage of state population vaccinated against COVID-19 and the percentage of state votes that went to either Biden or Trump in 2020. Typically, the higher the vaccine rate of a state, the higher the percentage of votes cast in that state were for Biden in 2020. Conversely, the lower the vaccine rate of a state, the higher the percentage of votes cast in that state were for Trump in 2020.

Model 6 (see Appendix) demonstrates that, on average, COVID-19 vaccination rates are highest in states that only permit medical vaccine exemptions from state immunization requirements. On average, states that permit religious vaccination exemptions have a lesser COVID-19 vaccination rate and states that permit personal belief exemptions maintain the lowest COVID-19 vaccination rate of those examined.

Model 7 (see Appendix) illustrates that COVID-19 vaccination rates, on average, are highest in states that enforce vaccine mandates for health care workers. States that do not enforce vaccine mandates for health care workers but do not ban vaccine mandates maintain a lesser COVID-19 vaccination rate on average than states who enforce such mandates. States that ban vaccine mandates tend to have the lowest COVID-19 vaccination rates. It is interesting to note that of the eleven states that enforce vaccine mandates for health care workers, Biden won the majority of votes in 2020 in all eleven states. Alternatively, of the thirteen states that ban vaccine mandates, Trump won the majority of votes in 2020 in ten of those states.

The background research conducted into the historical trajectory of the health freedom movement in conjunction with the statistical research performed on COVID-19 vaccination rates by state make clear that the United States is experiencing a new and dangerous anti-vaccination trajectory. While this research has answered questions of who constitutes the unvaccinated demographic and what policies are associated with higher and lower COVID-19 vaccination rates, this research must be put into conversation with other COVID-19 vaccination research to best inform policy approaches.

In the early months of the COVID-19 vaccine rollout (February-March 2021), sentiment analysis research was conducted across eighteen U.S. cities to determine American attitudes and

behaviours toward the COVID-19 vaccines.[23] The study analyzing these sentiments found that significant drivers for positive sentiments toward the COVID-19 vaccine included: "convenience of the process, the possibility of engaging in normal activities, protecting the health of family members, and direct prompts by friends, relatives, and/or personal doctors."[24] Alternatively, the study found that important drivers for negative sentiments toward the COVID-19 vaccine were mistrust of the American health system, lack of confidence in COVID-19 vaccine efficacy, lack of accessible information about the COVID-19 vaccine and how to receive one's dose, and unequitable distribution of COVID-19 vaccines along racial lines.[25] Further, this study found that cities successfully used sentiment analysis data to better direct communities away from vaccine misinformation, prevalent on social media where many consume their COVID-19 vaccination news, and encourage them to get vaccinated against COVID-19.[26] This sentiment analysis in conjunction with demographic and policy research informs policymakers that encouraging COVID-19 vaccination visibility, equity, and relatability in the face of online misinformation is important in the effort to vaccinate states that are low-income and/or maintained a high percentage of votes cast for President Trump in 2020.[27] Further, policymakers may consider cutting vaccine exemptions and implementing vaccine mandates in such states using sentiment analysis to guide these policy shifts.

As previously discussed, the rise of social media in the 2010s allowed for a new avenue for health freedom and anti-vaccination information and sentiments to spread contributing to school vaccine exemptions and measles outbreaks in the United States starting in 2014.[28] Social media has again been an important factor in the public health management of COVID-19 and the vaccination effort. The Center for Countering Digital Hate has found that the increasing levels of COVID-19 vaccine misinformation has led to increased levels of COVID-19 vaccine hesitancy.[29]

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[23] Zencity, Stephen Goldsmith, and Bennett Midland, *Sentiment analysis as a local public health tool: Using community insights to combat COVID-19 vaccine hesitancy* (2021): 4, distributed by Zencity, https://zencity.io/guide_report/sentiment-analysis-as-a-local-public-health-tool/.
[24] Ibid.
[25] Ibid, 9.
[26] Ibid, 6.
[27] Ibid, 5.
[28] Hotez, "America's deadly flirtation," 2.
[29] Center for Countering Digital Hate, *The Disinformation Dozen: Why Platforms Must Act on Twelve Leading Online Anti-Vaxxers* (Center for Countering Digital Hate Ltd., 2021): 4, https://www.counterhate.com/_files/ugd/f4d9b9_b7cedc0553604720b7137f8663366ee5.pdf.

65% of the COVID-19 vaccine misinformation content posted to Facebook and Twitter, two massive social media outlets, has been attributed to only twelve individuals, deemed the "Disinformation Dozen."[30] Many of these individuals, including Ty and Charlene Bollinger, Robert F. Kennedy Jr., and Joseph Mercola, maintain supportive ties to President Trump, who has also expressed anti-vaccination attitudes via social media.[31] These ties, in addition to the negative correlation found between percentage of votes cast for President Trump in 2020 and state COVID-19 vaccine rate, indicate that policymakers should investigate whether the anti-COVID-19 vaccination movement is co-opting not only the health freedom movement, but also the larger far-right conservative movement sweeping the United States.

LIMITATIONS, FUTURE RESEARCH, AND POTENTIAL POLICY IMPLICATIONS

It is important to note that determining correlation between the various factors analyzed in this statistical research does not imply a causal relationship, which is out of the scope of this paper but an object for future research into this area to explore. Further, future research in this area should consult state governments, politics, and voting patterns within states to capture a more holistic picture of voting trends and their relation to COVID-19 vaccination rates at regional, community, and neighborhood levels. Another limitation this research faced that future research should reconcile is the timeframe in which it was conducted. The 2020 Presidential election was volatile amidst the COVID-19 pandemic and future federal election results should additionally be analyzed in comparison with vaccination rates. Further, as the COVID-19 pandemic continues to infect the American public and as more Americans are continually vaccinated, this data and the correlations found are subject to wide change. At the eventual conclusion of the COVID-19 pandemic, research into this field will be important for future vaccination efforts to protect American public health.

Policymakers could make use of this data to target populations for COVID-19 vaccination efforts including communities and neighborhoods that maintain lower incomes, tend to vote far-right, and/or have historically voted in favor of President Trump. U.S. policymakers should contend with the strong correlations that exist between far-right groups, the anti-COVID-19

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[30] Ibid.
[31] Ibid.

vaccination movement, and the relatively low COVID-19 vaccination rates in states where President Trump won a majority of votes in 2020. Further, policymakers can utilize this research as a starting point for analyzing effectiveness or ineffectiveness of vaccine exemptions and vaccine mandates on COVID-19 vaccination rates.
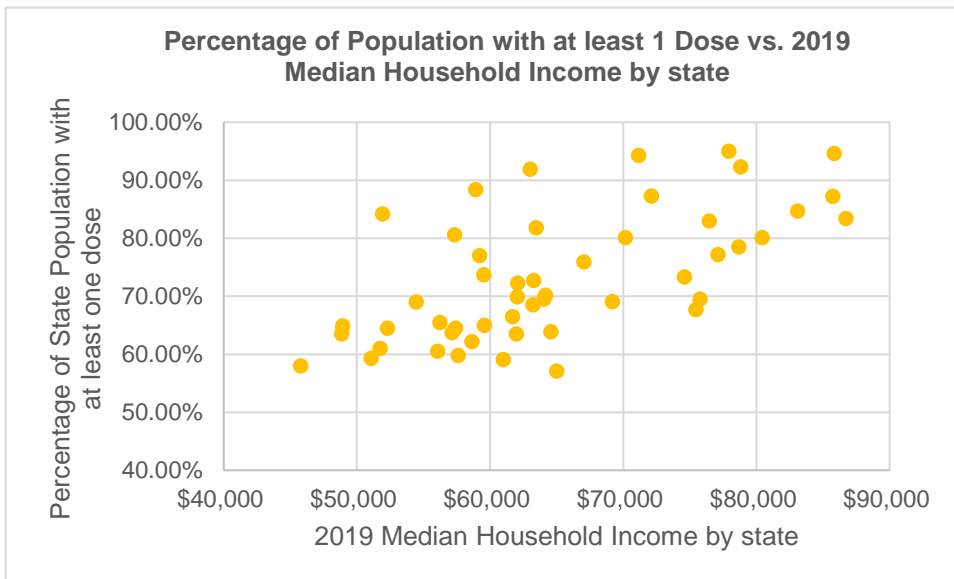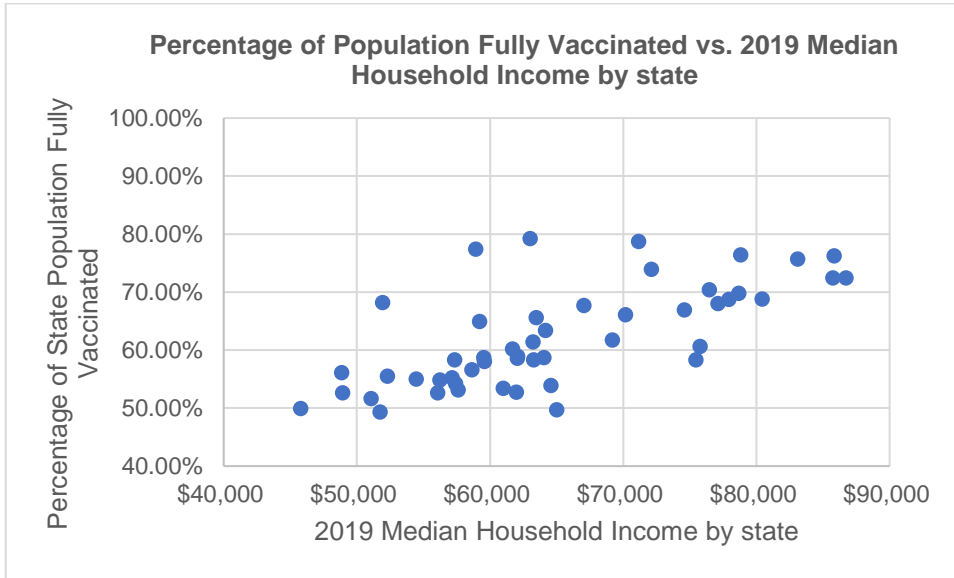
CONCLUSION

This paper has sought to provide insight to the anti-COVID-19 vaccination movement today by identifying demographic patterns among populations unvaccinated against COVID-19 and correlations between COVID-19 vaccination rates and vaccine policies including vaccine exemptions and mandates. One key finding of this research is that there is a strong positive correlation between the rate of COVID-19 vaccination in a state and the percentage of votes in a state that went to President Biden in the 2020 election. Another key finding of this research is that there is alternatively a strong negative correlation between the rate of COVID-19 vaccination in a state and the percentage of votes in a state cast for President Trump in 2020. These findings bolster other research performed and corroborates data that points to higher rates of COVID-19 vaccination amongst those who voted for President Biden in 2020 and lower rates amongst those who voted for President Trump in 2020. Another key finding regarding vaccine exemption policies indicates that states with only medical exemptions tend to have higher rates of COVID-19 vaccination, with falling rates for states with religious exemptions and lowest rates amongst states with personal belief exemptions. The final key finding of this research was that COVID-19 vaccination rates differ across states with different policies toward vaccine mandates. States who enforce vaccine mandates for health care workers tend to have the highest COVID-19 vaccination rates compared to states that do not. States that do not enforce nor ban COVID-19 vaccine mandates have a lesser COVID-19 vaccination rate and states that ban vaccination mandates comparatively have the lowest vaccination rates.

Past research into the health freedom movement and birth and grow of the modern anti-vaccine movement has informed the research this paper presents. This research and other COVID-19 vaccination research, including research into vaccination sentiment analysis; the linkages between social media, misinformation, and vaccine hesitancy; and the connections between far-right movements and the anti-COVID-19 vaccination movement, should be

continually analyzed together to provide most insight into the COVID-19 vaccination effort today and future vaccination efforts in the United States.

APPENDIX

MODEL 1. State Data on COVID-19 Vaccinations vs. 2019 Median Household Income

Percentage of Population Fully Vaccinated vs. 2019 Median Household Income by state

Percentage of Population with at least 1 Dose vs. 2019 Median Household Income by state

NOTE: Data from the Mayo Foundation for Medical Education and Research (MFMER) and the United States Census Bureau through Data USA

MODEL 2. State Data on COVID-19 Vaccinations vs. 2020 Diversity Index
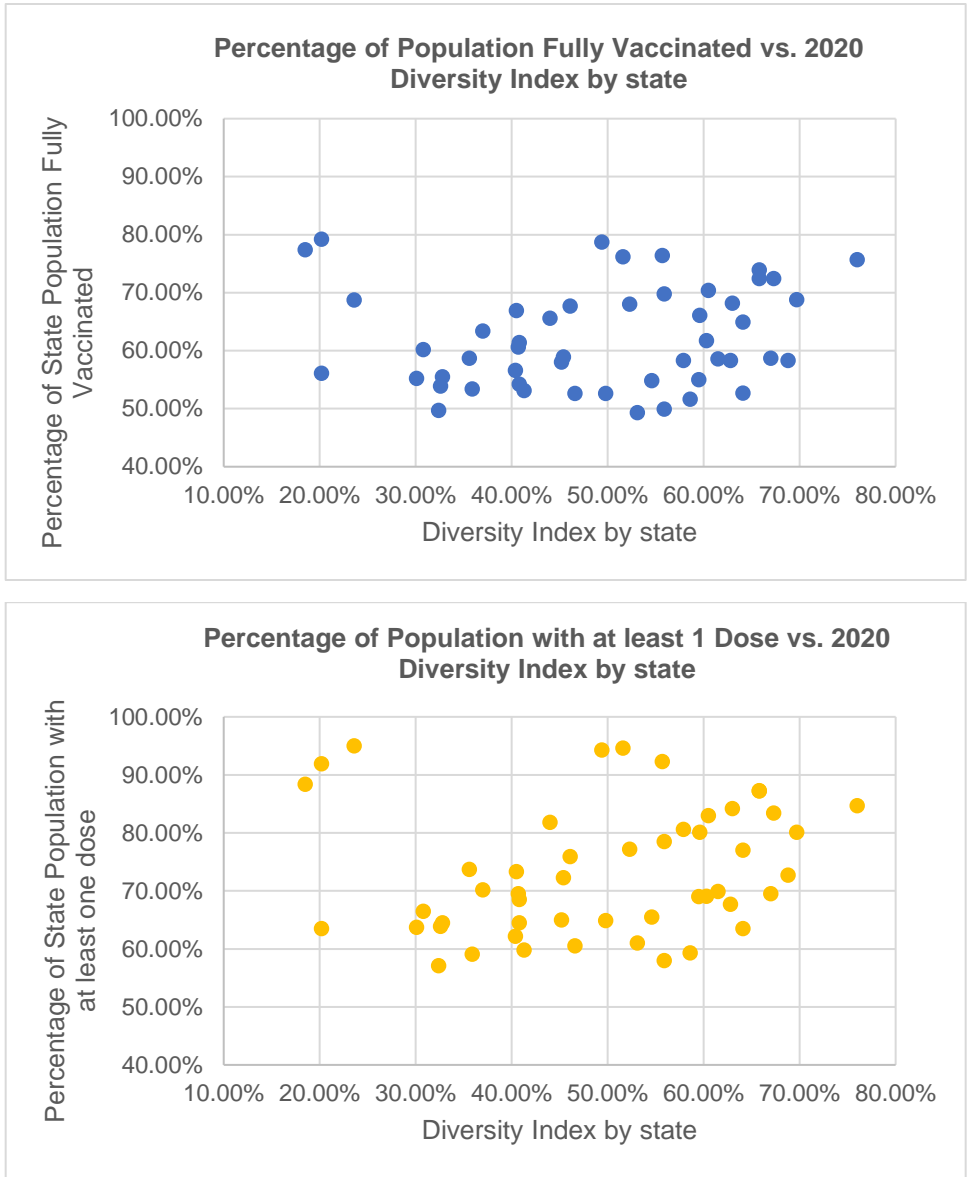
Percentage of Population Fully Vaccinated vs. 2020 Diversity Index by state

Percentage of Population with at least 1 Dose vs. 2020 Diversity Index by state

NOTE: Data from the Mayo Foundation for Medical Education and Research (MFMER) and the United States Census Bureau 2020 Diversity Index

MODEL 3. State Data on COVID-19 Vaccinations vs. 2019 Median Age

Percentage of Populaion Fully Vaccinated vs. 2019 Median Age by state

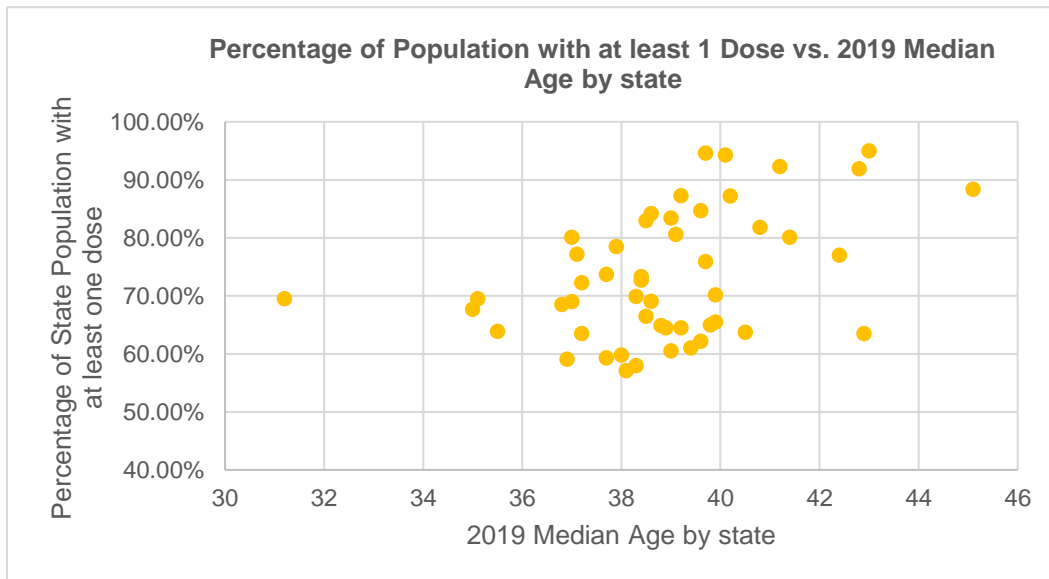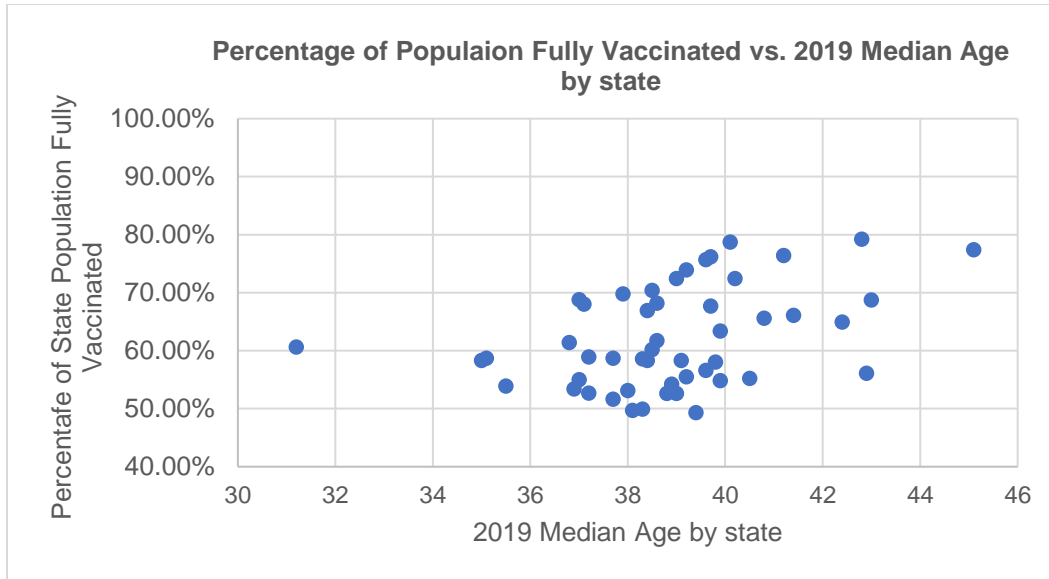Percentage of Population with at least 1 Dose vs. 2019 Median Age by state

NOTE: Data from the Mayo Foundation for Medical Education and Research (MFMER) and the United States Census Bureau through Data USA

MODEL 4. State Data on COVID-19 Vaccinations vs. Percentage of votes cast for President Biden 2020
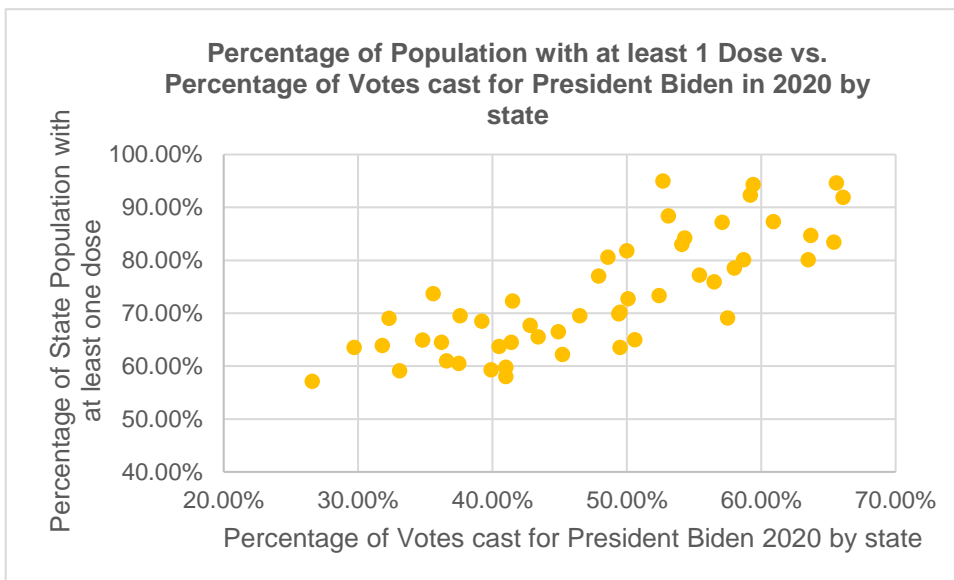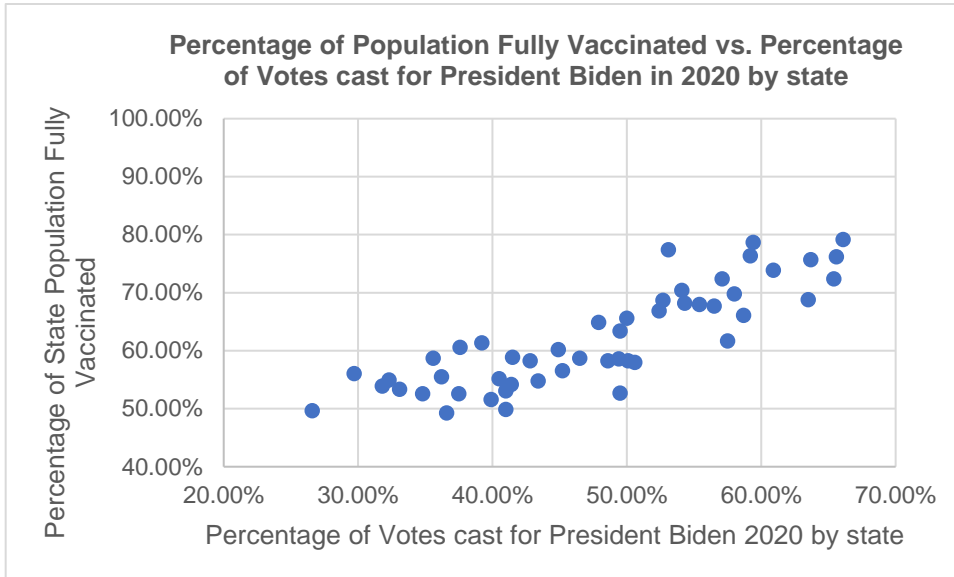
Percentage of Population Fully Vaccinated vs. Percentage of Votes cast for President Biden in 2020 by state

Percentage of Population with at least 1 Dose vs. Percentage of Votes cast for President Biden in 2020 by state

NOTE: Data from the Mayo Foundation for Medical Education and Research (MFMER) and NBC News Decision Desk

MODEL 5. State Data on COVID-19 Vaccinations vs. Percentage of votes cast for President Trump 2020
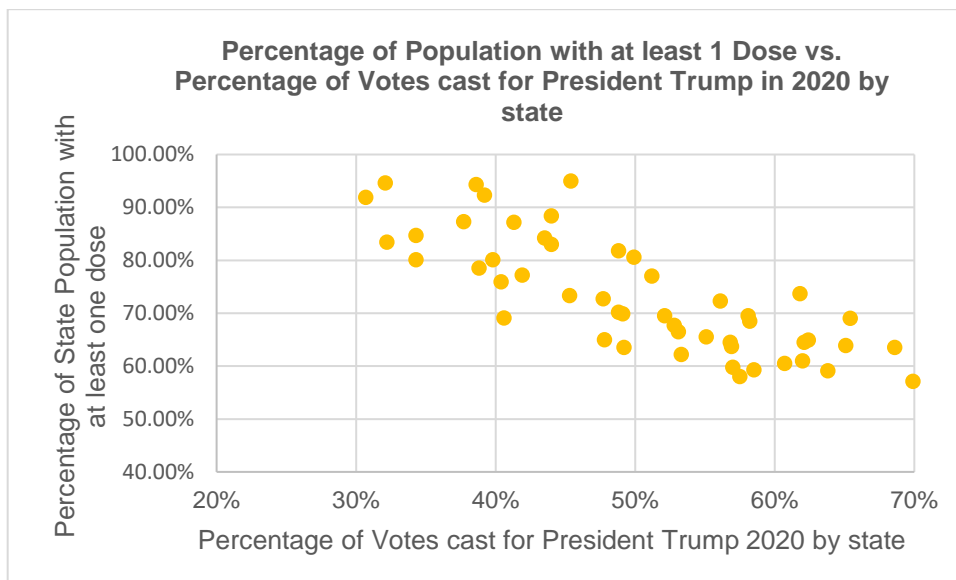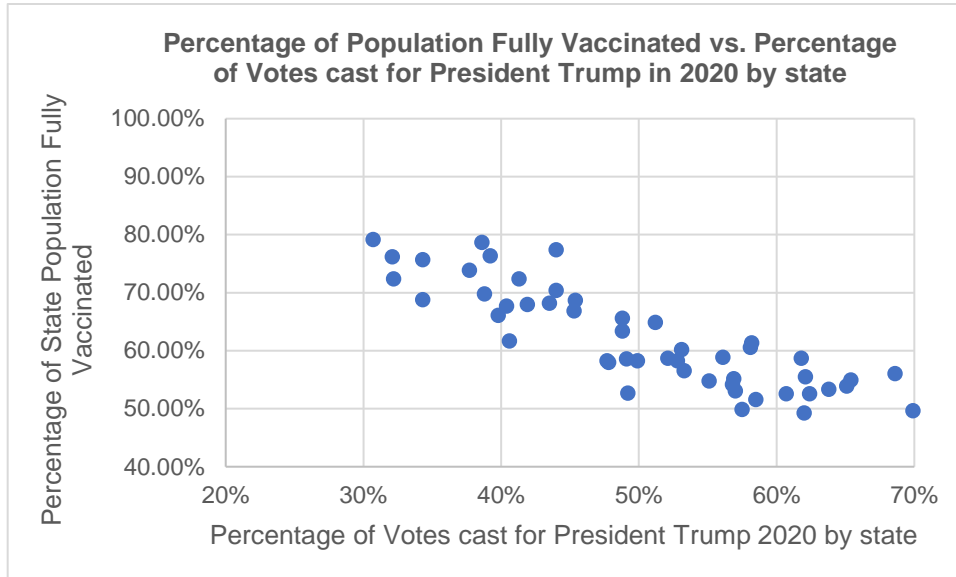
Percentage of Population Fully Vaccinated vs. Percentage of Votes cast for President Trump in 2020 by state

Percentage of Population with at least 1 Dose vs. Percentage of Votes cast for President Trump in 2020 by state

NOTE: Data from the Mayo Foundation for Medical Education and Research (MFMER) and NBC News Decision Desk

MODEL 6. Average COVID-19 Vaccination Rate for States with Varying Vaccine Exemptions
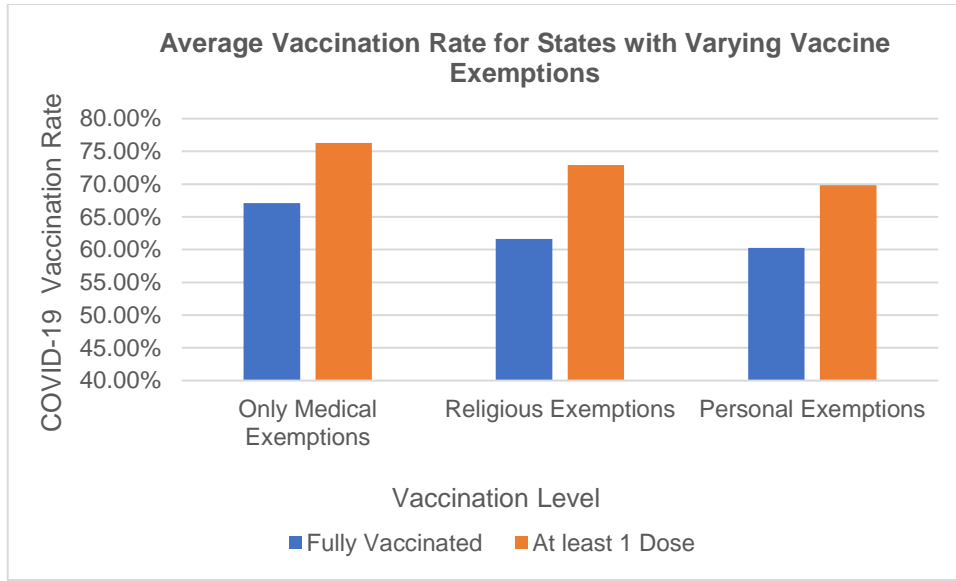
NOTE: Data from the Mayo Foundation for Medical Education and Research (MFMER) and Immunization Action Coalition

MODEL 7. Average COVID-19 Vaccination Rate for States with Varying Vaccine Mandate Rulings
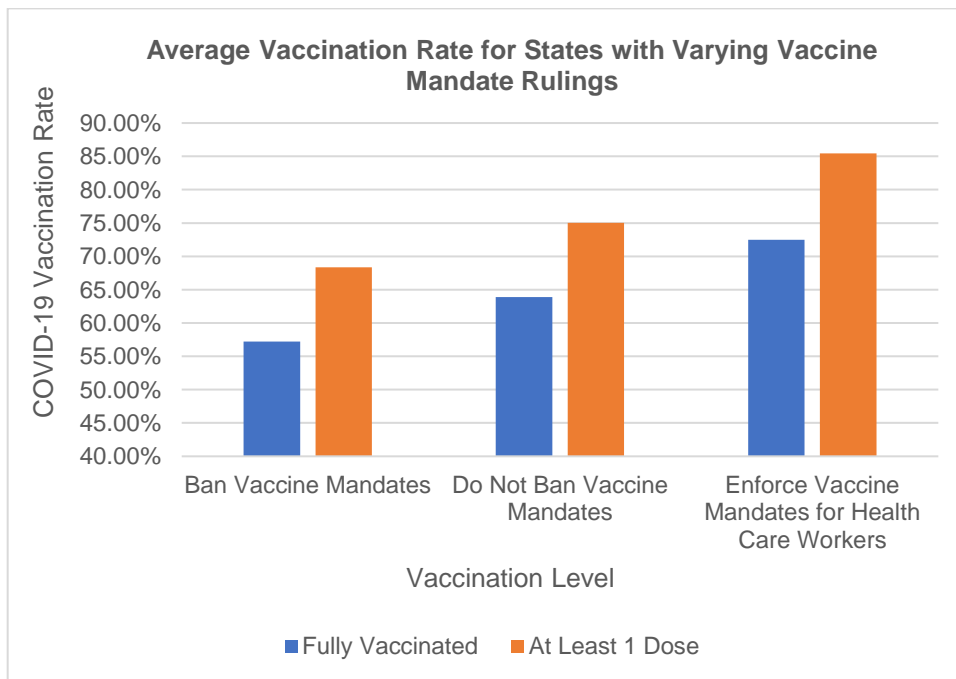
NOTE: Data from the Mayo Foundation for Medical Education and Research (MFMER) and Leading Age

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HEALTHCARE REFORM AND THE CONGRESSIONAL BUDGET OFFICE: HOW COST ESTIMATE REPORTS INFLUENCE THE POLICY PROCESS

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Since the introduction of Medicare and Medicaid in 1965 there has been no major healthcare reform legislation signed into law until the Affordable Care Act in 2010. A review of the literature shows that there is broad consensus across the political spectrum that the American healthcare system is inefficient and ultimately unsustainable. Calls for healthcare reform have been near the forefront of American political discourse since the 1970s, yet the policy process has broken down in nearly every attempt to address the widely recognized issues. This paper examines three major healthcare reform proposals: the 1971 Health Security Act, the 1993 Health Security Act, and the 2010 Affordable Care Act, specifically the ways in which the policy process is influenced by published research and data surrounding the legislation, with a particular focus on the cost estimates published by the Congressional Budget Office.

INTRODUCTION

The U.S. healthcare system holds an interesting position in American political discourse in that it is broadly agreed to be a broken and inefficient system. The United States spends more on healthcare as a percentage of gross domestic product than any other developed nation, and the continuously rising costs of healthcare have been well documented for nearly fifty years as of 2021.[1] The need for healthcare reform is well documented in published literature, has been a significant issue to voters for decades, and is recognized and acknowledged by lawmakers in Congress. Despite this near universal acknowledgement of a significant problem with healthcare in the United States, the solution to the problem remains frustratingly elusive.

There are myriad complex and interdependent variables that must be both understood and addressed in any significant healthcare reform legislation. While the nation appears to be in a rare state of unity regarding their opposition and frustration with our current healthcare system, every attempt at a comprehensive healthcare reform bill has failed since the 1965 Social Security Amendments which established the Medicare and Medicaid programs. Some might argue that

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[1] Sean P. Keehan et al., "National Health Expenditure Projections, 2019–28: Expected Rebound in Prices Drives Rising Spending Growth," *Health Affairs* 39, no. 4 (March 24, 2020): pp. 709, accessed November 28, 2020, https://doi.org/10.1377/hlthaff.2020.00094, 709.

the Affordable Care Act (ACA) passed in 2010 constitutes the adoption of significant healthcare reform, yet it is evident after a decade that the ACA has helped in many areas, hurt in others, and has been stunted by the numerous legal and political attempts to overturn the law. Overall, even if we consider the ACA as significant healthcare reform legislation, we must also acknowledge the fact that healthcare prices and expenditure continue to rise and are projected to continue rising over the next decade. This further demonstrates that the most comprehensive reform that has been passed to date has not adequately addressed the continuing crisis that grips our healthcare system.

While it may seem apparent that rigid partisanship is at the root of the inability for the government to come to an agreement on healthcare reform, evidence suggests there lies a deeper issue which has prevented the passage of significant healthcare reform in the United States. In fact, there have been multiple comprehensive healthcare reform bills considered since the 1970s, with only a watered-down version of the ACA being signed into law. I suggest that the presentation and framing of information and data presented to Congress for their use in crafting legislation, both by the nonpartisan Congressional Budget Office (CBO) and nongovernment think tanks, plays a significant role in the policy process. While the CBO has maintained a fiercely nonpartisan reputation it its role as the arbiter of legislative cost estimates, the inherently complex and nuanced nature of the work done by the CBO is frequently misrepresented by politicians and interest groups who cherry pick dollar amounts and statistics out of context in order to sway public opinion. In this paper I give a brief history of healthcare policy and reform in the United States up to 1970, followed by an introduction of the CBO and how cost analysis reports have shaped the policy process in three different attempts at comprehensive reform: the 1971 Health Security Act, the 1993 Health Security Act, and the 2010 Affordable Care Act. By framing the discussion through this particular lens, I demonstrate the influence that cost analysis reports published by the CBO, as well as other published analyses by nongovernmental entities, have a significant impact on the policy process with regard to healthcare reform. By identifying this and addressing the external influences that dictate the politics surrounding the healthcare coverage of Americans, specifically the influence that cost analysis by the CBO and others had on the policy process, we might gain a deeper understanding of what direction healthcare reform needs to move towards in order to ensure the system as a whole does not fail.

HEALTHCARE REFORM PRIOR TO THE 1970s

A brief review of the history of healthcare reform in the United States lays a necessary foundation for understanding the current state of healthcare reform as shaped by the three comprehensive attempts at reform since the 1970s. The history of health insurance is perhaps best summarized by Paul Starr and his three phases of health insurance: Progressive Health Insurance, Expansionary Health Insurance, and Containment Health Insurance.[2] Progressive Health Insurance, aptly named after the Progressives of the early twentieth century who advocated for such programs, saw the introduction of health insurance as we might know it today. Initially made available only to wage earners as protection from lost wages due to illness, which could bring already struggling families to financial ruin, these plans were eventually extended to cover dependents and other people.[3]

The Expansionary Health Insurance phase is considered the period from the 1930s through the 1960s. This phase saw the focus of the healthcare debate shift towards expanding coverage and true to its moniker, this era saw significant growth in the number of Americans covered by health insurance as a result of two major developments in the healthcare policy. The first major development being the rise of the employer based private healthcare following the influx of veterans returning home at the end of World War II, and the second development being the Medicare and Medicaid programs which are enacted in 1965.[4]

The era of Containment Health Insurance began in the 1970s and was brought on by rapidly increasing healthcare costs and expenditures that showed no signs of slowing down. During this era there was a renewed push towards universal coverage that sought to expand what Medicare started and create a social insurance program that covered all Americans, which was contrasted by pushback from conservative politicians and health insurance interest groups who sought to limit government growth and maintain the employer based private healthcare system.[5]

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[2] Paul Starr, "Transformation of defeat: the changing objectives of national health insurance, 1915-1980." *American Journal of Public Health* 72, no. 1 (1982): 78.

[3] Ibid, 79.

[4] Terree P. Wasley, "Health care in the twentieth century: A history of government interference and protection." *Business Economics* (1993): 12.

[5] Starr, Transformation, 85.

THE 1971 HEALTH SECURITY ACT

The early 1970s saw a flurry of healthcare reform proposals in the face of skyrocketing healthcare costs driven by an increasingly complex healthcare system and healthcare cost inflation that outpaced the overall interest rate with federal money flooding into the system as nearly 10% of the American population was transitioned on to Medicare in the second half of the 1960s.[6] The effort to implement comprehensive reform that would also introduce some level of cost control measures was spearheaded by Senator Ed Kennedy, an integral player in the healthcare reform debate throughout his career. The 1971 Health Security Act proposed a national health insurance plan that would offer comprehensive benefits to all United States citizens and permanent residents.[7] The proposal was to be financed through tax revenue, with 50% coming from employer and employee payroll taxes and the other 50% coming from general tax revenues.[8]

While Senator Kennedy's 1971 bill was not the first comprehensive universal healthcare bill introduced to the legislature, it came at a time when the public was yearning for change and looked to be the natural progression of incremental approach to healthcare reform as was signaled by congress when the Medicare and Medicaid amendments were enacted with coverage only available to the elderly and disabled. What sets the 1971 Health Security Act apart from its contemporaries is the fact that it was a true comprehensive reform package that guaranteed universal coverage in the United States. Other plans, such as the one introduced by Senator Jacob Javits at the same time as Kennedy's Health Security Act, saw an incremental extension of the existing Medicare program to eventually cover the entire population, as well as other plans that suggested a supplement to the existing private health insurance model that would cover the poor and uninsurable.[9] As the Nixon administration began to craft healthcare reform legislation of its own, as well as the American Medical Association and other interest groups developing their own proposals that were more friendly to the existing private health insurance industry, there

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[6] Barry R. Furrow, "Access to Health Care and Political Ideology: Wouldn't You Really Rather Have a Pony." *W. New Eng. L. Rev.* 29 (2006): 405.
[7] U.S. Congress, Senate, Committee on Finance, *National Health Insurance: Brief Outline of Pending Bills,* 92d Cong., 1st sess., 1971, S. Rep. 362-366, 1.
[8] Ibid.
[9] Eveline M. Burns, "A critical review of national health insurance proposals." *HSMHA Health Reports* 86, no. 2 (1971): 112.

was no one piece of comprehensive legislation that was able to make it through the House and the Senate.

By the end of 1972 no comprehensive reform bill had been passed, having faced objections by interest groups such as the American Medical Association, by existing private health insurance companies who saw their existence threatened, and by political leaders who were wary of the costs of such comprehensive reform.[10] By the middle of the decade stagflation had gripped the American economy and the prospects of implementing any sort of comprehensive national health insurance plan vanished as legislators feared any reform would cause further inflation.[11] While the establishment of the CBO was still three years away at the time Senator Kennedy introduced the Health Security Act in 1971, we can look to this legislation as being the first modern attempt at national healthcare reform, beginning a trend of healthcare reform bills introduced in response to public outcry over skyrocketing costs the large number of uninsured that was derailed by shifting public opinion away from reform by politicians and interest groups citing cost estimates out of context as well as capitalizing on a growing conservative movement that sought to limit the expansion of the federal government. The impact of these efforts to stymie healthcare reform, particularly the healthcare reform acts considered going forward, also coincide with paradigm shifting political movements with Newt Gingrich and the "new Republican Party" in the early 1990s, and the Tea Party movement in the late 2000s.[12]

THE CONGRESSIONAL BUDGET OFFICE

Having been established as part of the 1974 Congressional Budget Act, the Congressional Budget Office serves as an independent agency within Congress to assess the costs and budgetary impacts of proposed legislation. The original purpose of the act was to reclaim some authority over the budget process from the executive branch, which had essentially imposed a

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[10] I. S. Falk, "Medical care in the USA: 1932-1972. Problems, proposals and programs from the committee on the costs of medical care to the committee for national health insurance." *The Milbank Memorial Fund Quarterly*. Health and Society (1973): 30.
[11] Starr, Transformation, 89.
[12] Julian E. Zelizer, *Burning down the House: Newt Gingrich, the Fall of a Speaker, and the Rise of the New Republican Party*. Penguin, 2020.

budget on Congress as far back as 1921.[13] During this time, the executive branch submitted both the annual budget and legislative priorities, as well as the cost estimates and economic impact predictions for them to the Congress. Following the establishment of the CBO, the reports submitted by the executive via the Office of Management and Budget (OMB) were compared with those produced by the CBO. While there are significant differences in the way the OMB and CBO approach these estimates, including the fact that the OMB reports use specific targets while the CBO reports give ranges for their predictions, it was unsurprisingly found that the reports provided by the OMB were more optimistic and favorable to the priorities of the executive than the reports provided by the CBO.[14]

The passage of the Congressional Budget Act of 1974 and establishment of the CBO signaled the end of the progressive New Deal era that saw an incredible expansion in the size of the federal government and federal programs. The end of this era was, at least in part, brought about by the ideological shift in the major parties following the enactment of the Civil Rights and Voting Rights act of 1964 and 1965 as southern Democrats and evangelical Christians began moving to the Republican Party.[15] While the establishment of the Congressional Budget Office has had an impact on the broader policy process within Congress, the partisan use of CBO cost estimates has played a central role in the efforts to prevent comprehensive healthcare reform in the United States.

In exploring why the policy process of healthcare reform is particularly affected by CBO scoring, the term assigned to the cost estimate analysis of a particular piece of legislation, the scorekeeping guidelines that dictate how the CBO calculate its estimates must be examined. All CBO estimates are compared to their baseline projections, which are ten year predictions of how the budget and economy will evolve under the current federal budget and spending commitments.[16] This allows the CBO to clearly demonstrate the impacts of any given legislation or change in budget compared to the forecasted impact under current conditions. In producing its estimates, the CBO is required to follow a set of guidelines intended to ensure methodological

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[13] Douglas H. Shumavon, "Policy Impact of the 1974 Congressional Budget Act." *Public Administration Review* 41, no. 3 (1981): 339.

[14] Ibid, 340.

[15] James L. Guth et al., "God's Own Party:Evangelicals and Republicans in the '92 Elec." *The Christian Centruy* 110, no. 5 (February 1993): 173.

[16] United States, Congressional Budget Office, *An Introduction to the Congressional Budget Office.* (Washington, DC: Congressional Budget Office, 2021), https://www.cbo.gov/sites/default/files/Intro-to-CBO-2021.pdf

consistency and accuracy, which introduces a significant flaw in the process in that the CBO does not consider the secondary effects of legislation regarding revenue generation. Scott Levy succinctly describes why this can cause inaccurate estimates saying "the CBO will score the 'primary effect of such programs—the direct effect of spending more or less money in the budget — but it will not score the 'secondary effect'—the increase in revenue indirectly resulting from the funding change."[17] This means that a national health reform bill would consider the increased spending by the government in determining overall revenue impacts, but would not consider any increase in tax revenues that might come as a result of higher wages and payroll taxes as employer-paid premiums under the current system are exempt from federal income and payroll taxes.

In combination with an increasingly partisan Congress and the use of television and radio, particularly by the growing conservative movement, to take the political and legislative fights out of DC and directly to the American people, future healthcare reform bills would be plagued by partisan misrepresentation and oversimplification of CBO scores. The inherently complex and nuanced nature of comprehensive health reform will be shown to be ill-suited to the evolving state of the news media who increasingly favor the higher ratings generated by easily digestible soundbites and political controversy over balanced policy analysis, a strategy opponents of reform would come to find invaluable.[18]

THE 1993 HEALTH SECURITY ACT

Following the failure to pass comprehensive national insurance in the 1970s, there was a flurry of cost control measures that were intended to temper the ever-increasing cost of healthcare. This, combined with the election of Reagan in 1980 and an increasingly emboldened conservative caucus in Congress, meant that national health insurance legislation was off the table for the foreseeable future.[19] In the effort to control costs, employers began shift the financial burden to employees by cutting benefits, and increasing deductibles, copays,

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[17] Scott Levy, "Spending Money To Make Money: CBO Scoring of Secondary Effects." *The Yale Law Journal* 127, no. 4 (2018): 941. http://www.jstor.org/stable/45097960.
[18] Zelizer, *Burning Down the House,* 68.
[19] Starr, Transformation, 86.

coinsurance, and out of pocket maximums.[20] With healthcare costs continuing to increase at a staggering rate, health insurance companies began to restrict coverage for individuals that were deemed high risk or had preexisting conditions, employers were slashing benefits, employees were paying more out of pocket for healthcare, and tens of millions of Americans had no insurance coverage at all.

These developments resulted in a renewed call for comprehensive healthcare reform in the early 1990s, an issue that then Governor of Arkansas, Bill Clinton, made a centerpiece of his presidential campaign, promising voters to introduce a plan for reform to Congress within his first 100 days.[21] Following his election in 1992, President Clinton formed a task force, led by First Lady Hillary Clinton, to develop a comprehensive healthcare reform package.[22] While support for comprehensive healthcare reform was at an all-time high, the early 1990s also saw increasing polarization between the two parties that made finding a consensus on what healthcare reform ought to look like increasingly difficult. Mark Peterson makes a salient point in this regard, writing, "The very institutional setting in which health care reform must be liberated, crafted, enacted, and implemented has witnessed unprecedented changes since the era of Nixon, Ford, and Carter, when last the reform movement enjoyed such political currency."[23] In the increasingly partisan atmosphere, the CBO cost analysis report is perhaps the most significant factor in the failure of the Clinton healthcare plan.

The Clinton administration may have made its first error in waiting to introduce the Health Security Act until after the omnibus budget legislation was passed in 1993, as the budget act is where the revenue raising portions of the healthcare bill were outlined. This meant that once the CBO report for the Health Security Act was released, it only contained expenditure estimates as the revenue estimates were included in the CBO's budget analysis.[24] As a result, the CBO report bluntly stated that the Health Security Act would "more than double the federal government spending for health" and that part of the costs of the program would be "offset by

[20] Theodore R. Marmor, David Boyum, "American medical care reform: are we doomed to fail?." *Daedalus 121*, no. 4 (1992): 176.

[21] William J. Cox, "The Clinton Election: Implications for Healthcare." *Health Progress* (1993): 17.

[22] Theda Skocpol, "The rise and resounding demise of the Clinton plan." *Health Affairs 14*, no. 1 (1995): 70.

[23] Mark A. Peterson, "Institutional Change and the Health Politics of the 1990s." *American Behavioral Scientist 36*, no. 6 (1993): 783.

[24] Congressional Budget Office, *Preliminary Estimate of the Effects of H.R. 1200, American Health Security Act of 1993.* (Washington, DC: U.S. Government Printing Office, 1993), 1.

repealing Medicare, Medicaid, and other existing federal health programs."[25] The third page of the CBO report offered up a devastatingly succinct summary that described a more than doubling of government healthcare expenditures while repealing Medicare, one of the most successful and popular entitlement programs in American history. The matter was only made worse by the fact that the only way to know how the Clinton plan would be paid for was to read an entirely separate CBO analysis of the entire national budget and parse the specific revenue provisions from the entirety of federal spending in 1993. The task force had already been the target of partisan ire with complaints over the process being conducted behind closed doors by government bureaucrats, yet the issue still garnered bipartisan support for some sort of reform package in response to the burgeoning crisis in the American healthcare system.[26]

The entire healthcare debate was occurring in the eye of an impending political hurricane that would go on to be seen as a seminal moment in American politics as the "Republican Revolution" swept the nation and conservatives rallied around preventing another inefficient and expensive government program, the CBO report was the final nail in the coffin for Clinton's health plan. The legislation would require strong public support in order to pass through a Congress in which some Republican votes would be necessary, and Republican leaders recognized that healthcare reform would be the determining factor in the 1994 midterm elections. Sensing their opportunity, conservative politicians formed a unified front in objection to the plan, appearing on television and radio shows demonizing the costs and stoking fears about diminished quality and availability of healthcare services under such a large bureaucratic program. This political assault was paired with the work of interest groups who poured over $100 million into swaying public opinion against the Clinton health plan using similar rhetoric to turn the tide of public opinion.[27]

Public trust in government was at an all-time low, the new Republican Party was evolving American politics and political discourse with their cutthroat partisanship, and Clinton's healthcare plan had devolved into an increasingly complex bill that neither Democrats nor Republicans supported. While the external political factors occurring during the first half of the decade shaped the landscape in which healthcare reform would be crafted, the CBO report

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[25] Ibid.
[26] Skocpol, The Rise and Resounding Demise, 70
[27] Skocpol, The Rise and Resounding Demise, 75.

was a deflating, arguably self-inflicted, blow from which proponents of comprehensive reform would not recover until more than a decade later.

THE 2010 AFFORDABLE CARE ACT

Following the resounding failure of the Clinton healthcare plan and the lack of any meaningful cost control legislation, healthcare costs exploded. Households saw healthcare costs outpace median household income by 4.7% from 1999 to 2016, and average premiums accounted for more than 30% of median income in 2016, up from 16.7% in 1999.[28] While healthcare costs grew at a rate that significantly outpaced wage growth, employees also saw their actual out of pocket expenses grow an incredible 74% from 1990 to 2009.[29] Frustrated by the inability of the government to control healthcare costs through the incrementalist approach to healthcare reform, and facing real economic harm as wages stagnated and costs soared, healthcare reform was thrust to the front of American political discourse in the mid-2000s and culminated in the election of Barack Obama in 2008 who made comprehensive healthcare reform a focal point of his campaign. The 2008 election also saw the Democrats gain a majority in both houses of Congress, including a veto-proof supermajority in the Senate, all but ensuring the ability to pass comprehensive healthcare reform before the 2010 midterms.

Wasting little time, Democratic leaders began crafting the Patient Protection and Affordable Care Act (ACA) behind closed doors with little to no Republican input. Partisanship had come to dominate American politics by this time, and once again the CBO cost report became a central theme in the debate around passing the ACA. The initial bill introduced in the Senate received a CBO score that actually determined the legislation would reduce federal budget deficits over a ten-year period by roughly $130 billion.[30] But it was another figure quoted in the report that caught the attention of Republicans in Congress and media outlets, that the net cost over ten years was a staggering $848 billion. Similar to President Clinton in the 1990s, President Obama faced his own conservative uprising as the Tea Party movement began taking

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[28] Ezekiel J. Emanuel, Aaron Glickman, and David Johnson. "Measuring the burden of health care costs on US families: the affordability index." *Jama 318*, no. 19 (2017): 1864.

[29] Hao Yu, Andrew W. Dick, "Impacts of Rising Health Care Costs on Families with Employment-Based Private Insurance: A National Analysis with State Fixed Effects." *Health services research 47*, no. 5 (2012): 2013.

[30] Congressional Budget Office, *Cost Estimate of The Patient Protection and Affordable Care Act,* (Washington, DC: 2009), 2.

hold across the country, in large part as a response to the Affordable Care Act. Having refined their zero-sum partisan strategy over the last fifteen years, conservative politicians and media outlets eagerly awaited the CBO score for the Affordable Care Act knowing that the balance of political power lies once again in public opinion of healthcare reform.

Already incensed by being shut out of the policy process, the CBO report estimating the cost of the program coming in just under one trillion dollars gave even the plan's supporters pause and proved to be incredibly difficult to adequately defend on local and national news programs. Furthermore, Republican opponents of the healthcare bill engaged in an impressively successful media campaign against the ACA with claims that the law would gut the Medicare program and establish "death panels" of government doctors who would wield the power to choose who received end of life care and who did not.[31] The tone and rhetoric surrounding the ACA was uncannily similar to that seen in the fight over the Clinton health plan, and ultimately produced similar results. While the ACA was eventually signed into law, its passage was dependent on being stripped of one of its most important provisions, the public option which would have allowed consumers to purchase a government sponsored health plan that competed directly with private health plans in the market. The passage of the ACA also spent the entirety of the Democrat's political capital, with conservatives handily winning control of the House of Representatives as well as winning six gubernatorial races and flipping twenty state legislatures. The 2010 elections and the Tea Party movement would go on to be incredibly consequential for the broader political system, but there were particular consequences to the ACA and the healthcare reform movement as well. Following the 2010 elections, the ACA faced a series of state and federal legal challenges that ultimately saw a number of the main provisions either struck down or rendered inconsequential and unenforceable. A 2012 Supreme Court case regarding the mandated Medicaid expansion provisions resulted in Medicaid expansion being an optional provision states could choose whether or not to participate in. Additionally, continuing their efforts to repeal or dismantle the ACA, Republicans in Congress passed the Tax Cuts and Jobs Act of 2017 which effectively removed the individual mandate provision that required all citizens purchase health insurance or they would incur a tax penalty by reducing that penalty to

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[31] Daniel P. Gitterman, John C. Scott, ""Obama Lies, Grandma Dies": The uncertain politics of medicare and the patient protection and affordable care act." *Journal of Health Politics, Policy and Law 36*, no. 3 (2011): 555-563.

zero.[32] These two provisions were central to keeping costs down and health insurance in the marketplace affordable. While the ACA has led to a massive decrease in the number of uninsured Americans, the program continues to struggle with legal and political challengers that seek to overturn the legislation all together.

CONCLUSION

The United States healthcare system is demonstrative of the unique political culture in the country. Liberal individualism and market fundamentalism are weaved into the fabric of American society. As a nation founded on the ideals of individual rights protected by limited government, and made great by the wealth generated from market capitalism, the concept of a national health system appears to run counter to those most fundamental principles. Debate surrounding what the American healthcare system ought to look like has been an important political question dating back to the early twentieth century, with progress being made and lost as the political pendulum swings between the two major parties. Since at least the 1970s there has been multiple instances where some form of national health insurance appeared to have the momentum needed to become law, spurred on by exponentially increasing healthcare costs and a library worth of literature on the issues that continue to plague the current system. Instead of passing a comprehensive reform package that would achieve universal coverage and prevent the all-too-common issues of people being inadequately insured or not eligible for coverage due to risk or preexisting conditions, American politicians instead opted for the fragmented combination of incremental market based reform and a conservationist approach to the Medicare program.

The three landmark reform bills discussed in this paper reveal a pattern of systematic political disfunction that spans generations by the failure to make the hard choices necessary to move forward. In each instance discussed above there existed demand for action by the people, broad bipartisan recognition of the need to address the problems in healthcare, a consensus among published literature as to the unsustainable nature of the healthcare system and the need for some type of reform. Yet in each instance, ideological partisanship prevented the kind of

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[32] Jonathan Gruber and Benjamin D. Sommers, "The Affordable Care Act's Effects on Patients, Providers, and the Economy: What We've Learned so Far," *Journal of Policy Analysis and Management* 38, no. 4 (2019): pp. 1028-1052, https://doi.org/10.1002/pam.22158, 1030.

reform necessary, choosing to instead to manipulate the researched based analyses and cherry-picking data and figures to scare people into believing that the change they want and need will instead bring them economic ruin and political tyranny. Even today, healthcare costs continue to rise, wage growth continues to be suppressed, and the number of people who will become eligible for Medicare over the next ten years is expected to push the program well past its limits. There is no lack of information, data, or research regarding America's healthcare expenditures and the impending crisis if not addressed. What is lacking is the political capital, there is no mandate from the people to address healthcare because the past ten years have been spent attempting to hold together the piecemeal reform package that was passed from being picked apart by hyper-partisans in Congress and activist groups via the courts. There exists no energy, no willpower left to take up the mantle of healthcare reform again any time soon. But as sure as the tides will ebb and flow, the data shows that healthcare reform will be back at the top of the ticket by the end of this decade and the ability to kick the proverbial can down the road is waning.

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PUBLIC PERCEPTIONS OF THE SUPREME COURT'S LEGITIMACY: POLITICIZATION AS AN IMPACT ON JUDICIAL AUTHORITY

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This research paper is concerned with the question of Americans' opinion of the Supreme Court as an independent, apolitical arbiter of the law. Given the institution's interrelation with the executive branch, the essay explores public perceptions of the judicial nomination process and related implications for the Court's perceived authority as the highest tribunal. It engages with studies of public opinion to assess claims of fluctuating perceived legitimacy. Further, it evaluates proposed policy reforms to bolster the Court's independence and offers a path forward in shaping a federal judicial institution that is trusted by the electorate.

INTRODUCTION

As the final arbiter of the law and the conclusive interpreter of the Constitution, the Supreme Court of the United States bears the responsibility to uphold the separation of powers among the three branches of government. In order to pursue this role, the Court must remain independent, meaning free of political influence. This is key for maintaining institutional legitimacy: the belief that an institution has the right to govern. Suspicions of politicization can erode trust in judicial independence.[1] This, in turn, can threaten public perceptions of the Supreme Court's legitimacy.[2] The importance of such opinion – the country's highest tribunal is rightfully in possession of immense power – may ultimately influence the stability of the rule of law.

Even though the three branches of government are to be kept separate, the executive plays a significant role in influencing the perceptions of the Supreme Court's legitimacy by determining its make-up. The number of Associate Justices is at the discretion of Congress. Further, appointing them is a presidential power. This structure may prove problematic when it comes to bolstering trust in judicial independence. Interrelations between autonomous branches threaten the separation of powers.[3] The executive may directly benefit from influencing the

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[1] Frances E. Lee, „How Party Polarization Affects Governance," Annual Review of Political Science, 2015.

[2] Tara L. Grove, "The Supreme Court's Legitimacy Dilemma," Harvard Law Review, 2019.

[3] Peter L. Strauss, "Formal and Functional Approaches to Separation of Powers Questions," Cornell Law Review, 1986-1987.

judiciary, while those seeking appointment to the judicial branch may have strong incentives to influence the appointing body in a way that advances their objective. Thus, enforcing a robust system of checks and balances on the Supreme Court selection process is a crucial way of buttressing its authority.

A recent study conducted by the Annenberg Public Policy Center at the University of Pennsylvania found that over a third of Americans would consider abolishing the Supreme Court if a significant part of its rulings diverted from public preferences.[4] Specifically, 34% of those surveyed indicated agreement with the statement that "it might be better to do away with the court altogether" if it "started making a lot of rulings that most Americans disagreed with."[5] This is indicative of eroding support for the judiciary. It must be halted not only to maintain the rule of law, but also to prevent potential transgressions of power on part of the executive and legislative branches. In the absence of a trusted interpreter of the Constitution, citizens may lose respect for any or all other democratic institutions.

Moreover, the Court's increasing reliance on emergency procedures for bypassing the standard appeals process, the foremost example being the so-called shadow docket, has drawn critical scrutiny of the institution.[6] The term "shadow docket" was first defined by William Baude as "a range of orders and summary decisions that defy [the Court's] normal procedural regularity."[7] Put simply, the tool allows Justices to rule on matters without hearing oral arguments, and usually without publishing the reasoning behind the majority's decision. In recent years, Justice Sotomayor and Justice Ginsburg expressed opposition to the Court's over-reliance on the shadow docket during the Trump administration.[8]

Given the findings concerning the public's shifting perception of the Supreme Court, the growing scrutiny of the Court's polarization and reliance on the shadow docket, and the importance of an independent judiciary to a stable division of power, there is a need to establish a thorough understanding of the perceived legitimacy of the Court. This paper will seek to answer the following question: what are the factors that influence the public perceptions of the

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[4] Annenberg Public Policy Center, "1 in 3 Americans Say They Might Consider Abolishing or Limiting Supreme Court," October 4, 2021.
[5] Annenberg Public Policy Center, "Abolishing the Supreme Court."
[6] Mark Walsh, "The Supreme Court's 'shadow Docket' Is Drawing Increasing Scrutiny," ABA Journal, August 20, 2020.
[7] William Baude, "Foreword: The Supreme Court's Shadow Docket" (University of Chicago Public Law and Legal Theory Working Paper No. 508, 2015).
[8] Walsh, "The Supreme Court's 'Shadow Docket.'"

Supreme Court and its institutional legitimacy? Consequently, what are the policy measures that have the potential to strengthen the public's reliance on the Court as the final arbiter of justice?

I will argue that the public perception of legitimacy is dependent on individuals' political affiliation vis a vis the sitting President's party, the decisions immediately preceding the given poll establishing public opinion, and the political events, including judicial appointments, shaping the term.

PERCEIVED LEGITIMACY OF THE SUPREME COURT

The erosion of the legitimacy of the Supreme Court of the United States is observed in the decreasing percentage of Americans who perceive the institution as free of political bias impeding judicial independence. An Annenberg Public Policy Center's study reports that in September 2021, soon after the tribunal declined to intervene in Texas' abortion-restricting law, 38% of Americans agreed that Congress should be able to overrule the Supreme Court in instances of disagreement.[9] This highly problematic approach would put the existing balance of powers in jeopardy, thus threatening the structure of the United States' democratic system.

Additionally, a Gallup poll found that Americans' confidence in the Supreme Court decreased to 36% in 2021, down by four percentage points from the confidence level reported in 2020.[10] This downward trend may point to eroding trust. However, it is important to note that the year-on-year decrease may be a short-lived shift, as the 2019 value – 38% - was much closer to the 36% observed in 2021. In fact, other sources report that the Supreme Court's approval ratings tend to remain stable over time, despite some fluctuations.[11] Yet another consideration is that these findings apply to a time when American society was not as polarized as it has become in the years following *Bush v. Gore*.[12] Thus, the contemporary reader may infer that political divisions continued to fuel skepticism toward institutions observed in public opinion polls.

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[9] Annenberg Public Policy Center, 2021.

[10] Megan Brenan, "Americans' Confidence in Major U.S. Institutions Dips," Gallup, July 14, 2021.

[11] James Gibson, "The Legitimacy of the U.S. Supreme Court in a Polarized Polity," *Journal of Empirical Legal Studies* 4, no. 3 (2007): 515.

[12] The article defending the stable nature of public support for the Supreme Court was published in 2007; Gibson, "Legitimacy of the Supreme Court," 515.

The dynamically changing political landscape emphasizes the importance of focusing on recent findings. While they fluctuate year-to-year, average approval levels of the Court oscillate around 50-60% depending on the decade.[13] This can be seen in part (a) of Figure 1. Nonetheless, the key discovery made in this study concerns partisan support, displayed in part (b) below. Clearly, there is an immense difference between copartisan and outpartisan evaluation of the Supreme Court's performance. When surveyed subjects are in ideological agreement with the sitting President's party at the time of the study, they are more likely to express approval of the institution's performance.
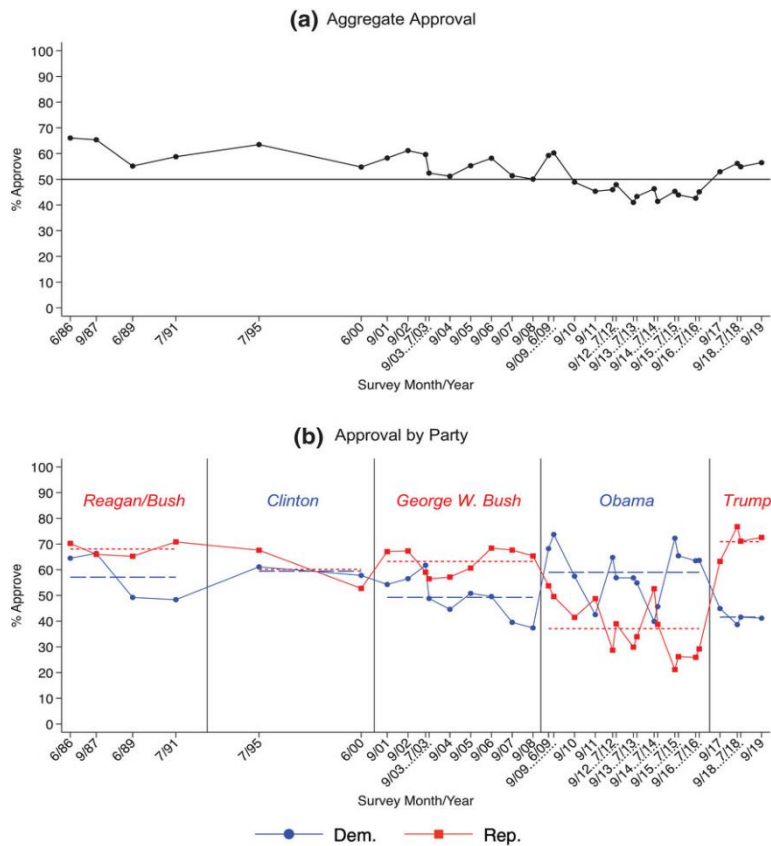
Figure 1. Bartels & Kramon, 2021

In contrast, those who find themselves in ideological disagreement with the Court's policymaking routinely assign lower legitimacy values to it.[14] Based on this correlational data,

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[13] Brandon Bartels, and Eric Kramon, "All the President's Justices? The Impact of Presidential Copartisanship on Supreme Court Job Approval," *American Journal of Political Science* (2021): 6.

[14] Brandon Bartels, and Christopher Johnston, "On the Ideological Foundations of Supreme Court Legitimacy in the American Public." American Journal of Political Science 57, no. 1 (2013): 197.

one may hypothesize that political affiliation influences perceptions of institutional legitimacy. Notably, this affiliation does not concern the Supreme Court directly. While the ruling President may be a Democrat, as Joseph Biden is, the majority of the Associate Justices may have been appointed by Republican presidents, as is currently the case. Moreover, further research is needed to determine how significant of a role is played by other factors, such as individual rulings, in shaping public opinion of the Supreme Court. For instance, Christenson and Glick find that aggregate legitimacy may prove stable despite ideology affecting different groups' perceptions.[15] Moreover, the missing electoral connection with citizens and the few checks on the Court's power likely both contribute to a negative perception of the institution.

POLARIZATION AND ACCOUNTABILITY ON THE BENCH

One perspective of looking at the structure of the Supreme Court leads to the assertion that the presidential selection process hinges on politicization. For instance, many believe that President Trump nominated Amy Coney Barrett, newest member on the Supreme Court, in an effort to bolster the Conservative majority that would rule on abortion according to Republican preferences.[16] On one hand, every presidential nomination can be seen as a calculated political decision, and each party has its own wedge issues that it seeks to advance through judicial appointments – especially when Congress is unable to pass legislation that can survive a change in administration, unlike executive orders. There is no need to single out the widespread protests that followed Barrett's nomination. On the other hand, it points to a trend of politicization that is likely to negatively affect the perceived legitimacy of the Supreme Court.

However, it is worth noting that measures of legitimacy hinging on polarization are limited. They present public opinion at a particular moment in time, not as an averaged representation of sustained general sentiments toward the Supreme Court among a given part of the population.[17] Opinion is influenced by factors such as recent political events, rulings, and appointments to the bench. As identified above, considering oneself to be in ideological

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[15] Dino Christenson, and David Glick, "Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy," *American Journal of Political Science* 59, no. 2 (2015): 418.
[16] Jeffrey Toobin, "There Should Be No Doubt Why Trump Nominated Amy Coney Barrett," *The New Yorker,* September 26, 2020.
[17] James Gibson, "Performance Evaluations Are Not Legitimacy Judgments: A Caution About Interpreting Public Opinions Toward the United States Supreme Court," *Washington University Journal of Law and Policy* 54, (2017): 72.

disagreement with the Court's effect on policymaking has been correlated with reporting lower legitimacy values.[18] Still, frequent polling provides a significant degree of confidence in the measures of legitimacy, especially when it comes to fluctuations in its values over time.

Evaluating public perception of legitimacy by concentrating primarily on the Justices' accountability may be more informative, not least because their duties and the appointment process have long been dictated by an unchanged set of articles in the Constitution. The main concerns pertaining to accountability are the lacking link with the electorate and the interminable nature of lifetime appointments. Few other public servants are selected for unlimited terms. Those public servants that serve limited terms are then susceptible to acting with personal political benefit in mind. They seek re-election or re-appointment. To remain independent, Justices should be shielded from such risks, the argument goes. Lifetime appointments provide the simplest way of implementing that idea. While superior in terms of impeding politically motivated actions, unlimited time in office is linked to a lesser degree of accountability. Limited terms have the advantage of subjecting appointees to continuous evaluation of conduct in office and performance in the role, as missteps in those key areas can significantly hinder, if not altogether prevent, re-election (or, in this case, re-appointment). Supreme Court seats do not come without such scrutiny, yet the opinion of external observers evidently carries less weight. Dissatisfied voters do not get to vote an Associate Justice out of office, as is their democratic right in the case of most other policymaking appointments.[19] Term limits must be considered given the immense effects that the Court's decisions have on the functioning of the United States.[20]

Furthermore, once selected to serve on the bench, Justices appear collectively protected from scrutiny. The power of the Supreme Court to override decisions of lower courts is derived not from an autonomous source but the Court's own precedent — Marbury v. Madison.[21] Additionally, the only way to reverse a Supreme Court decision is with another Supreme Court decision or an amendment to the Constitution. While the former is not exceedingly rare, the latter

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[18] Bartels and Johnston, "Supreme Court Legitimacy," 197.

[19] This, of course, raises the question of whether Supreme Court Justices are to be considered impartial interpreters of the Constitution or policymakers with ideological opinions shaping their decision-making. The contentious issue can be discussed at length, but the expected outcome of such debate is generally that there are formal and informal aspects of the role, with the Court leaning one way or another depending on the ideological affiliations of its members, whose rulings most certainly do affect policy.

[20] Presidential Commission on the Supreme Court of the United States, *Final Report* (2021): 6.

[21] Bartels and Johnston, "Supreme Court Legitimacy," 184.

is difficult to execute, especially in a polarized House and Senate. Therefore, alternative pathways to disputing rulings merit consideration.

PROPOSED SOLUTIONS

Given concerns such as those discussed above, it is worth considering potential modifications to the highest tribunal's institutional design. Some argue that the Supreme Court needs a comprehensive reform in order to survive as a legitimate democratic institution.[22] Others focus on enforcing stricter mechanisms of investigating alleged judicial misconduct.[23] Overall, ideas for reform are united by a call to increase oversight on an otherwise exceedingly independent institution. Striking a balance between judicial independence and the Supreme Court's perceived legitimacy continues to be the key challenge for policymakers seeking to promote the separation of powers while sufficiently restraining the Court.

Advocating for individual changes may bring effects sooner than attempts at whole-system reform. For instance, limited terms could go a long way in addressing the issue of polarization. While ideological bias can never be avoided, its effects can be balanced over time if the set of nine Justices does not remain unchanged for prolonged periods. Successfully petitioning policymakers to consider implementing such a change would require demonstrating that all political parties stand to benefit from it. Focusing arguments on worst case scenarios, such as the Court consistently siding with one faction, can highlight the need to decrease the likelihood of such outcomes.

In considering potential whole-system reforms, it is worth looking to state supreme courts, which rely on various judicial selection methods. There are three election methods: partisan, nonpartisan, and retention; as well as a few assisted and direct appointment mechanisms. Given that free, public elections tend to be regarded as the most effective vehicles of granting legitimacy to democratic institutions, let us consider existing methods of judicial election. Figure 2 illustrates the distribution of various selection mechanisms across the United States.

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[22] Daniel Epps, and Ganesh Sitaraman, "How to Save the Supreme Court," *Yale Law Journal* 129, no. 1 (2019): 181.
[23] Veronica Martinez, "Avoiding Judicial Discipline," *Northwestern University Law Review* 115, no. 3 (2020): 956.

Figure 2. Source: Ballotpedia

Partisan elections are conducted by providing the general electorate with ballots listing the candidates alongside their political party affiliation. Nonpartisan elections differ in one aspect: the candidates' political affiliation is not listed. Retention elections are still distinct as they allow voters to determine whether the judge remains on the bench or leaves to be replaced with a new candidate. This last mechanism seems particularly appealing to those signaling skepticism about the Court's institutional legitimacy due to lifetime appointments. Despite their individuating characteristics, these selection mechanisms are all similarly different from the present Supreme Court appointment process. By virtue of granting the general electorate with the power to determine the composition of the court, these state institutions are actively distinguishing themselves from the Supreme Court, which is virtually unchallengeable. Hence, installing as much as a retention election mechanism in the United States' highest tribunal could fundamentally reshape public perceptions of its legitimacy as a democratic institution.

However, it is important to acknowledge that the Supreme Court of the United States is not an unelected body for no reason. On the contrary, considering first the earlier public opinion figures suggesting that a significant portion of American citizenry would do away with the institution altogether if its decisions were condemned with significant turnout, and second the frequent fluctuations in evaluations of the Court's legitimacy, the likely outcome of introducing popular elections would be an extremely high turnover rate. Some judges would likely be voted

off the bench for singular controversial rulings, others simply for failing to adhere exactly to voters' expectations. Evidently, politically motivated actions in office would probably pose a far more serious concern than they do with the current system. Moreover, given the weight of the Court's seamless functioning on a day-to-day basis, as well as the added value of collaboration between well-acquainted Justices, constant changes could interfere with the institution's work.

Other ideas for reform include selecting Justices through a random lottery, whereby any eligible appellate court judge could potentially be nominated for a Supreme Court seat, as well as redesigning the institution to include equal numbers of Justices selected by the Democratic and Republican parties. The Justices would subsequently decide on additional appointments from lower courts.[24] Both of these proposals emphasize the need for changes in the present appointment process. This suggests that the focus of any reform concerned with institutional legitimacy should prioritize the way in which such trust is instilled into the Supreme Court by the public.

All in all, however, it is clear that one of the main concerns (if not *the* main concern) expressed by those doubting the Court's independence and accountability is the degree of politicization on the bench perceived by observers. The reforms advocating introducing limited terms would, as discussed above, likely produce political calculations motivated by the desire to maintain the most coveted judicial appointment in the country. Those pushing for elections would also probably face issues of politicization, though in another sense. This kind of politicization would be explicitly introduced by the public, and, in most cases, according to the relative representation of different ideological standpoints. Lastly, systems seeking to eliminate such consideration by, for instance, selecting Associate Justices via a lottery, must face the challenges of establishing an acceptable set of eligibility requirements to be met by candidates. Notably, such a set of rules may prove inflexible to departing from purely meritocratic considerations in order to take diversity of experiences (that could be brought to the Court) into account.

Therefore, further discussion of work such as the Presidential Commission's Report is needed not only to evaluate the possibilities for reform, but also to debate the value tradeoffs and

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[24] Epps, and Sitaraman, "Save the Supreme Court," 181.

priorities to be taken into account as the American democracy reflects upon the roles, structures, and responsibilities of the Supreme Court. [25]

CONCLUSION

Politicization and the shifting perceptions of the Supreme Court's legitimacy are multifaceted problems facing American institutions and public. Increasing partisan divides threaten to further exacerbate the issue of public support for independent judiciary. As discussed above, these concerning trends must be addressed if the separation of powers and rule of law are to be maintained at the core of the United States' democracy. Moreover, the Supreme Court must itself embody democratic values if it is to successfully engender continuing trust in its function. However, the road to a widely accepted yet independent institution is far from linear. Given the tradeoffs posited by various proposals calling for reform, a participatory evaluation of the Supreme Court's position among the institutions of the government should precede any durable change. Perhaps, in the process of such discussion, factors affecting perceptions of legitimacy that have so far been omitted are identified.

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[25] Presidential Commission on SCOTUS, *Final Report,* 2021.

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